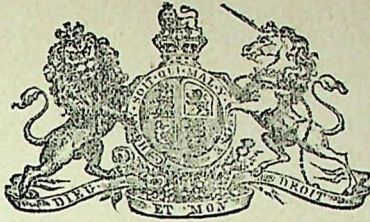



THE



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PART V.

PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

The following extract from the Proceedings of the Government 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 Bombay, on Friday, the 12th March 1869, at midday.

PRESENT:

The Right Honourable Sir W. R. S. V. FITZGERALD, G.C.S.I., Governor of Bombay, *presiding*.

His Excellency LORD NAPIER OF MAGDALA, G.C.B., G.C.S.I.

The Honourable B. H. ELLIS.

The Honourable S. MANSFIELD, C.S.I.

The Honourable The ADVOCATE GENERAL.

The Honourable Colonel W. F. MARRIOTT, C.S.I.

The Honourable MUNGULDASS NUTROOHROY.

The Honourable A. H. CAMPBELL.

The Honourable A. D. SASSOON, C.S.I.

The Honourable BYRAMJEE JEJEEHROY.

The following papers were presented to the Council:—

Telegram and letter from the Secretary to the Government of India, communicating the assent of the Governor General to the "Bhore Ghaut Accident Commission Inquiry Act, 1869;" also the Report of the Select Committee on the Steam Boilers' Bill.

The Report was as under:—

"Report of the Select Committee appointed to consider a Bill to provide for the periodical Inspection of Steam Boilers and Prime Movers attached thereto in the City of Bombay."

Your Select Committee have considered the Bill referred to them, and beg to report that, subject to the following amendments, they approve of the provisions of the Bill as

originally drafted on the model of Bengal Act VI. of 1864. They consider it desirable to provide in the Act for a Commission to supervise the conduct of Inspectors in certain cases. With this object, the appointment of a Commission by Government has been directed in Section No. II. as now amended, and the action of the Commission has been regulated in Section V., and in a new Section, No. VI., inserted by your Committee in the Bill.

A Memorial from Mr. Ormiston, Civil Engineer, was laid before your Committee, and Mr. Ormiston was permitted to state in person his objections to the Bill. His chief grounds of argument were that cause for legislation had not arisen, but your Committee were unable to accept the argument.

Your Committee have had in view the rules framed by the Government of Bengal for carrying out the provisions of Bengal Act VI. of 1864. Presuming that similar rules will be issued for the execution of the proposed law, your Committee recommend that the Bill as now amended be passed.

(Signed)	A. H. CAMPBELL.
(")	ALEXANDER BROWN.
(")	S. MANSFIELD.
(")	MUNGULDASS NUTHOOBHOY."

27th February 1869.

Mr. Munguldass Nuthoo-
bhoy moves the third reading
of the Bill for the levy of
Town Duties.

The Honourable Mr. MUNGULDASS NUTHOOBHOY moved that the Bill for the levy of Town Duties—Bill No. 9 of 1866—be read a third time.

The Honourable The ADVOCATE GENERAL proposed that the Bill be recommitted. He thought the Council would agree with him as to the desirability of recommitting the Bill, with a view to the substitution of another Section in place of the existing second Section, which did not appear to him to be worded clearly. He had re-drafted the Section. For the single purpose of this amendment it appeared to him very desirable that the Bill should be recommitted. Honourable Members were aware that as it stood, the second Section proposed to give the Justices the power next October, and in all subsequent Octobers, of re-adjusting the rates of Town Duties for the year next following, provided such rates should not in any case exceed the rates specified in the Schedule of the Bill. The language of the Section did not appear to him to be sufficiently accurate or comprehensive, and the Section he proposed to substitute for it was merely an improvement with a view to remove any doubt. He should also, if the Bill was recommitted, move the other amendments of which he had given notice. With these few observations, he moved that the Bill be recommitted.

