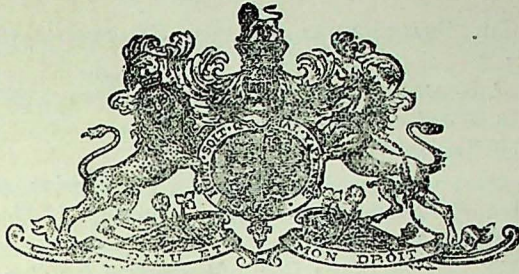


THE



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Separate paging is given to this Part, in order that it may be filed as a separate compilation.

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 ACTS, 1861 and 1892."

The Council met at Bombay on Monday, the 20th December 1897, at 12 noon.

P R E S E N T.

His Excellency the Right Honourable Lord SANDHURST, G.C.I.E., Governor of Bombay, *Presiding.*

The Honourable Mr. JOHN NUGENT, C.S.I., I. C. S.

The Honourable Sir E. CHARLES K. OLLIVANT, K.C.I.E., I. C. S.

The Honourable the ADVOCATE GENERAL.

The Honourable Mr. W. H. CROWE, I. C. S.

The Honourable Mr. J. MONTEATH, C.S.I., M.A., I. C. S.

The Honourable Mr. H. M. THOMPSON, B.A., M.Inst.C.E.

The Honourable Mr. A. ABERCROMBLE.

The Honourable Mr. NARAYAN GANESH CHANDAVARKAR, B.A., LL.B.

The Honourable Mr. J. K. SPENCE, I. C. S.

The Honourable Mr. T. B. KIRKHAM.

The Honourable Mr. A. S. MOBIARTY, I. C. S.

The Honourable Mr. BHAI CHANDRA KRISHNA BHATAVADEKAR, L.M.

The Honourable Mr. FAZULBOY VISRAM, C.I.E.

The Honourable Mr. DHONDO SHAMRAO GARUD, B.A.

QUESTIONS AND ANSWERS.

The Honourable Mr. BHALCHANDRA KRISHNA BHATAVADEKAR put question No. 1 standing in his name—

Will Government be pleased to reconsider their decision regarding the enhancement of the rate of fees at the Grant Medical College?

His Excellency the PRESIDENT in reply said—

Government do not see any reason to reconsider the decision regarding the increase of fees at the Grant Medical College arrived at in February 1896, that decision having been arrived at after careful consideration.

The Honourable Mr. BHALCHANDRA then put question No. 2—

Will Government be pleased to consider the desirability of emphasising the policy enunciated in Government Resolution No. 1979 of November 1888 regarding the appointment of Professors at the Grant Medical College with a view to placing medical education in the Presidency on a better basis than at present?

His Excellency the PRESIDENT in reply said—

His Excellency the Governor in Council has every desire to adhere as far as possible to the principle laid down in Government Resolution No. 1979, dated the 9th November 1888.

The Honourable Mr. BHALCHANDRA then put question No. 3—

(a) *Have the Civil Assistant Surgeons submitted from time to time any memorials setting forth their grievances on the ground of their pay, promotion and prospects in the service, and praying Government for their favourable consideration?*

(b) *Will Government be pleased to state whether such memorials, submitted both individually and collectively, have received their favourable consideration, and, if so, with what result?*

(c) *If the memorials have not received any consideration, will Government be pleased to consider them favourably with a view to affording redress to that deserving class of public servants?*

The Honourable Sir CHARLES OLLIVANT in reply said—

Memorials of the kind referred to have been received, and the question of improving the position and prospects of Civil Assistant Surgeons is now under the consideration of Government.

The Honourable Mr. BHALCHANDRA then put question No. 4—

Will Government be pleased to consider favourably any memorials submitted by the class of Hospital Assistants regarding their grievances?

The Honourable Sir CHARLES OLLIVANT in reply said—

If, as is presumed, the question refers to memorials already submitted by Hospital Assistants, I must refer the honourable member to the answer given to a question by the Honourable Mr. Setalvad at the Council Meeting of the 17th August 1896.

The Honourable Mr. BHALCHANDRA then put question No. 5—

Will Government be pleased—

(a) *to consider the advisability of including the village school-masters in the village committee of sanitation, and*

(b) *supply any information at the disposal of Government as to the measures taken to make such committees work effectively?*

The Honourable Sir CHARLES OLLIVANT in reply said—

(a) Under the Act, the responsibility for selecting the most suitable residents of the village as members of the sanitary committees is laid upon the Collectors, and Government do not consider it advisable to issue any general order requiring the nomination of village school-masters.

(b) Where funds are contributed by the villagers, the Local Boards usually add sums equal to two-thirds of the amount contributed and Government grants one-third. The work of the committees is subject to the general supervision of the district officers.

The Honourable Mr. NARAYAN GANESH CHANDAVARKAR put question No. 1 standing in his name—

Will Government be pleased to state what action has been taken in regard to the illegal conduct of the A'bkari Inspector and of the Police under his orders, referred to in the judgment of Her Majesty's High Court of Judicature at Bombay in Imperatrix vs. Ramu bin Dhondi and three others, and brought to the notice of Government by that Court?

The Honourable Mr. NUGENT in reply said—

On consideration of the explanation of the A'bkari Inspector and of a detailed report from the officer by whom the case was first inquired into, Government came to the conclusion that no further action was required.

