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PART V.

PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

The following Extract from the Proceedings of the Governor of Bombay in the Legislative Department is published for general information :—

Abstract of the Proceedings of the Council of the Governor of Bombay assembled for the purpose of making Laws and Regulations under the provisions of "THE INDIAN COUNCILS ACT, 1861."

The Council met at Poona on Saturday the 6th day of October 1888, at 12 o'clock, noon.

PRESENT:

His Excellency the Right Honourable LORD REAY, LL.D., G.C.I.E., Governor of Bombay, *Presiding*.
Lieut.-General His Royal Highness the DUKE OF CONNAUGHT, K.G., K.T., K.P., G.C.I.E., G.C.S.I., G.C.M.G., C.B., A.D.C.
The Honourable J. B. RICHEY, C.S.I.
The Honourable J. R. NAYLOR.
The Honourable F. FORBES ADAM, C.I.E.
The Honourable Ráo Báhadur BEHECHARDAS VEHARIDAS.
The Honourable RAHIMTULA MAHAMED SAYANI, M.A., LL.B.

Papers presented to the Council.

The following papers were presented to the Council :—

1. Petition from Bálábhai Dámodhar and others, owners of salt works in the Island of Karinjah, dated 10th October 1888, submitting objections to some of the sections of the Salt Bill.

2. Memorandum of objections to the Gujarát Tálukdárs Bill from the Thákor Sáheb of Limbdi, without date.

The Gujara't Ta'lukda'rs Bill.

Consideration in detail of the Bill resumed.

The Honourable Mr. RICHEY said :—Your Excellency, since the consideration of the Bill at the last meeting of the Council a further memorial or rather memorandum has come to hand from the Thakor Sáheb of Limbdi urging some objections with which we have already dealt and one or two points which were not considered at the last meeting.

of this Council. It is not necessary to detain the Council with the reading of this memorandum, for all the most important considerations in it have been already dealt with either in the speech of the honourable mover of the Bill, or in my remarks at the last meeting, or in the report of the Select Committee. But as the Thákor Sáheb has reiterated some of his objections, apparently carried away by some erroneous impression, I may perhaps take up a little time in noting one or two of them. In the third paragraph he objects to the repeal of the provisions of the Act of 1862 which affect the proprietary rights of Tálukdárs. But he is here under a misapprehension, as the provisions are not repealed. Paragraph 6 asks that the provisions should be re-enacted, which is quite unnecessary. He renews the objection as to the application of the Land Revenue Code which, as the Council is aware, is already applicable. In paragraph 7 he urges that the operation of the Act should be limited in the interests of himself and three or four other Chiefs of Káthiáwár. Then he says: "This will exclude from operation estates like those belonging to the State of Limbdi and other States of Káthiáwád which are impartible by reason of the rule of primogeniture obtaining, and in respect of which the *jama* payable is either *fixed* by the Permanent Settlement of 1807, or variable in consequence of no objections being raised by the Chiefs when some insignificant increase was made in the amount. In estates like these there is no occasion for a Revenue Survey or for a Settlement Register or for partition." The contents of this Bill were before the public for six weeks and we received no petition from any one but the Thákor Sáheb of Limbdi and three or four other Chiefs who have small interests, and he asks us to make an exemption to exclude him and these others from the operation of this Act, but his memorial does not afford any basis for exemption. There are larger estates than these in Broach which are entirely primogeniture estates and they have not asked for any exclusion from the Act. The Thákor Sáheb asks that the provisions of the Act be not made applicable to estates in respect of which the *jama* is fixed. But besides his there are other estates with fixed *jama*, and we cannot make this a test. We should exclude a considerable number of estates with fixed *jamas*. With regard to Bill section 5*e*, the Thákor Sáheb asks that it shall be altogether expunged. He says: "It relates to matters between the tálukdár on the one hand and people having a kind of interest in his estate on the other; these have nothing to do with the Revenue Administration of the táluka, by which is understood the regulation of the relations of the tálukdár with Government in matters of revenue." As I have said, no greater hardship could be done to the tálukdárs than by the refusal of Government to record any alienation. The Thákor Sáheb does not recognise the fact that this Bill is prepared, as it is, both in the interests of the tálukdár and the public. The paragraphs of the memorandum which follow have already been dealt with and can hardly be said to call for further explanation. The Thákor Sáheb suggests some maximum limit as to the assessment of tálukdári estates, but as I have already explained we do not exact the full demand for the tálukdár's estate and there are habitually abatements of from 30 to 50 per cent. Then the Thákor Sáheb says of the Bill, section 29, that it "introduces a change in the present system of police establishments in tálukdári villages; in some of them, those, for instance, belonging to the Limbdi State where the only police officer provided for by the State at its own expense is the *Mukhi* and no one else, the change would be very marked, and contrary to the implied understanding of Government with the tálukdárs. Ordinarily the expenses of the police should be borne by the ruling power direct; and accordingly the tálukdárs of Ahmedabad, when they enjoyed such power, used to pay the expenses." There is a misapprehension—there is no change contemplated in the practice as regards police establishments. In the original Bill it was proposed to make the tálukdár responsible for all village establishments, but in Select Committee it was held that this would be going too far. The present provision was accordingly adopted. In old times beside some military responsibilities full liability for the Police of his villages fell upon a tálukdár, and he had to make good any losses by theft that occurred within his estate; now he has to pay a few village officers. But we ask the tálukdárs whom they wish to appoint a patel; their nominee is accepted except where the tálukdár is a criminal, and then we override his nomination. The Thákor Sáheb rather taxes our credulity when he speaks of the Tálukdárs as "ruling powers." They were never "ruling powers." They range from feudal chiefs of some dignity to merely small headmen of two or three villages. So there is no transfer of power from the tálukdár to the British Government. The Thákor Sáheb objects to the limit of time of encumbrances to the tálukdár's own life, but there is nothing further in the memorial which has not already been disposed of, and I think the Council may accept the conclusion aleady arrived at that no harm will be done to the Thákor Sáheb or any of his brother Chiefs in Káthiáwár.

The Honourable Ráo Bahádur BEHECHARDAS VEHARIDAS moved the following amendment, *viz.* :—

"Section 29.—Add (4)—Provided that the said charges shall not exceed the scale prescribed for Government villages of similar size and importance; nor shall such charges in any case exceed the difference between the total survey assessment of the estate and the amount of *jama*."