His Excellency The PRESIDENT pointed out that, unless the Bill was recommitted, and some provision made in it, such as that moved by the Honourable The Advocate General, the Justices would have no discretion given them to omit any one or more of the articles included in the schedule. Under the existing Section, all they would have the power to do would be to fix the rates to be levied on the different articles included in the schedule, without having any discretion for the omission of an item—it might be undesirable to tax all the articles named. He felt bound to state to the Council that had the Bill, in its present shape, passed the third reading on the last occasion, he should have considered it his duty to refuse his assent to the Bill.

Bill recommitted.

On the votes being taken, it was resolved that the Bill be recommitted.

Considered in detail.

The Bill was then recommitted, and considered in detail.

New Section substituted for
Section II.

On the motion of the Honourable The Advocate General, the following Section was substituted for Section II.

“At a Special General Meeting of the Justices of the Peace for the City of Bombay to be held under the provisions of Section XXXIII. of “The Bombay Municipal Act of 1865” in October 1869, and at every such Meeting in October in each subsequent year, it shall be lawful for the said Justices to fix the rates for the said Town Duties to be levied for the year then next following after such Meeting in respect to all or any of the things specified in the Schedule to this

II. Power to Justices to
impose Town Duties
for 1870 and subse-
quent years.

Act annexed, and for that purpose to retain or omit all or any such things in or from the said Schedule accordingly for the then ensuing year: *Provided* that such rates so from time to time to be fixed shall not exceed the rates specified in the Schedule to this Act annexed, or be imposed in respect of any other things than those contained in the said Schedule; and the Town Duties when so fixed shall be the Town Duties leviable for the then next ensuing year under the provisions of this Act."

The Honourable The ADVOCATE GENERAL, in moving the omission from Section IX. of the words "without having broken bulk," said the object of the proposed amendment was to prevent these town duties from being transit duties, and to free cotton and other goods, which were merely in transit through the city, from being taxed for the purposes of this Act. He therefore, in accordance with the notice he had already given, moved the omission from the Section of these words.

The Honourable Mr. ELLIS said he would merely ask whether these words formed part of the provisions of the Bill which His Excellency the President considered so objectionable?

His Excellency The PRESIDENT said he did not think he was bound to give an explicit reply to the Honourable gentleman's question. He had at previous meetings of the Council expressed the strong opinion he held against the propriety of exacting transit duties in any Town or on any description of merchandise, and he had given the reasons why it was specially inexpedient to impose such taxes upon cotton. Although the amendment had not as yet been put in Council, he might nevertheless refer to the notice of the learned The Advocate General's motion; the amendment of which notice had been given was for the substitution of grain in the schedule in the place of cotton. In his opinion it was not at all right that corn should be subjected to a transit duty, especially as the Government of India were encouraging Native Chiefs and Governments to remove transit duties in their States. He did not think it was at all a proper course for this Council to adopt, to sanction the imposition of transit duties on corn which came to Bombay for the purpose of being exported.

On the motion, the words "without having broken bulk," in line 3 of the Section, were then omitted.

The Honourable The ADVOCATE GENERAL said he would now move the alteration in the schedule of which he had given notice. He begged to move that the words and figures "Cotton per cwt. Rs. 0-1-0" in the schedule be omitted, and that in lieu thereof the words and figures "Grain of all sorts per candy Rs. 0-4-0" be inserted.

The Honourable Mr. ELLIS said he merely wished to state, after what had fallen from His Excellency the President, that he did not think any thing would be gained by his (Mr. Ellis) offering further remarks.

Cotton omitted from the schedule. The words and figures "Cotton per cwt. 1 anna" were then omitted from the schedule.