The Honourable Mr. CHANDAVARKAR then put question No. 2—

Will Government be pleased to state whether they contemplate the early extension of the Dekkhan Agriculturists' Relief Act to other districts than those to which it has been applied?

The Honourable Sir CHARLES OLLIVANT in reply said—

Government have no such present intention.

The Honourable Mr. CHANDAVARKAR then put question No. 3—

Has the recommendation of the Special Commission appointed by the Government of India in 1891 to inquire into the working of the Dekkhan Agriculturists' Relief Act that a correct record of proprietary rights in land should be prepared and maintained been under the consideration of this Government?

The Honourable Mr. NUGENT in reply said—

The recommendation has been considered by this Government.

The Honourable Mr. CHANDAVARKAR then put question No. 4—

If the answer to question No. 3 be in the affirmative, will Government be pleased to state the conclusion they have arrived at as regards that recommendation?

The Honourable Mr. NUGENT in reply said—

This Government consider that all registered transactions affecting land should be communicated to the village officers, who should keep in each village as correct a record of proprietary rights as is possible through these means, and orders have been issued accordingly. But the question whether the land register, which under the existing law and rules is a record of legal liability for the assessment, should be converted into a correct record of rights is still the subject of correspondence with the Government of India.

The Honourable Mr. CHANDAVARKAR then put question No. 5—

Are Government aware that the District Municipalities and Local Boards are unable to bear the cost of the plague operations?

His Excellency the PRESIDENT in reply said—

The attention of the honourable member is requested to "(a)" in the reply to question No. 5 put by the Honourable Mr. G. K. Parekh, which applies also to Local Boards.

The Honourable Mr. CHANDAVARKAR then put question No. 6—

Is it the intention of Government to represent to the Government of India the advisability of the Imperial Exchequer bearing a substantial portion of that cost?

His Excellency the PRESIDENT in reply said—

Government regret their inability to reply to the question at this stage.

The Honourable Mr. CHANDAVARKAR then put question No. 7—

Are Government aware that the Quarantine Rules in some places make race distinctions?

His Excellency the PRESIDENT in reply said—

(a) The word quarantine should not appear in Government orders and in the popular acceptance of the word does not apply.

(b) There has never been any intention to exempt Europeans who are liable to carry infection and a modification will shortly be made in the rules to make this intention clear.

The Honourable Mr. CHANDAVARKAR then put question No. 8—

If the answer to question No. 7 be in the affirmative, will Government be pleased to direct that the rules be so modified as to do away with those distinctions?

His Excellency the PRESIDENT in reply said—

The attention of the honourable member is invited to the reply to the honourable member's question No. 7.

The Honourable Mr. CHANDAVARKAR then put question No. 9—

Will Government be pleased to modify the Quarantine Rules so as to exclude from their operation gentlemen of the medical and the legal profession going on professional business?

His Excellency the PRESIDENT in reply said—

The attention of the honourable member is invited to "(b)" in the reply to question No. 8 put by the Honourable Mr. Gokuldas Kahandas Parekh.

The Honourable Mr. CHANDAVARKAR then put question No. 10—

Will Government be pleased to state the result of the communication between them and the Government of India regarding the question of giving early effect to the recommendation of the Finance Committee to put the Clerk of the Insolvent Court on a salary of Rs. 500 to Rs. 600 a month and to credit all fees received in excess of such salary to Government?

The Honourable Sir CHARLES OLLIVANT in reply said—

The final orders of the Government of India have not yet been received.

The Honourable Mr. CHANDAVARKAR on behalf of the Honourable Mr. GOKULDAS KAHANDAS PAREKH, who was not present, then put question No. 1 standing in the latter's name—

(a) *What is the aggregate amount of expenditure incurred in connection with the plague operations in Poona?*

(b) *Have Government passed any order under the Epidemic Diseases Act for the defraying of these charges?*

His Excellency the PRESIDENT in reply said—

(a) The actual amount of expenditure incurred may be taken as between 2 and 2½ lakhs.

(b) The question is under consideration.

The Honourable Mr. CHANDAVARKAR (for the Honourable Mr. PAREKH) then put question No. 2—

Is it not a fact that Damodar Chapekar has admitted in his confession made before a Magistrate that Mr. Rand and Lieutenant Ayerst were murdered by himself and two other individuals?

The Honourable Sir CHARLES OLLIVANT in reply said—

As the case is still pending, Government can only refer the honourable member to the reports of the confession which have appeared in the public press.

The Honourable Mr. CHANDAVARKAR (for the Honourable Mr. PAREKH) then put question No. 3—

Will not Government be pleased to order the discharge of the Punitive Police posted at Poona?

The Honourable Sir CHARLES OLLIVANT in reply said—

The question to what extent the force of additional police employed in Poona can, in the unfortunate circumstances of that city, be reduced, is engaging the anxious attention of Government. I may inform the honourable member that the expression "punitive police" does not occur in the Police Act or in any rule thereunder.