The honourable gentleman said :—My Lord, this amendment though late, will, I hope, commend itself to your Lordship and to the honourable members of this Council, as necessary to prevent misunderstanding or possible misinterpretation of the object of the Bill. Government can certainly have no wish to burden a tálukdár with police expenses beyond the margin of profit left to him, nor beyond the actual needs of his village. But the provisions of the Bill as they stand at present appear to be somewhat vague and too wide, and it is therefore desirable to clearly define the responsibilities of the tálukdár in this important matter.

The Honourable Mr. RICHEY :—As a rule the police charges will never amount to more than the amount which would be payable in a Government village. But I should desire very strongly to keep the police responsibility entirely separate from revenue responsibility. The revenue liability is one attaching to the land, its incidence is clearly defined and placed beyond all question. The tálukdár's police responsibility is more of a personal nature and refers to the characteristics of his tenure and his previous historic position with regard to the Government. If there were no black sheep one might say—let it be as the honourable member suggests. But as I have already explained, where the tálukdár himself is a doubtful character, it is necessary that the police patel should be strong enough to hold his own in the village. If the tálukdár is actually criminous and we were unable to control his propensities through a strong patel, the alternative would be some interference with the management. A case in point is this :—a tálukdár has magisterial powers and uses them to recover very valuable property a portion of which he steals and hides in his village; he arranges with his police patel, who with his chaukidárs assist him to keep possession of it. When the circumstances come to be known, the tálukdár loses his magisterial, powers and after that cannot be allowed to nominate a police patel, for that officer would not be able to hold his own against all the influences against him. Such a case came under my notice as Tálukdári Settlement Officer, and I think I put in as patel a pensioned policeman who got Rs. 10 or Rs. 15 per month. No smaller salary would do. Under such circumstances as these we should not be able to put in a proper person if my honourable friend's amendment were carried out. I should be sorry if this were the case, and I think my friend after this explanation will be willing to accept my view of the matter.

The Honourable Ráo Bahádur BEHECHARDAS VEHARIDAS :—The Honourable Mr. Richey desires to keep the police responsibility separate from the revenue responsibility, but I must admit that this amendment is based on the view taken by the honourable member who first introduced the Bill. He is right, however, in mentioning the nature of the exceptional cases. These I submit are very rare and may therefore be specially provided for. But I do not think it proper to let such rare cases govern a general provision for a permanent police establishment. I have certainly no objection to make a special provision for those cases if the Honourable Mr. Richey so desires.

The Honourable Mr. RICHEY :—That would be possible, but it would be redundant. We cannot go on the assumption that these powers will be abused. We do not find our magistrates abuse their powers of fixing the emoluments to be paid by vatandárs to the officiating patel. I don't think I remember a case in which such complaint has been made. Some discretion must be left, and it would be a pity to call attention to misconduct by providing for it specially. I submit, Your Excellency, that no case for amendment has been made out.

His Excellency the PRESIDENT (to the Honourable Ráo Bahádur Behechardas) :—Does the honourable member press his objection?

The Honourable Ráo Bahádur BEHECHARDAS VEHARIDAS :—No, your Excellency, I will withdraw it.

The amendment was accordingly withdrawn.

The Honourable Ráo Bahádur BEHECHARDAS VEHARIDAS then moved the following amendment:—Section 32, sub-section (1), substitute "41" for "40" in line 1, add "48" after "44" in line 2, and add "69, 73" after "inclusive" in line 3.

The honourable gentleman said :—My Lord—I venture to submit this amendment also at this stage of the proceedings, because its object is to supply an omission which is due apparently to nothing but oversight and to make certain provisions of the Bill consistent with its avowed principle. All trees in tálukdári estates undoubtedly vest in the Tálukdárs irrespective of any concessions made in the case of occupants of Government lands. Section 40 of the Land Revenue Code has consequently been declared inapplicable to tálukdári estates, and this being so, there is no object in letting Section 41 apply to these estates. Similarly it is not contemplated to interfere with a tálukdár's right to put the lands of his estate to any use he may consider necessary, and with this view Sections 65 and 66 of the Code have been declared inapplicable to those estates. As a necessary corollary, Section 48 should also be declared inapplicable. As regards Section 69 I am respectfully of opinion that it could never have been the intention of Government to reduce the tálukdárs to mere survey occupants in the matter of their rights to mines and minerals. Clause 2 of the section, it is true, protects existing rights, but *primâ facie*, all mines and minerals in tálukdári villages vest in the Tálukdár, and the application of the section to tálukdári estates is consequently totally unnecessary. Section 73 clashes with the principle of the Bill and may also be omitted with advantage.

The Honourable Mr. RICHEY :—Your Excellency, this subject in Select Committee came in for very close criticism from the Honourable Mr. Telang. Section 41 of the Land Revenue Code contains the following,—"The right to all trees, &c., except so far as the same may be the property of individuals or of aggregates of individuals capable of holding property, vests in Government." It must be remembered that tálukdárs, as the name is now applied, are only one section of a class to whom this Bill will apply, it will apply to kusbatis, mehwasis, naiks, and it becomes necessary to take very great care that we do not make away with any rights which now vest in Government. It is true some of them are proprietors of their land, but we do not define *mehwasi*, *kusbati* and *naik*. These terms have never been properly defined. But it is better to err on the safe side if at all, and this clause can do no harm. Then as to Section 48, no doubt the honourable mover of this amendment considers that tálukdárs should have their village sites exempted from liability to assessment. As Your Excellency is aware, we have not made the land in village sites pay Government assessment; they are already liable, but we have not exercised our powers in this respect, though it would be perfectly legal to do so. If we should exercise these powers there is no reason why tálukdári village sites should not be included in the general assessment; rather the contrary, for tálukdárs receive payment from non-agriculturists for the sites of their houses. If this amendment were passed the general public would have cause to complain. As to Section 69, the remarks I made as to trees apply here, and we are asked to suggest that Government has not a right to minerals in estates held by tenures which may not exclude such right. As to Section 73 there is no reason to exclude tálukdárs from procedure which applies to everybody else. The section is either harmless or, if ever wanted for certain purposes, it is useful. The subject was carefully considered in Select Committee. Therefore, I think on the one side, it would be safer and on the other side more convenient to leave these sections as they stand.