The Honourable The ADVOCATE GENERAL moved that the words and figures "Grain of all sorts per candy Rs. 0-4-0" be inserted in the Schedule. The Honourable Member observed that this was precisely the same rate upon corn of all sorts as that to be found in Act XXV. of 1858 ("An Act for appointing Municipal Commissioners and for raising a fund for Municipal purposes in the Town of Bombay"), which tax was levied in Bombay from that time until the repeal of the Act by the Municipal Act (Bombay) II. of 1865. It was necessary to substitute some article in the schedule in place of cotton, to make up the necessary amount of money required by the Municipality; and finding that corn had been taxed in Bombay before without objection, and not seeing his way to the introduction of a tax upon any other article, he begged to propose the insertion in the Schedule of a tax on corn, of the same amount as that levied under the Act of 1858. He begged to move the insertion, in place of cotton, of the following words: "Grain of all sorts per candy Rs. 0-4-0."

His Excellency The PRESIDENT observed that he could only say he greatly regretted the necessity that existed for the insertion of these words in the Schedule, for it was contrary to all sound principle to impose taxes, however small their amount, upon the necessities of life. He had not hesitated to express his opinion of the mistaken policy of the Bench as regarded the Municipal taxation which rendered such taxes necessary. But it was impossible for the Municipality to go on without having additional means of raising

funds, and the introduction of this item seemed indispensable. He had heard it stated several times by members of this Council, including the native members, that this kind of taxation met with the general assent of the native community, and therefore, although, as he had said, he was most unwilling to tax the necessaries of life, he was prepared to agree to this tax.

His Excellency LORD NAPIER OF MAGDALA observed that, in giving his assent to the insertion of these words in the Schedule, he begged to say he entirely concurred in the remarks of His Excellency The President as to the objection to taxing the necessaries of life. He (Lord Napier) took so little share in the burdens of the city, however, that he desired to give way in the matter to the opinions of those who were the representatives of the rate-payers.

The Honourable COLONEL MARRIOTT might be allowed to express his assent to what had just been stated by His Excellency The President and His Excellency Lord Napier of Magdala, but with this exception, that he did not see that there was any absolute necessity for the insertion of the item of grain, as the Bench of Justices have the power of raising the House Rate in such a manner as to meet all the requirements of the case. At the same time; in deference to the opinion of the majority of the Council, he agreed to the insertion of the item in the Schedule as preferable to the charge on cotton for which it is substituted.

The Honourable Mr. MUNGULDASS NUTHOOBHOY quite agreed with the views of His Excellency The President and His Excellency Lord Napier, but said there was an extreme necessity for the Municipality being furnished with sufficient means under this Bill.

The Honourable Mr. BYRAMJEE JEJEEBHOY begged to oppose the insertion of the item of corn, as he objected to any tax on grain.

On a division that the words be inserted, the numbers were:—

AYES—8.

His Excellency LORD NAPIER OF MAGDALA.
The Honourable Mr. ELLIS.
The Honourable Mr. MANSFIELD.
The Honourable The ADVOCATE GENERAL.
The Honourable COLONEL MARRIOTT.
The Honourable Mr. MUNGULDASS NUTHOO-
BHOY.
The Honourable Mr. CAMPBELL.
The Honourable Mr. SASSOON.

NOES—1.

The Honourable Mr. BYRAMJEE JEJEE-
BHOY.

The motion was therefore carried, and the words were inserted accordingly.

The Advocate General moves the inser-
tion of a new clause in the Bill.

The Honourable The ADVOCATE GENERAL moved the
insertion of the new clause of which he had given notice,
which provided that—

“This Act is not applicable to, nor shall the Justices of the Peace for the City of Bombay under the provisions thereof have the power of fixing rates for, the levy of Town Duties on any things imported from any place into the City of Bombay, by or for the direct or exclusive use of the Government of India, or of the Government of Bombay, or of Her Majesty's Military or Naval Forces, or of Her Majesty's Indian Forces.”