The Honourable Mr. CHANDAVARKAR (for the Honourable Mr. PAREKH) then put question No. 4—

(a) *Is it not a fact that several Municipalities and Local Boards had and have still to incur heavy costs to prevent the spread of plague through passengers coming by rail?*

(b) *Will Government be pleased to order under Section 2 of the Epidemic Diseases Act that a portion of these costs be defrayed by the Railway Administrations?*

His Excellency the PRESIDENT in reply said—

(a) Government are not aware that any Municipality or Local Board has incurred heavy costs in the prevention of the spread of plague otherwise than for their own protection.

(b) Government do not consider that any portion of the costs of plague measures can equitably be imposed upon Railway Administrations.

The Honourable Mr. CHANDAVARKAR (for the Honourable Mr. PAREKH) then put question No. 5—

(a) *Is it not a fact that many Municipalities have become seriously embarrassed in their finances on account of the outbreak of plague?*

(b) *Will Government be pleased to make contributions for relieving them of the embarrassment?*

His Excellency the PRESIDENT in reply said—

(a) Government are aware that some Municipalities have become embarrassed in their finances as a result of the plague operations.

(b) The question as to whether Government will make contributions will require very careful consideration.

The Honourable Mr. CHANDAVARKAR (for the Honourable Mr. PAREKH) then put question No. 6—

Is it true that the District Local Board of Broach has made rules to the effect that it should not undertake the construction or repairs of any village well or tank (except for Dheds) unless the villagers contributed a certain proportion either in cash or labour; if it has made such rules, will Government be pleased to place them on the Council table?

The Honourable Sir CHARLES OLLIVANT in reply said—

The attention of the honourable member is invited to the following reply given at the Council Meeting of the 4th February 1895 to a similar question put by the late Mr. Javerilal Umiashankar Yajnik :—

“The District Local Board passed a resolution to the effect mentioned by the honourable member, and it was subsequently modified by a proviso ‘that any hard case brought before the Board by a member of the District Local Board should be considered on its merits.’ The circumstances in which the resolution was passed will be perceived from the extract* from the Collector’s report laid on the table.”

* *Vide Appendix A.*

The Honourable Mr. CHANDAVARKAR (for the Honourable Mr. PAREKH) then put question No. 7—

Will Government be pleased to say when they are likely to be able to bring before the Council the District Municipal Bill?

The Honourable Sir CHARLES OLLIVANT in reply said—

Government are unable at present to say when a Bill dealing with the subject may be brought before the Legislative Council.

The Honourable Mr. CHANDAVARKAR (for the Honourable Mr. PAREKH) then put question No. 8—

Will Government be pleased to direct the following modifications in the rules prescribed in reference to quarantine in the mofussil :—

That the following descriptions of persons, if free from plague or suspicious symptoms, be not detained in quarantine, or subjected to disinfection :

(a) *Persons who are able to satisfy the plague authorities that they have not been in any affected area during the preceding ten days.*

(b) *Members of the medical and legal professions travelling on duty and their servants.*

(c) *Wives and children of Government officers exempted from quarantine rules.*

(d) *Persons of known respectability who give on undertaking, and others travelling first or second class who give security to the satisfaction of the authorities that they will present themselves for medical examination at the place to which they go.*

His Excellency the PRESIDENT in reply said—

The attention of the honourable member is requested to (a) in the reply to question No. 7 put by the Honourable Mr. CHANDAVARKAR.

(a) Persons who are able to satisfy the plague authorities that they are not "suspicious" are not detained under observation nor subjected to disinfection.

(b) A circular has been issued providing for passes which will be obtainable by members of the medical and legal professions in Bombay. In the mofussil the Collectors have discretion to exempt.

(c) No general order can be given regarding the wives and children of Government officers.

(d) Plague authorities have discretion to exempt persons of known respectability.

The Honourable Mr. CHANDAVARKAR (for the Honourable Mr. PAREKH) then put question No. 9—

(a) *Have Government noticed that the general death-rate of the City of Ahmedabad is very high?*

(b) *Are Government aware that this high death-rate is owing to overcrowding and the unhealthy condition of the subsoil?*

(c) *Will Government be pleased to make a relaxation in their conditions for allowing agricultural lands to be used for building purposes?*

The Honourable Sir CHARLES OLLIVANT in reply to (a and b) said—Inquiries are being made on the subject.

The Honourable Mr. NUGENT in reply to (c) said—

Government do not consider it to be necessary or expedient to make any relaxation in the conditions for allowing agricultural lands to be used for building purposes. Collectors are well aware that the discretion given them by the rules should not be so exercised as to discourage the conversion of agricultural land into building sites, but it would not further that process or relieve overcrowding to forego for the benefit of private land-holders the share which is due to the public of the increase in the value of land which is created by the demand for it for building purposes.

The Honourable Mr. CHANDAVARKAR (for the Honourable Mr. PAREKH) then put question No. 10—

(a) *Will Government be pleased to state the grounds which led to the arrest and imprisonment of the two Nattu brothers under Regulation 25 of 1827?*

(b) *Will Government be pleased to state whether they intend to put them on their trial, and if so, when?*

(c) *If Government do not propose to put them on their trial, will they be pleased to state how long they propose to detain them in prison?*

His Excellency the PRESIDENT in reply said—

(a) The persons referred to were placed under restraint for reasons of State touching the security of a portion of the British dominions from internal commotion.

(b) Action under the law in question implies that, in the language of the Regulation, judicial proceedings are either not adapted to the nature of the case, or are unadvisable or improper.