The Honourable Ráo Bahádur BEHECHARDAS VEHARIDAS withdrew his amendment.

Bill read a third time and passed.

On the motion of the Honourable Mr. RICHEY, the Bill was read a third time and passed.

The Salt Bill.

Mr. Richey moves the first reading of Bill No. 2 of 1888.

The Honourable Mr. RICHEY in proposing the first reading of Bill No. 2 of 1888, a Bill to consolidate and amend the law relating to salt and the salt revenue throughout the Presidency of Bombay, said : Your Excellency, we have at present two laws regulating the sale of salt. Sind comes under the general Act of the Government of India of 1882, whilst a local Act applies to the Presidency proper. About the year 1883 it was found that some difficulty arose with respect to the working of the Act, which is in force in Sind, and it was discussed whether it would not be better simply to extend the provisions of the Bombay Act with such changes as would enable us to suit all the requirements of Sind. The Sadar Court in Sind passed one or two judgments which seemed to go beyond previously accepted views of the law as to the manufacture of salt and the importation of salt in the province. And these points were urged upon the attention of Government and it was found desirable to provide for the wants of Sind in a more direct manner. It was subsequently deemed desirable to make the review of our Salt Act and to take the opportunity at the same time to improve the drafting of some of its provisions before it was made one for the whole presidency, and the result of our deliberations was that the Bill now before the Council was drafted. Really there is very little new in the Bill. The old law of 1873 is practically reproduced. It is more carefully drafted and has some slight additions and modifications which will conduce to make it more practicable and convenient for executive working. But there are two new features to which attention might be called as they are mentioned in the Statement of Objects and Reasons. The salt-earth provisions of the Bill were before the public for six months without producing any representation or petition on the subject. The history of these provisions is a simple one. Act XII of 1882 does not prohibit the excavation of salt-earth but only the manufacture of salt from it, though it does prohibit the excavation of saline deposit or efflorescence. It was supposed by the Sind Salt Officers that the excavation of salt-earth would be covered by this prohibition and excavation of salt-earth was brought under control. The Sadar Courts have ruled that this was *ultra vires* and had no longer the sanction of the law behind it. Upon this point I may read from the contemporary reports by Mr. Erskine. He quotes the remarks of the Assistant Commissioner for Salt Revenue, who says that "in Northern India the Courts have held that the removal of Kalar earth is an offence and the authorities have, when they found it necessary, been able with the law on their side to check it. Here, however, the Sadar Court had held that it is no offence to remove Kalar earth, and the consequence is abundant removal over a very large portion of Sind. Mixed with a little water and boiled it supplies quite sufficient salt for the use of a household for the day." This sort of thing goes on very extensively in Sind, and it is desirable to provide a reasonable check. People take home the salt-earth, and in an hour or two make salt of it. It is of no use talking about searching the houses, for the officers cannot tell whether they are cooking salt or their dinner. There is no other way except to check excavation. The manufacture of salt from salt-earth merely imitates the natural process by which a large portion of our salt is made. We have two processes—one from sea-water and the other from inland brine pits. These are pits sunk in salt-earth where there is plentiful subsoil water; the water extracts the salt from the soil and becomes brine which when evaporated leaves salt. Our works at Khárághoda are simply due to a considerable body of salt subsoil by the Runn of Katch. It is strongly impregnated with salt, in fact the earth is sometimes more than half salt and the subsoil water which is there abundant has become brine. You have a very great stretch of salt-earth country bordering on the Runn. In the rains every depression is filled with water, it extracts the salt from the earth and when it evaporates after the rains natural salt is deposited just as salt in the salt-pans. We can control the use of this salt naturally made from salt-earth, what we want to be able to do is to control the artificial imitation of the natural process. This can only be dealt with as the Punjab Courts have dealt with it, by prohibiting excavation. What the people will have to do under the new provision will be to go to the Revenue Officer and get his pass when they want to excavate, to make their threshing floors or for manure or other legitimate uses to which no one will object. In the Konkan salt-earth is used for fish-curing. We don't wish to hinder this industry but rather to encourage it and develope it. I believe the public taste has become so much accustomed to it that they prefer fish cured with salt plus the earth than without it, and in order to provide for this legitimate use of salt-earth a section has been introduced that removal may be permitted without a license from the Collector when it is for purposes of this kind We should allow people to take salt-earth for fish-curing, for laying threshing floors or for manure, but in order to control abuses we want in Sind a restoration of the powers in exercise up to 1883 and now exercised in the Punjab. Another important change is in the direction of regulation of penalties and the withdrawal of power from departmental officers and transferring them to Magistrates. I need not say anything further to this Council on these points, they speak for themselves. I have the honour to move that the Bill be now read a first time.

Bill read a first time and referred to a Select Committee.

The Bill was then read a first time, and on the motion of the Honourable Mr. Richey was referred to a Select Committee composed of the Honourable Messrs. Naylor, Mehta and Sayani, and the mover.

The Aden Port Trust Bill.

Mr. Naylor moves the first reading of Bill No. 3 of 1888.