IX. Act not applicable to
articles imported for
Government of Her
Majesty's Forces.

He moved this upon two grounds; first, that it would remove any difficulty or doubt that might exist in the minds of persons as to any supposed right of the Municipality to tax articles which, in point of fact, ought not to be taxed. In January 1865, a somewhat similar question to one which might arise under this Bill, were not this Section inserted, came before the Court of Queen's Bench in England. There, the Mayor and Corporation of Weymouth were by a local Act enabled to levy tolls and duties, in respect of specified goods, upon ships entering the harbour of Weymouth, and out of the funds arising from such tolls and duties to repay monies borrowed for the improvement of the harbour, and to keep the same in repair. The Act contained certain exemption in favour of the Crown, and there was no express provision that the Crown should be liable to toll in other respects. Goods not included within the exemption were imported into the harbour for Government purposes, and dues were claimed on them.

The Court held that the Crown was not liable for these duties. When the case came before the Justices of Weymouth, it was proved that certain stone on which the Corporation claimed wharfage dues was brought into the harbour by a barge, but that such stone was only for the use of Her Majesty's Government, that it was brought there from Portland and delivered to persons in the employ of the Government. The respondent, as one of Her Majesty's Officers, took charge of it on behalf of the Government, and it was proved that two shillings and sixpence would be the amount of wharfage dues in respect of the stone so brought into the harbour, if any were payable; and that the Collector demanded payment thereof from the respondent. It was contended on behalf of the respondent that he was not liable for the wharfage dues claimed, inasmuch as the Act of Parliament did not give the appellants any right to petty customs or wharfage dues in respect of material brought into the harbour for the use of Her Majesty's Government works, and that by Her Majesty's prerogative the stone was exempt from such dues as were then sought. The Justices being of that opinion, dismissed the information and complaint. This decision was appealed against, and the question referred for the ruling of the Court of Queen's Bench was, whether the Justices were right in dismissing the complaint? The case was argued before the present Lord Chief Justice, Sir Alexander Cockburn, and other Judges. Sir Alexander Cockburn held that the Justices were right in their decision, and said: "From an early period of our history two great principles have been established with respect to the royal prerogative; first, that the Crown is exempt from the payment of tolls; and, secondly, that, except to certain matters of public character, the Crown is not bound by statute, unless specifically mentioned therein. The question arises here, whether these duties can be claimed in respect of stone brought into the harbour by a person employed by, and acting under, the Crown. It may be argued that the status of immunity from toll or dues arose at a remote time when the right to impose such was founded upon a grant from the Crown, and that in such case the Crown never intended to tax itself; and, therefore, it may be assumed, whether the right to tolls or dues have been acquired from the Crown by grant or by statute, the Crown has always contemplated its own immunity. But whether that be the origin of the immunity or not, it has obtained from the earliest times, and it cannot be supposed that it was the intention of the legislature to make the Crown liable to the payment of those duties where no mention of the Crown is made at all. But, even if we were of opinion that the Crown was not entitled to succeed upon the first ground, I should, at all events, hold its immunity established upon the second; namely, that the Crown is not bound, unless specifically mentioned in the Act of Parliament. In my opinion, the principle applies to the case where duties are claimed under a local Act * * *. The prerogative of the Crown, which from the earliest times has been so clearly established by the two rules to which I have referred, would be materially affected by our adoption of the arguments of Mr. Lush, and we should be acting in direct contravention of them if we were now to hold the Crown liable. In coming to this conclusion, I do not so much regard the special provisions of the Act to which we have been referred, as to the great principles to which I have adverted and the high authority which exists upon the subject." The Honourable The Advocate General now thought there could be no doubt on the point, but perhaps it would be best to embody a clause in the Bill, for the purpose of making it clearly known that it was not the intention of this Council to allow the Municipality to tax articles which were brought to Bombay for the direct use of the local Government, the Government of India, of Her Majesty's Military or Naval Forces, or of Her Majesty's Indian Forces. A second ground upon which he proposed the insertion of the new clause, was that by so doing the Council would be following out the regulations laid down by the Government of India in their Minute of the 6th November 1868 upon Municipal taxation. Amongst the various rules prescribed by the Governor General in Council for the guidance of the different local Governments was this one: "No town duty or toll shall be levied on goods, vehicles, &c., *bonâ fide* the property of the Government, brought within the Municipal limits for the exclusive and direct use of Government. When the Government takes delivery of goods from a dealer or contractor within Municipal limits, the above exemption shall not apply." In conclusion, he begged to move the insertion of this additional clause, to which he apprehended there would be no objection.