(c) The first part of this question is covered by the preceding answer. The answer to the second part depends on considerations alluded to in the answer to the first question and upon eventualities not yet determined.

PAPERS PRESENTED TO THE COUNCIL.

(1) Report of the Select Committee appointed to consider Bill No. II of 1897 (a Bill to amend the Sind Village Officers Act, 1881, as amended by Bombay Act II of 1888).

* *Vide* Appendix A.

(2) Extract* referred to in the reply to question No. 6 put by the Honourable Mr. Gokuldas Kahandas Parekh.

† *Vide* Appendix B.

(3) Memorandum† from Mr. P. R. Desai, Pleader, District Court, Ratnágiri, dated the 10th December 1897.

BILL No. II OF 1897: A BILL TO AMEND THE SIND VILLAGE OFFICERS ACT, 1881, AS AMENDED BY BOMBAY ACT II OF 1888.

In moving the second reading of the Bill to amend the Sind Village Officers Act, 1881, the Honourable Mr. NUGENT said:—Your Excellency,—I beg to propose the second reading of Bill No. II of 1897, being a Bill to amend the Sind Village Officers Act of 1881, as amended by a former Act of 1888. This small measure was introduced at a Meeting of the Council held at Poona in August last, and when bringing it forward I fully gave the reasons which led Government to consider this legislation to be necessary. The Bill was then read a first time, and referred to a Select Committee which approved unanimously of it, and had no suggestion to make, or amendment to propose. The Bill is a small one and is non-contentious, and I do not think I need add anything further to the remarks contained in the statement of objects and reasons, or to the observations I made when I moved the first reading of the Bill. I will, therefore, now propose that this bill be read a second time. I would take this opportunity of expressing my sense of the loss sustained by the death of the late Honourable Mr. Dharamsi, whom I last saw at the meeting in Poona last rains of the Select Committee on this Bill. By the premature decease of the honourable gentleman in the prime of his life and vigour an unkindly fate has robbed this Council of an able and valued member; the community to which Mr. Dharamsi belonged of one of its most distinguished ornaments; and me personally of an esteemed and courteous friend.

Bill read a second time.

His Excellency the PRESIDENT put the motion that the Bill be read a second time. This was agreed to.

The Honourable Mr. NUGENT then moved that the Bill be considered in detail which was carried. The Bill was then considered in detail and no amendments were made.

Bill considered in detail.

BILL No. III OF 1897: A BILL TO AMEND THE BOMBAY DISTRICT POLICE ACT, 1890.

In moving the first reading of the Bill to amend the Bombay District Police Act, 1890, the Honourable Sir CHARLES OLLIVANT said:—Your Excellency,—I could have wished that the maiden measure it is my pleasure to present to you, had been one of more originality and possessing more fascination for myself personally. But the maiden is not one exactly of my own selection. It was left (I do not mean abandoned) to my faithful charge by my predecessor. I cannot even say that since his departure it has acquired any additional charms excepting such as may have accrued from more mature development. But probably the fact that it has had his benevolent interest will commend it to your favour far more than any panegyric on my part. For my own part, I believe it will be found a humble measure of utility, and generally speaking I should describe it as one of harmony and relief. In alluding to the harmony I do not refer to the general concurrence of this Council which I am so sanguine of obtaining, nor to the mention of instrumental music at the end of the Bill which is to form an accompaniment of the vocal music already dealt with by law, but rather I refer to the fact stated in the objects and reasons appended to the Bill that it will bring the police law of the Bombay Presidency into harmony with the police law which prevails in the rest of India.

The Honourable Sir Charles Ollivant moves the first reading of the Bill to amend the Bombay District Police Act, 1890.

Then as regards relief, you will find on reference to the sections that the first relief it aims at securing, is relief from verbal ambiguity—a relief to the lawyer on the one side from much trouble and to his client on the other from much expense. The second measure of relief is one with which we will all sympathise—the power it gives to put off paying to-day what you can possibly pay to-morrow, and in another way it gives relief, by enabling your neighbours to bear a part of the expense which you would otherwise have to pay yourself. Then again it relieves certain innocent individuals from having to pay anything at all, and lastly it relieves Municipalities from having in the last resort to enforce recovery.

It is not necessary for me to go into details because the Bill is so short that all its details are adequately explained in the statement of objects and reasons. I need only make one more allusion, and that is, to the statement made somewhere, that this Bill may have something or other to do with the fact that an additional police force is employed in Poona. It has only this much to do with it: that if it had not been for the fact that an additional police force was imposed upon Poona, the Bill would have been presented to you some months earlier than this. As I have already explained, the measure was approved before I joined this Council, but it was thought that if it were introduced at the last Session of the Legislative Council, incorrect inferences might be drawn as to its having been suggested by the state of affairs at Poona. As I have mentioned Poona, I am glad to have an opportunity of saying that the most intense and impassioned sympathy is felt by Government for the sorrows, troubles and inconveniences which have befallen that city. Your Excellency, I now beg leave to move the first reading of this Bill.