The Honourable Mr. NAYLOR in moving the first reading of Bill No. 3 of 1888, a Bill to vest the Port of Aden in a Trust, said:—Your Excellency, it is two years ago to-day since the late Sir Maxwell Melvill obtained leave to introduce Bill No. 5 of 1886 for the purpose of constituting a Port Trust at Aden. On that day—6th October, 1886—the Bill which he introduced was read a first time and referred to a Select Committee. That Committee, after several meetings and consultations, presented their report to this Council on the 7th April, 1887. After publication and after having been before the public for some time, the Bill was read a second time in this Council on the 16th July, 1887, and also on the same day it was read a third time, and passed. The reasons for constituting a Port Trust at Aden, and the lines upon which the special provisions of the Bill were passed, were fully explained by the late Sir Maxwell Melvill in his two speeches in this Council at the first and second readings of the Bill, and on the last occasion on which he spoke upon it—the 16th July, 1887—he explained that Aden is pre-eminently a fortress, and that shipping and mercantile interests there must be subordinated to military and naval exigencies; and the Bill, as amended by the Select Committee, contained several important provisions, and at the second reading the Hon'ble Sir Maxwell Melvill himself asked the Council to approve certain other provisions, all having for their special object the recognition of the fact that Aden is primarily a fortress, and of the Imperial considerations raising out of that fact. The Bill, as passed by this Council, was forwarded for the assent of the Viceroy. In the letter of May 23, 1888, which has already been communicated to the Council, the Government of India informed this Government that His Excellency the Viceroy had felt compelled to withhold his assent to the Bill principally upon two grounds. The first of these grounds was that military and naval munitions and stores, and vessels landing or shipping the same, should have been exempted from section 40 of the Bill, which enables the Port Trust, with the approval of the Government of Bombay, to fix a scale of tolls and rates on the landing and shipping of goods and the use of wharves, quays, and the like. With regard to this point the Government of India observes that Government having itself provided places for the landing and shipping of stores, it seems to the Governor-General in Council that vessels landing or shipping military or naval stores and munitions and the stores and munitions landed or shipped should be excluded from the operation of section 40. The Government of India has also observed with regard to its second objection, that section 41 vests in the Board the power, with the approval of the Government of Bombay, to remit tolls and rates, but this is a power which in the opinion of the Governor-General in Council should be exercisable by the Government of Bombay alone. It was to remedy these special defects and to meet the wishes of the Government of India that the Bill, which is now in my charge, was drafted. The defects are got over by the insertion in sub-section (3) of section 40 of a new clause, *viz.* 3 (*a*), by which it is proposed to provide that "nothing in sub-section (1) or (2) shall be deemed to authorise the inclusion, in any scale framed or approved thereunder, of any toll, rate or charge in respect of military or naval munitions or stores, or of any vessel landing or shipping any such munitions or stores." And the second point to which objection is taken by the Government of India it is proposed to provide for in the present Bill by vesting in Government alone the power under section 41 to remit any tolls, rates or charges, or portions of them, leviable under section 40. But although these are the principal objections taken to the provisions of the previous Bill, there are others which have been pointed out in the letter of the Government of India, and with regard to which it has been suggested that the opportunity should be taken of introducing amendments. The first of these is most important, inasmuch as in the previous Bill section 42 is in conflict with section 143 of the Army Act of 1881. The Army Act, which is an Act of Parliament applicable to the whole empire, provides that all officers and soldiers of Her Majesty on duty or on the march and their horses and luggage shall be exempt from payment of duties or tolls on landing or embarking on or at any pier, quay, wharf or landing place. Section 42 of the Bill, as passed by the Council in 1887, provided that in lieu of a toll under section 40 "a toll shall be payable by Government to the Board on all troops, landing or embarking at Aden, at the rate of one rupee per head." The first part of that section exempted troops from tolls or rates ordinarily leviable by the Board, and the second paragraph of it declared that Government should pay for every soldier landed or embarked, and for each member of a soldier's family, one rupee per head. This is clearly in conflict with the English statute, and the Government of India has asked that the conflict be removed. The only thing to be done seems to be to omit section 42 altogether, and to provide under section 40 (3-*b*), "That nothing in sub section (1) or (2) shall be deemed to authorise the levy from officers or soldiers of Her Majesty's regular forces, on duty or on the march, of any duties or tolls from which they are exempted by section 143 of the Army Act of 1881." This, I think, meets the objection of the Government of India. Then there are other suggestions. One of these is that in section 6 the senior officer of Royal Engineers, for the time being stationed at Aden, shall be added to the *ex-officio* trustees of the Port. To this there appears to be no objection, and the necessary words have been inserted in section 6 of this Bill. Then with regard to section 14, the Government of India is of opinion that the fee of Rs. 30 per meeting, which it was proposed should be payable to every trustee for attending meetings of the Board, was too considerable a fee for so small a port as Aden, and it has suggested to this Government that the corresponding provision of the Rangoon Act might be followed for Aden. Under that Act the fee for attendance is limited to Rs. 16, and it is provided that if more than one meeting be held in any one month no more than one fee shall be paid. That limits the fee to a gold mohur per month, and the Government of India makes a further suggestion that *ex-officio* trustees shall not be entitled to any fee, but only non-official trustees shall receive it. This Government thinks that these suggestions should be adopted, and section 14 has been amended in accordance with that view. The next point is with regard to section 19 of the previous Bill. The last proviso of that section was to the effect that every officer and servant, if any, maintained by Government on the day when the Act comes into force, shall, if he is entitled to pension or leave allowances as a Government servant, be deemed to be lent to the Board on and from the date notified by the Governor in Council under section 9. The object of this proviso was that on the Act first coming into operation the Board should take over the existing staff, and after having had time to look about it, should determine whether it would retain that staff or dispense with any members of it, and gradually make its own arrangements without being compelled to get rid of all the existing staff and provide its own. This proviso also dealt equitably with the officers of Government whose services would be retained by the Board. As they were to be deemed to be Government officers, whose services were lent to the Board, the usual rules which apply to Government servants so lent would apply to them. The Government of India did not take exception to this proviso, but it says that it is not fair to impose upon revenues unconnected with the port charges for pensions or leave allowances in respect of these officers, so far as they have been already earned. Those servants of the harbour staff who have been hitherto employed as Government servants will be entitled when retiring from Government service to pensions under the rules applying to Government servants; but some part of those services having been rendered to the port it is just that a portion of these pensions should be paid from harbour revenues, and that the whole amount should not be paid at the charge of the general revenues of the country. The Government of India states its wishes in the following words:—"In the opinion of the Governor-General in Council, no pension now chargeable on the revenues should be chargeable upon those revenues after the constitution of the Trust." The clause which has been introduced to give effect to this wish of the Government of India is proviso (*b*) at the end of section 20—a clause which has been drawn in consultation with the Accountant-General, and it embodies a principle which I think the Council will agree is unexceptionable: "Any pension or leave allowance payable to any officer or servant of Government employed in connection with the Aden harbour prior to the date notified by the Governor in Council under section 9, shall, in so far as the same has been earned during such employment, be a charge on the port fund, and shall be defrayed thereout, on the requisition of Government, by the Board." Then as to section 33, the Government of India desires that specific provision be made for landing and shipping military or naval stores in any part of the harbour which the authorities think fit or desirable. For that purpose provision has been made under section 33 (1-*b*), which runs :—" Notwithstanding anything contained in sections 31 and 32, military or naval munitions or stores may be landed or shipped at any time and at any place within the limits of the port which the Political Resident at Aden may deem convenient." One other alteration has been made in the present Bill, in what was section 49, but is now section 48. It is merely a verbal improvement which I need not do more than just mention. I have stated the only changes of any importance which have been made in the Bill. They do not affect the principle of the Bill vitally, and I trust there will be no objection to the Bill, as now before the Council, being read a first time, and I beg to move that it be so.