New Section added to the Bill.

The Section was then added to the Bill.

The Honourable Mr. MUNGULDASS NUTHOOBHROY requested His Excellency The President to permit the suspension of the standing orders.

The standing orders having been suspended, the Bill as amended with the following preamble—"Whereas it is necessary to provide additional funds for Municipal purposes within the city of Bombay: It is enacted as follows"—was read a third time, and passed.

Bill read a third time, and passed.

The Honourable Mr. CAMPBELL moved the second reading of the Bill for the periodical inspection of Steam Boilers and Prime Movers attached thereto in the City of Bombay—Bill No. 3 of 1869. The Honourable Member said the only material thing in the report of the Select Committee for him to mention, was the proposition for the appointment of a Commission by Government to supervise the conduct of Inspectors under the Act in certain cases. There was no such Commission provided for under the Bengal Act (VI. of 1864), upon which the present Bill was framed, but a Commission was provided under the rules framed by the Bengal Government for the guidance of Inspectors appointed under that Act. It was considered by the Select Committee on the present Bill, that it would be preferable to provide for the appointment of a Commission by a Section in the Bill, than to leave it to be provided for by the rules.

Bill read a second time, and considered in detail.

The Bill was read a second time, and considered in detail.

Upon Section II. the Honourable Mr. CAMPBELL observed that the Select Committee had thought it was more proper to provide for the appointment of a Commission by a Section in the Act itself, than to leave such provision to be made by the rules hereafter to be framed for the guidance of the Inspectors.

His Excellency The PRESIDENT observed that some little difficulty arose here as to the appointment of a Commission. He saw that by Section VI. the action of the Commission was regulated thus: "Government, or the Commission appointed under Section II., might revoke any certificate granted under the Act, in any case in which there should be reason to believe that such certificate had been 'fraudulently obtained, or erroneously granted without sufficient inspection, or in case there should be reason to believe that the Boiler or Prime Mover, in respect whereof such certificate had been granted, had, since the granting such certificate, sustained injury, or was not in good condition.'" Then the Section ran: "On such revocation of a certificate, an Inspector, not being the person who granted the revoked certificate, shall again examine the Boiler or Prime Mover, in respect whereof such revoked certificate was granted, in the manner prescribed in Section IV. of this Act; and if he shall be satisfied that the same is in good condition, shall grant another certificate: Provided that no additional fee shall be paid, unless there shall appear reasonable ground for revoking the certificate." The first thing, therefore, he would point out to the Honourable Mover was, that these provisions would impose on the Government the necessity of appointing at least two Inspectors, instead of an Inspector. A further difficulty was, that it seemed to him (His Excellency The President) a most curious thing that, in the first place, an Inspector was to be empowered to grant or to withhold a certificate; that the Commission—to be formed of five persons, of whom three were to be professional Engineers—was to have power to reverse his decision; and that the decision of this body, after overruling the one Inspector, were in their turn to be liable to be overruled by another Inspector. It seemed a most curious proceeding to say that, after the judgment of one had been set aside by the Commission of five, the judgment of the five might afterwards be virtually reversed by the second Inspector, who was in no way in a superior position to the man whose order had been originally cancelled. It was like referring the decision of a single Judge to a full Court, and then appealing from the full Court to a single Judge of an inferior Court.

The Honourable Mr. CAMPBELL explained that, as stated in the Report of the Committee, the provision was based on the rules framed for the guidance of the Inspectors under the Bengal Act. The word "Inspectors" was used there, and the second Inspector would of course be prevented under the rules from acting, except on the orders of the Commission.