The Honourable Mr. BHALCHANDRA KRISHNA BHATAVADEKAR said:—Your Excellency,—I have no wish to oppose the reading of the Bill now before the Council at this stage. But lest my silent vote may be construed into concurrence, your Lordship will be pleased to permit me to make a few observations indicating the grounds of my objection. In the form in which the Bill is now framed, I conceive it is not open to question the principle or the policy of levying any punitive post at all. The only point now open to consideration is the mode of imposing the tax, cess, or rate, whatever it may be called, to provide for its cost. Even on this limited ground the Bill as framed contains some points which, I venture to say, are open to serious objection. First, the Bill makes no mention of the rate of the tax. I believe it is not unusual for the Legislature to specify the maximum rate allowable under any circumstances. I admit that the conditions of localities incurring the penalty may widely vary, and it will be difficult to lay down a hard and fast rule applicable to all places. At the same time, I think to leave the question of the amount absolutely at the direction of the Executive is apt to lead to great hardship in conceivable cases. The Legislature should therefore, I submit, indicate its wish that certain defined limits should not be exceeded. Municipal Acts generally lay down such maximum rates of the cesses to be imposed. The impost to be provided for by the Bill is, I take it, of the nature of a municipal cess; only the authority to require its levy is the Central instead of the Municipal Government. But the necessity of putting a limit on the demand does not become less urgent on that account.

Secondly, as to the persons to be affected by the impost, the Bill makes a new departure which again is likely to work serious injustice to innocent people. It is intended to make landlords, whether resident or non-resident, liable to the tax which, if it all justified, ought to be confined to the residents of a particular locality. The ground of levying a post of punitive police on any town or village is, I apprehend, that the residents of the town or village have become too unruly to be held in check by the ordinary police, or that a certain crime is undetected in consequence of the inhabitants of the place giving shelter to the offender. There may be some justification to make the actual inhabitants responsible in this manner in extreme cases. But non-resident owners of property could not be charged, except when there is proof of complicity in any local crime. To say that men of property are likely to have local influence, and that it is their duty to use such influence in the cause of peace and good government is to argue on assumptions, which, I humbly submit, my Lord, have no foundation in fact. To put a concrete case: A is a permanent resident of Bombay. He has some property in Poona; but he is so obscure that he does not possess the slightest influence for good or evil with the inhabitants of Poona. Is he to be made responsible for any crime committed in Poona on the ground of the supposed influence he may have got from the fact of his

possession of property at that place? Or to put it in another way: suppose a similar law is passed in England and an Englishman ordinarily resident in India has property in England. Is he to be supposed to have influence in England from the fact of his possession of property, and will it be equitable to make him liable on the ground of such supposed influence? Further, assuming that ordinarily a person has in point of fact such local influence as is contemplated, if he is not a frequent visitor of the place or is not in communication with his local agent, he is not likely to be cognizant of any criminal designs of any of the local residents. Besides, among the non-resident property-holders there may be women, infants, religious endowments, charities and other corporations who could not be possibly presumed to exercise any influence. If non-resident property-holders are to be made responsible on the ground of their possessing influence, I would suggest the responsibility should be based on clear and distinct proof which should be open to challenge by the person sought to be made responsible.

Thirdly, the provision as to spreading the liability over a period longer than the actual levy of the punitive post is to be greatly deprecated. A punitive post, whether justifiable or not, will always be a source of soreness among the people. To keep the tax on even after the post is withdrawn would be to keep open the sore—a result by no means desirable in the best interests of the Government. Further, it will be making posterity liable for the sins of their ancestors—a kind of vicarious suffering for which, my Lord, I humbly submit, there is no possible justification. It is usual to spread over a number of years the cost of large public works; but the principle involved in that case is that posterity gains the benefit of the works. A punitive post is a penalty not a benefit. As a penalty it should be visited on the immediate and actual, or if necessary, at the outside, on constructive offenders. But to inflict a punishment on a future generation for the crime of a prior one is, I believe, beyond the limits of secular criminal justice. If a place is too poor to pay a certain high demand made by Government that is a reason for lowering the demand and suiting it to the ability of the place rather than spreading the demand over a longer term of years than justice requires, and making innocent generations of men liable. To enable the Government to spread the cost over a number of years is to remove one important check upon the arbitrary exercise of executive powers. The most sober and judicious executive officers are on occasions apt to be carried away by the impulses of the hour, to exaggerate evils, and to mete out exaggerated punishment on the objects of their displeasure. The very object of legislative measures is to regulate executive discretion and to provide safeguards for the protection of the weak and the innocent. I have high respect for the justice and generosity of our executive officers, but I would not be a party to legislation which would multiply facilities for the exercise of executive power and create disabilities and penalties on innocent people. As I have said at the outset, I do not wish to oppose the first reading, but I earnestly hope that the measure will be modified in regard to the points I have indicated.