The Honourable Mr. FORBES ADAM :—Your Excellency, I have reason to know that the Bill which was passed through this Council last year gave great satisfaction to those people at home, who are largely interested in the shipping of Aden, and to most of the chief residents who are trading at Aden. Owing, however, to the long delay which occurred before the Government of India placed their views before your Excellency in Council, an idea got abroad that it was intended to alter vitally the principle of the Bill, and to make important changes. Repeated representations have been made to me from Aden upon the subject, and I have been urged to do all I could towards getting the Bill finally passed. How strong was the impression that the principle of the Bill was destined to undergo a material change, an instance which came before my notice will show. A gentleman who had previously expressed a warm and strong approval of the measure came to me with a settled look of reproach in his eye and a copy of the new Bill in his hand, said in a voice quivering with emotion, pointing to one of the sections : "Look at that, sir, all your good work of last year is gone." I examined the section word for word, and found it exactly the same as the last year's Bill, and I think it is well that the public should understand that the Government of India has made no change in the principle of the Bill now before us, and that no alteration has taken place except with respect to the landing of naval and military munitions, and the exemption from toll of soldiers on duty, their baggage and horses. This latter exemption, if I have been rightly informed, is already the practice at Aden, and has been so for a long time, Government having itself provided wharfs for the purpose, and private wharf owners charging nothing when their wharfs happened to be used. I am prepared to support the Bill now before us and the passage through all its stages to-day.

Bill read a first time.

The Bill was then read a first time.

Mr. Naylor moves the second reading of the Bill.

The Honourable Mr. NAYLOR :—Your Excellency, the Bill for constituting a Port Trust at Aden having been before the Council for over two years and the commercial public of Aden being desirous, as the Honourable Mr. Forbes Adam has said, that its provisions should come into force as soon as possible, and the Government of India and the Secretary of State being also anxious to see it in force without delay, I wish to ask the Council to assist me in enabling it to pass through all its stages to-day. I beg to move that the Standing Orders be suspended and the Bill read a second time.

Standing Orders suspended and Bill read a second time.

Standing Orders were accordingly suspended and the Bill was read a second time.

Bill considered in detail.

The Honourable Mr. NAYLOR then said :—Your Excellency, I have three proposals to make for amending the Bill The first two are not my own ; they should be in the hands of the honourable gentleman opposite (the Honourable Mr. Forbes Adam), who was good enough to suggest them, and I have myself given notice of them only because it was doubtful whether the honourable gentleman would be able to be present here to-day. Under section 5, the proposal is that the last word "five" be altered to "six". In the first Bill of 1886 section 5 proposed that the Board should consist of a minimum number of five members, and section 6 proposed that three of these members should be the *ex-officio* members whose names were given in that section. Section 7 provided that the rest should be appointed by Government, and of these such number as should from time to time be fixed shall not be public officers. Section 7 of the Bill now before us nominates four members out of the minimum number of five to be *ex-officio* members. Thus only one could be a non-official member. The Honourable Mr. Forbes Adam pointed out that this is a smaller proportion than the public would expect, and suggested that the minimum should be altered to six, leaving the other sections standing as they are. This Government sees no objection to the proposal.

The Honourable Mr. FORBES ADAM :—I think, your Excellency, you could hardly get both the trading and shipping interests represented properly without making this amendment.

The amendment was adopted.

The Honourable Mr. NAYLOR then moved the following amendment to section 40 :—"For the last eleven words of section 40 (3) (*a*) substitute the following:

For such time as a vessel is landing or shipping any such munitions or stores, in respect of such vessel."

The honourable gentleman said:—Your Excellency, I have already explained the reason for introducing the new clause (*a*) of section 40 (3). The last eleven words of that clause effect what was desired by the Government of India, but the Honourable Mr. Forbes Adam has pointed out that those words might operate unfairly at times, as in the case of a ship which lands only a few tons of military stores and otherwise carries a cargo of ordinary merchandise. As the only object of the proposed exemption is that ships landing or shipping military or naval munitions or stores shall not have to pay in respect of those military or naval munitions or stores, it seems reasonable that they should only be exempted from the liability to rates during such time as they are actually engaged in landing or shipping those stores. My present proposal therefore is that the last eleven words be eliminated and those I have read substituted.

The amendment was agreed to.

The Honourable Mr. NAYLOR :—Your Excellency, the last amendment I have to propose is but a clerical correction in schedule A. The necessity for it has been pointed out by the Resident at Aden. In column 4 opposite the entry No. 7 'Lascars' Lines,' for the word 'ditto' the words 'In Post Office Bay' need to be substituted. There is simply a mistake which has crept in unawares, and I think the Council will have no objection to the correction being made.

The amendment was adopted.

Bill read a third time and passed.

On the motion of the Honourable Mr. NAYLOR the Bill was then read a third time and passed.

The City of Bombay Municipal Act Amendment Bill.

Mr. Naylor moves the first reading of Bill No. 4 of 1888.