His Excellency The PRESIDENT said that the Calcutta provision as to Inspectors might be, because there were very many more Boilers in Calcutta than in the city of Bombay. He thought there could be no doubt that the words of the Section should be amended, and that it should read as "one or more Inspectors." Then, again, if it was proposed that the Commission should be constantly sitting, it would be found that all the decisions of the Inspector would be appealed against.

The Honourable Mr. ELLIS observed that the Commission sat permanently in Calcutta.

His Excellency The PRESIDENT said there was no legislative authority for their so doing.

The Honourable Mr. CAMPBELL intimated that he was quite willing to amend the Section.

In lines 1 and 2, Section II., after the word "shall," the words "appoint a Commission and" were omitted, and the following words inserted in place thereof: *be empowered from time to time to appoint one or more.* After the word "Act," in line 4, the words "the Commission shall consist of at least five members, three of whom shall be professional Engineers" were omitted, and the following words inserted in place thereof: *and from time to time to remove the same or any of them.*

The Section as amended was passed as follows: "The Government shall be empowered from time to time to appoint one or more Inspectors for the purposes of this Act, and from time to time to remove the same or any of them. It shall be the duty of the Inspectors to inspect all Boilers and Prime Movers attached thereto in the City of Bombay, in the manner hereinafter provided."

On Section VI. the Honourable The ADVOCATE GENERAL said it was desirable to have a clause regulating the appointment of the Commissioners.

His Excellency The PRESIDENT concurred, and said this was the part of the Bill where the provision for the Commission, Court of Appeal, or whatever was proposed, should be inserted.

The Honourable Mr. CAMPBELL explained that the Committee had not considered the Commission merely in the light of a Court of Appeal, but as a body empowered to give directions and orders from time to time to the Inspector or Inspectors. If the Commission was only to be considered as a Court of Appeal, he should prefer to have a special clause inserted regulating its duties.

His Excellency The PRESIDENT observed that this appeared to be exactly the place for putting in the provision. The Bill had provided for the appointment of an Inspector or Inspectors, and having done so, the Council had now to provide for the establishment of some Body who should review the decision of the single individual. The latter would otherwise be absolute, and might inflict great injustice if there was no appeal from his decision. The Bill contained no power for the framing of rules by the Commission. Government were to frame rules, and the sole duties of the Commission were in reference to the granting or withholding of certificates.

The Honourable The ADVOCATE GENERAL suggested that an appeal might lie to the Municipal Commissioner and the Executive Engineer of the Municipality.

The Honourable Mr. MUNGULDASS NUTHOOBHOY would suggest that an appeal should lie to the Court of Petty Sessions, which had judicial powers, and which would probably have far better means of finding out the truth than a Commission appointed under the Bill.

The Honourable Mr. CAMPBELL said that, if it was the opinion of the Council that there should be an alteration, he would propose in lieu of Section VI. the following: "Government shall from time to time appoint a Commission for controlling the Inspector appointed under this Act: such Commission shall consist of not less than five members, of whom three shall be professional Engineers; and all or any of them shall be removeable at the pleasure of Government."

It was resolved that after the word "Government," in line 1, Section VI. be omitted; and the Council proceeded to consider the Section as amended by the Honourable Mr. Campbell.

The Honourable Mr. ELLIS suggested that the Section should run thus: "Government shall from time to time appoint a Commission for hearing appeals as hereinafter provided, and also, under such rules as may from time to time be framed by Government, for controlling," &c.

The Honourable Colonel MARRIOTT asked whether it would not be better to say "for the purpose of hearing appeals against decisions of the Inspector under this Act."?

His Excellency The PRESIDENT said he must confess he thought that any rules defining the duties of the Inspectors would be best laid down by Government. What would be required was something to protect the owner of machinery from having his certificate improperly withheld, and the public from the danger of certificates being improperly given.

The Honourable COLONEL MARRIOTT said that, in order to obtain a decision on this point, he would beg to move as an amendment: "For the purpose of hearing and determining appeals against the action of Inspectors under this Act, the Government may from time to time appoint a Commission consisting of at least five members, of whom three shall be professional Engineers; any or all of whom may be removeable at the pleasure of Government."