The Honourable Mr. DHONDO SHAMRAO GARUD said:—May it please your Excellency,—This is the first time I have had the honour to stand at this table to address your Excellency. The time that has elapsed since your Excellency's pleasure of nominating me to this Council was made known to me is so short that I cannot within this brief interval pretend to have made myself as fully conversant with the business before this Council as my honourable colleagues. I can, therefore, only speak from first impressions, and having listened with all attention to the remarks made by the honourable mover in charge of the Bill, I am bound to say I am not satisfied that a strong case has been made out for making the proposed change in the existing law. The amendments, which demand special attention, are those in section 25, subsection (2), and the addition of section 25 A. The former refers to the cost of additional police which the Government may think fit to post in any local area. The law, as it stands at present, empowers the Government to recover such cost by a rate charged on the inhabitants generally or on any particular section of the inhabitants of such local area. These are exceptional powers, and the occasions which call for their exercise are very rare. Religious or race animosity has indeed sometimes led to breaches of the peace; but the passions excited by such causes are always of a transient nature and the powers possessed by the Government would appear to be sufficient to cope with these evils. But it is now proposed to extend these powers—to empower Government to recover such cost not only from the inhabitants but from holders of land within such local area who may not be its inhabitants. I cannot imagine how persons, who may be

miles away from the scene of a disturbance, can be held responsible for the acts or misconduct of those with whom they have nothing in common save the possession of land within the same local area. We have a great many small holders who spend their time in service or other profession abroad and make an investment in land in the place of their birth as a provision for their family and themselves upon their retirement. They have generally no interest and no voice in local jealousies or animosities, and it would be very hard on this class, who may be the best respectors of law, to be classed among those who may have to be punished for a breach of it. A tax imposed on all or any persons is likely to cause unnecessary irritation. It would bring an unjustifiable stigma on persons whose only fault may be that they are holders of land in a certain local area. It would also be objectionable if it should fall on persons whose earnings are hardly sufficient for the maintenance of themselves and their families. Such a law cannot but work harshly in practice, as it will lead to invidious distinctions for which Government cannot always be expected to give justifying reasons in each instance.

These objections apply with equal force to the provisions for realizing the amount of compensation to be awarded under the new section 25A, which is proposed to be incorporated in the existing law. It is proposed by this section to empower District Magistrates to award compensation for loss or damage caused to property or in respect of death or grievous hurt caused to any person or persons by anything done in the prosecution of the common object of an unlawful assembly. The Judicial Courts both in their civil and criminal jurisdiction have power under the present law to award such compensation where justice requires that it should be granted. And when such an order is passed after judicial investigation the public have at least the satisfaction of knowing that it is dictated by justice. When it is proposed to transfer this power to the District Magistrate to award such compensation after such inquiry as he may deem necessary, the award assumes the form of an arbitrary order; and the brunt of it may fall upon persons who have no connection with the guilty parties. Then again the District Magistrate is not provided with the requisite machinery to make these inquiries. It was said with great truth by His Excellency Lord Reay, at the second reading of the District Police Act in 1890, that the District Magistrate is supreme in the district. His time is already overtaxed by the multifarious duties which he has to discharge, and he cannot be expected to devote his personal time and attention to inquiries of this kind. He will necessarily have to act upon the report of minor police or village officers who are likely to be influenced by various considerations which may not always bear examination. I am far from saying that a work entrusted to the District Magistrate will not be done well, on the contrary I have learned from personal knowledge to entertain the highest respect for his exceptional tact and judgment. But I should certainly be chary of curtailing the short leisure of the District Magistrate by throwing upon him these extra duties without providing him with adequate machinery for their proper discharge. I have not had time to ascertain how far these proposed amendments are justified by the corresponding provisions in the English law. These, your Excellency, are my first impressions, but if the Government are satisfied of the necessity of bringing forward this measure before the Council, I would wait for further information and not oppose the first reading of the Bill.

The Honourable Mr. NARAYEN GANESH CHANDAVARKAR said:—Your Excellency,—I do not desire to enter into anything like a minute examination of the provisions of this Bill, as, I believe it will be in due course referred to a Select Committee, by whom the details will be carefully considered; but one or two of the observations made by the honourable mover of this measure render it necessary that I should offer such opinion as I have formed. Sir Charles Ollivant assures us that the Bill clears away several ambiguities and must, therefore, satisfy lawyers. Well, there are some who think lawyers are a very hard lot to satisfy, and will go on quibbling to the end of the world. But even the most reasonable lawyer should find it hard to agree that this measure clears away ambiguities. For instance, there is the proposal to make not only absentee landholders, but even those who are "interested in land" liable to pay the cost of an additional police force. I am not sure that the expression "interested in land" is a happy expression to use in a legal enactment; but apart from that, may it not be taken to mean that anyone who is interested in land may be made liable, and if that is so, what is there to prevent the members of this Council from being made liable—for, I take it, we are all more or less interested in land in the sense that we take interest in the prosperity and well-being of the agricultural interest. That, however, is a minor point, for what is meant

by the expression "interested in land" is evidently what the lawyers call owning an interest in land.

But has the honourable mover of the Bill carefully considered what anomalies Government would have to face, if not merely absentee land-holders, but all those who own what is called an interest in land, are included in the category of those having to pay for the cost of an additional police force? The instance of a mortgagee not in possession is not perhaps so glaring an instance of the anomaly as some other instances I would give. Take, for example, the case of the creature known to the Hindu law as the Hindu widow. Our Courts are frequently called upon to decree maintenance to such a creature and to charge it upon land; and the Honourable Mr. Crowe will bear me out, when I say that such maintenance is often Rs. 4 or Rs. 6 or Rs. 12 a year—a paltry rate which used to startle a late Chief Justice of our High Court, who could not comprehend how even a Hindu widow could keep body and soul together on such a miserable pittance. And now this Bill proposes to pounce even upon the Hindu widow's scanty rate of maintenance, for, it cannot be denied she has an interest in land. And is this to be defended on the ground that the Hindu widow, having such an interest in land, has personal influence conferred upon her by that interest? Take again another instance. I have spoken of the Hindu widow, but I shall speak of another creature known to the Hindu law—a man having what is called a reversionary interest. When a Hindu dies, leaving his widow as his heir, the widow gets the property during her life-time, and behind her is some one who longs to see the day when she shall cease to be and he will get the property as the reversioner. This reversionary interest is of a contingent and uncertain character, but, nevertheless, it is an interest in land, and is that also uncertain and precarious as it is to be made liable? I could multiply instances to show how inequitable it will be if persons interested in land are brought in as this Bill seeks to do.