The Honourable Mr. NAYLOR in moving the first reading of Bill No. 4 of 1888—a Bill to amend the City of Bombay Municipal Act, 1888,—said: Your Excellency, I feel that some apology is due to the Council for bringing municipal matters again before it, so soon after the many meetings which were devoted to their discussion during the last Session in Bombay. But it is not an uncommon thing that in Bills before local Councils points escape that minute criticism which the higher authorities bestow upon them, and thus amendments are frequently called for before the final assent of the Viceroy can be obtained. The municipal Bill, which was discussed at such length and with so much earnestness in Bombay, has however received the assent of His Excellency the Viceroy, and this fact was communicated to this Council at its last meeting. The Bill became law on the 14th September last. But before that assent was given, the Viceroy desired that this Government should undertake to legislate without delay in order to remove the few important objections which the Government of India entertained to some of the provisions of the Bill. The objections of the Government of India appeared to be such as this Government could without hesitation undertake to remove, and therefore it did agree to alter the few sections of the new Municipal law to which its attention was directed. The Bill which I am about to ask the Council to have read a first time has been introduced for the purpose of meeting the objections of the Government of India. The objections are few in number and, considering the importance and the length of the Municipal Act, I may say that the amendments which are to be proposed are not of any material importance. The first relates to section 106 of the Municipal Act, which empowers the Corporation from time to time to borrow or re-borrow and take up at interest money from Government or from the public, with the sanction of the Governor in Council. Upon this the Government of India have remarked that "the Governor in Council will be aware of the terms on which the Government of India came to the assistance of the Bombay Municipality in the early days of the indebtedness of the Corporation, and of the restrictions which are imposed on the borrowing powers of similar Corporations in other parts of India. Having regard to the reasons which led to the imposition of these terms and restrictions, the Government of India are of opinion that in section 106 of the Bill the sanction of the Governor-General in Council should be substituted for that of the Governor of Bombay in Council." The effect of the amendment desired by the Government of India is that proposals as to the borrowing and taking up of money at interest will, as hitherto, be disposed of finally, not by this Government, but by the Government of India. That is provided for in section 2 of the Bill. There is a somewhat similar proposal as to section 109 of the Act. Clause (c) of that section relates to a matter which has been the subject of recent correspondence between the Government of India, the Government of Bombay and the Corporation. "In the opinion of the Government of India forty years and not sixty should be the maximum period within which a loan should be repaid. The limit of sixty years may stand in the Bill, as such a term may, in exceptional circumstances, be admissible, but the words 'Governor-General of India in Council' should be substituted for the word 'Government.'" Here the Government of India desire that the same power should be vested in them as heretofore to determine for what period they will allow a loan raised by the Corporation to run. For recent loans the Government of India have decided that the period shall not exceed forty years, and they have ruled that it shall be usually fixed at that number of years. It is admitted, however, that under exceptional circumstances as long a period as sixty years may be admissible and the Government of India do not wish to limit the period to forty years in the Act. What they wish is that the determination of the period shall rest with themselves. This is accordingly provided for in section 3 of the present Bill. Section 4 of the Bill relates to section 138 of the Act. It will be within the recollection of the members of this Council that section 138 relating to a special audit of municipal accounts, which may from time to time be directed by the Governor in Council, was introduced while the Bill was under consideration, by the Honourable Sir Raymond West. The question was discussed as to whether auditors should be appointed by the Corporation or by the Government, and it was decided that the auditors should ordinarily be appointed by the Corporation, but that Government might, whenever they thought it desirable, order a special audit, but that the cost of any such special audit should not, without the consent of the Corporation, be chargeable to the Municipal Fund. Upon this matter the Government of India have made the following remarks:—"The audit of municipal accounts has two objects. The first is to assure the municipal authorities themselves that their revenue is being duly brought to account; that the expenditure of their officers and servants is such as has been sanctioned by themselves or by proper order; and that the accounts presented to them contain a true statement of their transactions and affairs. The second object is to assure Government, as the authority which has conferred by legislation upon the municipal authorities certain powers of taxation and expenditure, that the levy and expenditure of the taxes is such as has been authorised by the Legislature. This second object can only be attained by the employment of auditors independent of the Municipal authorities, and in practice the Government would not ordinarily appoint such auditors unless, upon the representation of persons interested, it has reason to believe that an enquiry ought to be made into the proceedings of the Municipal authorities. But when the Government considers that such an enquiry is necessary, it should, in the opinion of the Governor-General in Council, be entitled to charge the cost of the audit to the Municipal Fund. In this view the proviso to section 138, sub-section (1), appears to the Governor-General in Council to be open to objection." This objection appears to me to be a reasonable one, and this Government has also concurred in it. It is now therefore proposed to enact that the cost shall be chargeable to the Municipal Fund. I must say that this provision seems a very proper one. A special audit is not likely to be of frequent occurrence—probably none will be ordered at all, unless there appears to be something wrong which requires looking into—and when such an audit is directed it will be as much for the satisfaction of the Corporation themselves as of Government. The next important change is that which is effected in section 7 of the Bill. The proposal there is to exclude petroleum from the articles upon which the Corporation shall be entitled to levy a town-duty. With regard to this, the reason of the objection taken by the Government of India is "that Schedule H, which includes petroleum, offends against the rule that where a duty is levied for imperial purposes town-duty should not also be taken." When the Bill to amend the Municipal law was first prepared, petroleum was not included in Schedule H at all. It was made liable to a town-duty subsequently by a special Act, which came into force on the 1st October 1886, and from that date a town-duty has been levied upon it by the Corporation. Since that, the Government of India have also thought fit to impose an imperial tax upon petroleum. There is no hardship in asking the Corporation to forego the duty upon that article and in subjecting it to the general rule that upon no article on which an imperial tax is levied shall a local tax be resorted to. The object of section 7 is to give effect to this rule. But in order that the budget arrangements of this year shall not be interfered with, section 1 provides that section 7 shall not come into force until the 1st April 1889, so that until the 31st March 1889 the present arrangements will continue under which a town-duty is levied on petroleum. I may give a few figures, which will, I think, satisfy the Council that in asking approval of section 7 of the Bill, I am not asking the Corporation to give up anything of very great value. The duty, as I have said, was introduced on the 1st of October 1886, and up to the end of 1887-88 it had been in force for eighteen months only. The figures of the year 1887-88 show the remarkable fact that the exports from Bombay of petroleum exceeded the imports into it, so that the town-duty during that year resulted in a loss. The imports were 34,15,000 gallons, and the exports 34,26,000, eleven thousand over and above the imports. The collections were Rs. 1,67,000 and the cost Rs. 1,75,000. The loss to the Corporation on this article was Rs. 3,500. Of course it may be said that the year 1887-88 was an abnormal year, and no doubt it was, because in the half-year between the 1st October 1886 and the 31st March 1887 the net revenue realised was Rs. 73,000. But the fact that in one year the tax on this article may result in a loss shows that the results of the taxation of petroleum are very uncertain indeed, and that the tax is not by any means a good one for municipal purposes. And there is every reason also for saying that it is a tax which the Municipal Corporation can very easily do without. There are several other articles in Schedule H which are liable to town-duties, and some of those are not at present taxed at the maximum rates. In the last budget the rates on grain were reduced from five annas to two annas per khandi, sugar from seven to six, and ghee from ten annas to six per maund. So there is plenty of margin for the levy of taxes on other articles, and the exclusion of this one article will not make any real difference in the resources of the Municipality. Section 5 of the Bill amends certain sections of the Act in which an expression has been used to the effect that certain State property vests in the Secretary of State for India in Council. This is a minor point, the need for amending which can, perhaps, only be appreciated by lawyers. But the Government of India have pointed out that it is incorrect to say that public property vests in the Secretary of State for India in Council. He is the person in whose name conveyances of public property in India have to be made, but that is the result of a special statute. Public property in this country, as in England, vests in Her Majesty, and the Government of India desired that "in the event of legislation being undertaken, the legal advisers of the Governor in Council should be consulted as to the propriety of describing State property as vested in or belonging to the Secretary of State for India in Council," and as to whether it was not desirable to amend the Municipal Act in this sense. This was done, and the Honourable the Advocate-General has advised Government that in his opinion the expression "vesting in the Secretary of State for India in Council," although having the pretence of conciseness, is in reality incorrect, and that it would be better to employ either the accurate expression "vested in her Majesty" or the loose and popular expression "vested in Government." Having thus a choice between an accurate expression and a loose and popular one, I have thought it wisest to select the accurate one, and it is accordingly proposed to describe State property, in the several sections in which is mentioned, as vested in Her Gracious Majesty. One other section of the Bill, *viz.* section 6, I have inserted, but not at the request of the Government of India, in order to provide for a rather serious omission in sub-section (2) of section 308 of the Municipal Act. That section re-enacts section 196 of the previous Municipal Act of 1872 and whilst sub-section (2) of it makes provision that the Commissioner may require the removal of any structure or fixture set-up in contravention of the Act, no provision is made as to any structure or fixture set-up before the Act came into force. The consequence would be that if the Commissioner served a notice upon a person to remove any offending structure or fixture, he might be met with the reply, "I put it up before the Municipal Act came into force, and therefore under section 308 you cannot compel me to remove it." In order to prevent any such legal quibble I propose to refer to section 196 of the Municipal Act of 1872 in section 308 (2) of the Act as well as to the new Act itself. These are the whole of the proposals of the Bill as it stands, and I beg to move that it now be read a first time.