But that is not all. There is a question of principle involved in this Bill, which I think deserves the very serious consideration of this Council. Legislation of this kind, which provides for the cost of an additional police force quartered in any local area on account of its disturbed or dangerous condition, has always been, so far as I have been able to understand the history of it, understood to be of a preventive or protective character, and an answer given by the Honourable Sir Charles Ollivant to one of the questions put to-day shows that he is of the same opinion, for he has told us, and rightly I think, that it is not correct to speak of an additional police post quartered in any place on account of its disturbed condition as a punitive post. If it were punitive, innocent inhabitants of a place declared to be in a disturbed or dangerous condition would not have to share the cost of the additional police, but they have to pay because of the special protection they get. This is the principle underlying legislation of this kind, but, is it the principle on which this Bill, as it is now before us, proceeds? No; because if you look at section 4 you will find that it gives power to the Governor in Council to impose the cost of the additional police, if he chooses, on a single individual, leaving aside the inhabitants generally, or any section of the inhabitants. This I consider to be an innovation entirely opposed to the preventive and protective character of such legislation. By applying it to individuals in the way that this Bill seeks to do, it violates the cardinal principle of such legislation, which is, that it is intended to touch entire classes and not individuals. When the Bill which became law as Act VIII of 1895 was before the Supreme Legislative Council, Sir Anthony Macdonell took care to point out that that Bill was never intended to touch individuals; and I do not see any reason why the Bill before us should proceed upon a line so new as to make the measure not preventive and protective, but penal and punitive.

Then there is the proposal to bring in absentee landholders, and that proposal is recommended on two grounds. Firstly, it is said, the ownership of landed property confers influence upon them. I am aware that Act VIII of 1895 of the Supreme Legislature makes absentee landlords liable, but I would in passing say that it is not quite correct to say as the honourable mover has said, that the Bill before us seeks to bring the law in harmony with that Act, for the word "inhabitants" bears in that Act a more restricted meaning than it does in this Bill. But absentee landlords were brought in by Act VIII of 1895 of the Supreme Legislature because, as a careful perusal of the debates in that Council will show, agrarian risings leading to serious breaches of the peace were frequent in Eastern Bengal; but as far as our Presidency, is concerned, I think I shall not be wrong in saying that our agricultural classes have been law-abiding, and none of the riots of late have been due to

agrarian disputes. Why, then, should they be brought in, as this Bill seeks to do? It is said that the ownership of landed property confers personal influence on the owners: but is it quite correct to say that of the landholders in this Presidency, the bulk of whom are peasant proprietors with small holdings? And what influence can a landholder exercise who does not live in the place where his land is situate, and who cannot, therefore, be expected to know, or be known by, the inhabitants of that place? Secondly, it is said, an absentee landlord must be made liable, because of the protection which he gets from the State. But an absentee landlord is generally one who lets his land under an agreement for a fixed rent, which he gets from those to whom the land is let. His rent is assured under any circumstances, and no special protection is afforded to his property by the quartering of an additional police force; and as to his person, there is no protection, for he does not live in the place.

Then there is what may be called the compensation section of this Bill. That, too, requires very careful consideration. In the first place, under this Bill it is open to the District Magistrate to give compensation to any person for the death of any other person, even though the former may not be the son or widow or other dependant of the latter. That is surely not just. There are other modifications which I should like to suggest in the section, for as it stands it is open to comment in several respects. But as we are now considering the motion for the first reading of this Bill I shall not enter into details at the present, but content myself with the observations which I have so far submitted for the consideration of the Council.

The Honourable Sir CHARLES OLLIVANT said:—Your Excellency—I have but little to say as to the remarks of honourable members who have spoken, as they have all expressed their willingness to support the first reading of the Bill. So far as I am personally concerned, while I am prepared to accept in a chastened spirit the criticisms of the Honourable Mr. Garud as to my remarks in proposing the first reading, I have some grounds for consolation in the discovery that those criticisms were apparently prepared before he entered the room. So far as other speakers are concerned, I am grateful to the Honourable Mr. Chandavarkar, because he so effectually removed some of the chief arguments advanced by the Honourable Dr. Bhalchandra. The latter honourable member seemed to think that the imposition of additional police must necessarily be a punitive measure, but Mr. Chandavarkar pointed out that it might be a necessary protective measure. Dr. Bhalchandra said that if you can bring it home to the absentee landlord that he was in any way responsible for the disturbance, occasioning the extra police, it might possibly be right to make him pay. But if, on the other hand, it is necessary owing to the disturbed state of a city to have additional police over and above the number which the general taxpayer is content to provide as the normal strength, then surely those who have the greatest interest at stake in the city, that is, those who own property there, should bear a share of the expense.

The same consideration affects the contention that the policy of permitting a deferred payment is wrong in principle, as it keeps the sore open. If the imposition of a certain extra force is a *sine qua non* of public security for a short time then the cost of the extra police is determined, not by the guilt of the inhabitants or particular section of them, but by the question of what the measure of effective protection is. If the force imposed as the minimum addition required be such as to entail a very heavy charge, is it not kinder that the inhabitants instead of being called upon to pay the whole sum at once should be allowed to spread the payment over several years. I have no doubt whatever that if the inhabitants of any town or district subject to the payment of a certain sum were polled as to the time within which that sum should be paid, they would give a nearly unanimous opinion that it should be distributed over a certain number of years. I am not in favour of laying the charge upon posterity, as some speakers seem to think, but you cannot apply that description to a payment spread over three or perhaps five years.

There is one other point touched upon by the Honourable Mr. Chandavarkar to which I should perhaps refer, one on which I have not before touched. As it is a purely legal matter, I must leave our lawyers to place beyond doubt the question of the meaning of the term "interested in land." I can only quote what our own legal advisers said on the subject. It is this: "The word 'otherwise' will limit according to established canons of construction, the application of the word 'interested therein' to persons having an interest *ejusdem generis* with that connoted by the associated words 'holders of land.'" That at any rate was the intention of Government in having this phrase inserted in the Bill.

Fortunately if the actual wording at present does not carry out the intention of Government, there will be opportunities hereafter of introducing the necessary change, and I am happy to think we may probably have the assistance of the Honourable Mr. Chandavarkar in the task.

Bill read a first time.

His Excellency the PRESIDENT put the motion, that the Bill be read a first time. This was agreed to.

The Honourable Sir CHARLES OLLIVANT then moved that the Bill be referred to a select committee consisting of the Honourable Messrs. Referred to a select committee. Monteath, Garud, Chandavarkar, Moriarty, Crowe and the Mover with instructions to report within four weeks.

The motion was put by His Excellency the PRESIDENT and agreed to.

His Excellency the PRESIDENT then adjourned the Council *sine die*.

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

S. L. BATCHELOR,
Secretary to the Council of the Governor of
Bombay for making Laws and Regulations.

Bombay, 20th December 1897.

APPENDICES

TO THE

PROCEEDINGS OF THE COUNCIL OF THE GOVERNOR OF BOMBAY
ASSEMBLED FOR THE PURPOSE OF MAKING LAWS AND REGULA-
TIONS ON THE 20TH DECEMBER 1897.

APPENDIX A.

Extract paragraphs 2 and 3 of the memorandum from the Collector of Broach, No. L. P.—273, dated the 5th September 1894:—

"2. The Resolution was passed in view of the fact that every village in the district has now been provided with as good a water-supply as is feasible, considering the salty character of the soil in some parts, and that it was found that money which could be more usefully expended was being spent on building flights of bathing steps (*ovaras*) which are simply a luxury and desired by villagers for purposes of display.

"3. It was with a view to checking this unnecessary expenditure and amassing funds for the improvement of communications—the great need of the district—that the District Local Board passed the resolution referred to * * * * *

APPENDIX B.

MEMORANDUM.

A short Bill No. III of 1897 is about to be introduced into the Bombay Legislative Council for amending Bombay District Police Act IV of 1890. Section 25 of the Act, now in force, limits the liability to contribute to the cost of additional police quartered in any local area, which is found to be in a disturbed or dangerous state only to all the inhabitants generally, or to a particular community of the inhabitants of the locality. It is now proposed to extend this liability to non-resident landholders, because, it is said, that their property receives protection from the State while they are away from their homes. This reason has, in my opinion, only a plausible weight, but the question remains whether what they pay to the State in shape of ordinary taxes which are admittedly high enough, are not sufficient to ensure ordinary protection from the State. The necessity, if any, of quartering extra police must obviously arise from wilful acts or wilful omissions of the residents of the place and not from lands and premises owned or held by landlords, and consequently any taxation on account of extra police cannot, I submit, fairly be levied upon those absentee land-owners unless they are found directly or indirectly to aid or instigate persons creating a disturbance which may lead Government to employ additional police. I think the proposal, as it now stands, if carried out, will result in considerable hardships upon innocent persons. I am of opinion, therefore, that this matter calls for a careful reconsideration.

Another objectionable feature of the Bill under consideration is that it proposes to empower Government to extend, from time to time, the period for making payments of the cost of the Punitive Police after the period of their actual employment is over. This, no doubt, is a convenient way of recovering the money from defaulters, but how long is the liability to last? Surely there must be a stage where it ought to cease. In my opinion it ought to cease when the necessity for continuing the employment of the police ends, precautionary measures being taken, if necessary, to recover the outstanding balances, if any, from the persons charged with the cost before the period, originally fixed for employing the police, expires. The instalment system, however convenient, has the disadvantage of extending the period for paying the cost to any indefinite number of years. I hope that this proposal which is open to many objections will not survive the Select Committee that may be appointed to consider the measure in detail.

P. R. DESAI,
Pleader, District Court, Ratnágiri.

Ratnágiri, 10th December 1897.