Bill read a first time.

The Bill was then read a first time.

Mr. Naylor moves the second reading of the Bill.

The Honourable Mr. NAYLOR :—Your Excellency,—As this is the last sitting of this Council at this time of the year and the Government of India have asked us to legislate at once and it is desirable that the Act should be passed without delay—especially on account of the amendment I last spoke of, I hope the Council will not object to standing orders being suspended and to the Bill being proceeded with through all its stages to-day.

The Honourable Mr. SAYANI said :—Your Excellency,—Before the standing orders are suspended and the Council read this Bill a second time, I wish to say that a good deal of discussion took place upon several matters concerned, and I would like to make a remark as to sections 4 and 7. As the Honourable Mr. Naylor has stated, these are the two most important points—one dealing with the question of the audit, the other the deprivation of the Corporation of the power to levy a tax upon petroleum. As to the former, a great deal of discussion took place when the matter was before this Council, and it was a sort of a compromise that the Municipality should have its own audits at its own expense ; but that if Government desired to have the Municipal accounts audited it should not without the consent of the Corporation charge the expense of such additional audit to the Municipality. But now it is proposed to impose the burden upon the Municipal Funds, and I submit that before that is passed into law it is right that the Municipal Corporation should be allowed to make what representation they may think fit upon the subject. In the same way with respect to section 7, I submit that it is also fair that the Municipal Corporation should have an opportunity of making any representation they may think proper. No doubt, as a matter of fact, there has been a loss on the tax on petroleum. But one year there may be a good deal of profit and the next year a loss. That is simply a question affecting the merchants. They may import in one year a great deal more than there is immediate demand for, and a great deal of it may be re-exported. But if an average were taken, I think some profit would be shown, otherwise there would be no necessity for levying a tax for any purpose whatever. The Honourable Mr. Naylor said that even with petroleum removed from the schedule there are still several other articles in the same category, on which the Corporation may increase their imposts. But these are articles of a class that the Corporation always feel very reluctant to increase imposts upon, therefore I think the Corporation should have an opportunity of making representations before the Bill passes. No doubt it is introduced into this Council in accordance with the promise to the Viceroy ; but I take it there is no necessity to pass it immediately, and without the Corporation having an opportunity of expressing their views.

The Honourable Mr. NAYLOR :—With regard to the removal of petroleum from the schedule of dutiable articles, no doubt it is desirable that the Corporation should have power to spread its net and make it as far-reaching and as easy to fill as possible ; and if it were merely a question as to whether one or two articles should be inserted in the schedule, I would have two instead of one. But the question is not one of that nature : it is whether an article upon which the Government of India levies a tax—an imperial tax—shall also be subject to local taxation. I think whatever representation might be made by the Corporation on this point, this Council would be inclined to give heed to the desires of the Government of India. Any additional taxation which the Corporation wishes to levy may be distributed over the other articles in Schedule H, without any great injustice to any class of the community. The loss occasioned by the prohibition of a tax on petroleum may easily be recouped by an increase of the duties on other articles. Only last year the tax on grain was reduced from 5 annas to 2, on sugar from 7 annas to 6, and on ghee from 10 annas to 6 annas per maund. Therefore the Council, I think, may safely hold that no necessity has been made out for deferring the further progress of the Bill on this score. As regards the other point, it is one which relates to a principle, and even if the Council were in possession of the views of the Corporation concerning that principle, it would still be a matter which we must decide according to our views of right and wrong. I think therefore that the grounds urged for delay are insufficient. I would add that the Bill was published on the 22nd September, fourteen days ago, and if the Corporation had desired, they might have made a representation on the subject of it ere now. They have not been without time for this; there has been a meeting of the Corporation in the meantime, but I speak in the presence of the President of the Corporation, who will correct me if I am wrong, I believe no mention was made at that meeting of any desire to have any alteration made in the Bill. One reason of great importance why we should pass the Bill to-day is, as I have already said, the need for the early enactment of the section which refers to section 308 of the Municipal Act, and another is the urgency of the amendment of which I have given notice to-day, which is to provide for the continuance of the rates and taxes which have been sanctioned by the Corporation for the current year. The Solicitors of the Corporation have pointed out the urgent necessity of this amendment, and it is very important there should be no avoidable delay in its passing into law.

The Honourable Mr. FORBES ADAM:—Your Excellency,—I certainly sympathise with the principle that no Bill which is of interest to the public, after being read for a first time, should be further proceeded with without an opportunity being given to those interested of expressing opinions and passing criticisms. And although the fires which once raged so fiercely have now almost burned out and have only strength left to emit an occasional faint and feeble flicker, still the Bill before us does include matters interesting to those watching municipal affairs, and it is not unreasonable that they should wish to be heard. I believe, nevertheless, that nothing can be gained by further delay, and it will be well if to-day we should pass this measure. There are, as the Honourable Mr. Naylor has said, several important reasons why the Bill should become law as speedily as possible. But one or two observations occur to me. As to the clause affecting petroleum which the Honourable Mr. Sayani has called attention to I would like to remark that petroleum might well bear both an imperial and a local tax. On the other hand, the Corporation is perfectly able to provide for sufficient taxation without resorting to petroleum. As to loans the Government of India wish to retain control in their own hands as before. Of course, they have a right to wish that; but recent experience has shown that occasionally in dealing with the loans of the Corporation they have not exhibited that consummate wisdom which has generally been associated in the public mind with the decisions of the finance department at Simla. The Tansa loan furnishes an instance—the first portion runs for sixty, the latter for forty years. The work will last for centuries probably and will eventually bring in a large revenue. But it must be paid off within a comparatively brief period, and you have one and the same loan running for two different terms, which financially is exceedingly undesirable and inconvenient. The Government of India can have no special love or particular predilection for forty years, for they have just sanctioned a Madras loan for fifty years. They should I think lay down some broad principle for the guidance of corporations and others, and not let such matters be entirely at the mercy or the caprice of the head of the department for the time being. My opinion is that the local Government, being more in touch with the nature of the works for which loans are wanted, should have the power to determine the conditions. They would be in a better position to judge. With regard to section 138 and the special audits, I think the Municipality should pay the cost. It was a compromise. I was in favour of the Corporation appointing their own auditors; but that was overruled by a majority of this Council. As it now stands in the bill under discussion, seeing that the power is given to the Government to appoint special audits, I should like to have had something put in to limit the number of such audits in the life-time of a Corporation. These are points which I consider are of importance, but at the same time having considered the matter very fully and carefully I have come to the conclusion that there is nothing to be gained from delaying the passing of the Bill to-day.

His Excellency the PRESIDENT:—Does the honourable member wish to press his objection?

The Honourable Mr. SAYANI:—I only wished to make the suggestion, your Excellency, but seeing that the majority is against me I will not press it to a division.

His Excellency the PRESIDENT:—The only thing I wish to say is that, I hope, the honourable member will understand that if this Bill was due solely to the initiative of this Government, I should be willing to postpone it. I have previously shown that nothing is further from my wish or from the wishes of this Government than to prevent the Corporation from considering carefully measures affecting the interests of Bombay; but we are in rather a curious predicament—the real honourable mover is absent; this Bill is in the position of an orphan; its parents are not here, and having promised to the Government of India to legislate without delay, the honourable member will see that it is absolutely necessary that this Bill, in accordance with that promise, should become law as soon as possible.

Standing orders suspended and Bill read a second time.

Standing orders were then suspended and the Bill was read a second time.

Bill considered in detail.

The Honourable Mr. NAYLOR moved the addition to the Bill of the following section :—

Section 8. For Section 9 of the Schedule R annexed to the said Act, the following section shall be deemed to have been substituted from the date on which that Act came into force, *viz.* :—

Rates and taxes sanctioned for the current year in which this Act comes into force to continue leviable for that year.

"9. (1)—The several rates, taxes, tolls, and duties the rates for levy of which were fixed by the Corporation under the said Acts for the period during which any such budget estimate is in operation shall, subject to the provisions of Section 196, be leviable in respect of the said period, as if the rates for levy thereof had been determined by the Corporation under this Act, nothwithstanding that the said rates, taxes, tolls and duties, or any of them, may have been fixed at rates or on articles at or on which corresponding taxes are not imposable under this Act.

(2)—Sections 144 and 145 shall have operation on and from the first day of April, 1889, only; and the sums payable to the Corporation in respect of the period aforesaid by the Secretary of State for India in Council or by the Trustees of the Port of Bombay in lieu of property rates, under the said Acts or under section 36 of the Bombay Port Trust Act, 1879, respectively, shall be paid as if this Act had not been passed."

Bombay VI of 1879.

The honourable gentleman remarked :—I have already alluded to this motion the object of which is the substitution of a new section for section 9 of Schedule R of the Municipal Act. The schedule in question contains sundry provisions which do not form a part of the permanent enactment. They are temporary provisions for facilitating the transition from the old state of things under the repealed Municipal Acts to the new state of things under the new Act. Section 9 at present is :—

Sanction of property-taxes and town-duties given before this Act comes into force to continue valid.

"9. The decision of the corporation under the said Acts as to the rates at which property-taxes and the rates at which and the articles on which town-duties shall be levied during the time for which any such budget-estimate is in operation, shall, subject to the provisions of section 196, have the same validity as if this Act had not been passed."

The object of amending the section is to substitute for it one which covers all rates and taxes for the current year and also to make provision that the liabilities of the Secretary of State in Council, *i. e.* of the Government and of the Port Trust, shall continue the same up to the 31st March last as if the Act had not been passed. By an oversight which it is difficult to account for, the present section 9 omits to mention the tax on carriages and animals and is otherwise not sufficiently comprehensive. Mr. Leslie Crawford, the Solicitor to the Corporation, has approved the new section; so also has the Municipal Commissioner, and I think the Council will have no difficulty in accepting it.

The amendment was accepted.

Bill read a third time and passed.

On the motion of the Honourable Mr. NAYLOR the Bill was then read a third time and passed.

His Excellency the President then adjourned the Council.

By order of His Excellency the Right Honourable the Governor in Council,

J. J. HEATON,
Secretary to the Council of His Excellency the
Governor of Bombay for making Laws and Regulations.

Poona, 6th October 1888.

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PART V.

PROCEEDINGS

OF THE

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