The Honourable Mr. MANSFIELD thought the Government should appoint the Inspectors under the Bill, and frame rules for their guidance; and that if any person wished to appeal against the decision of the Inspector, such appelland should be at liberty to appeal to the Petty Sessions, at which a European and Native Justice were always present.

LORD NAPIER OF MAGDALA thought there was an objection to making the appeal to the Petty Sessions, because it might be making a Government Officer amenable to a Municipal body. He thought if the Government appointed the Inspectors, the Government should also appoint the tribunal before which they were to be cited.

The Honourable Mr. MANSFIELD pointed out that the Court of Petty Sessions would be the tribunal in other cases where certain description of charges were made against a Government official.

LORD NAPIER OF MAGDALA would rather see the Inspector appointed by the Municipal Commissioner, if the appeal was to lie to the Justices. He thought if the Inspector was a Government Officer it would not be expedient to make him subject to other authority than that of the Government.

His Excellency The PRESIDENT said he thought it would be better to establish a direct Court of Appeal, consisting of persons appointed by Government.

The Honourable Mr. MANSFIELD proposed, as an amendment, that the Chief Magistrate of Police, and the Municipal Commissioner, and three other Justices, should be a Committee to whom all appeals should lie.

The Honourable Mr. MUNGULDASS NUTHOONHOY said he agreed with the Honourable Mr. Mansfield, but wished to point out that the Court of Petty Sessions in Bombay was not like a Court of Petty Sessions at home. The Chief Magistrate of Police was quite independent of the other Justices sitting with him, but there were many points which came before the Petty Sessions that had to be decided by the other Justices; as, for instance, the value of land, whether houses were in a dangerous state and ought to come down, and so on. Witnesses were heard on both sides of a case, and substantial justice was done. He would suggest that the Court of Petty Sessions, possessing as it did proper judicial powers for the examination of witnesses, was the proper Court of Appeal under this Bill.

LORD NAPIER OF MAGDALA said that, looking to the character of the Government of this country, he was satisfied that the Government should appoint the Commission if they appointed the Inspectors. If the Government thought proper to transfer the power of appointing Inspectors to the Municipal body, well and good; the latter might also appoint the Commission to control them; but he certainly did not think it would be proper for a part of the Municipality to sit in judgment on the Government Inspectors, whose action was in fact that of the Government itself.

His Excellency The PRESIDENT said he did not understand that it was at all proposed to appeal to the Municipality. He understood the Honourable Mr. Mansfield's amendment to refer to the Police Magistrate and the Justices in Petty Sessions. The Police Magistrate was not a Municipal but a Government Officer.

The Honourable The ADVOCATE GENERAL would direct the attention of the Council to an Act passed for purposes somewhat similar to those provided for in the present Bill. The Act was passed by this Council, and was No. II. of 1864. It was to provide for the periodical survey of steam vessels in the ports, harbours, rivers, or waters of the Presi-

gency of Bombay. Under that Act, it was lawful for the Governor of Bombay in Council to appoint a fit and proper person or persons to be a Surveyor or Surveyors for the purposes of the Act. And by Section XIV. it was enacted: "If the Surveyors appointed under this Section unanimously refuse to give any certificate and declaration, or agree as to the terms of their certificate and declaration, such refusal, or such certificate and declaration, shall be final and conclusive; but if they do not agree, the refusal originally made, or the certificate and declaration originally granted by the Surveyors who surveyed the said steam vessel in the first instance, shall remain and be of full force and effect." Now the object of Act. II of 1864, as stated in the recital, corresponded to some extent to that of the present Bill, and it might perhaps be as well to adopt the model of Act II., although its object was rather to provide proper authority than the means of appeal.

The Honourable Mr. ELLIS thought it was very desirable that the Government should not mix itself up with petty matters of detail connected with inspection. There should be some kind of buffer between Government and the Inspector.

The Honourable Mr. CAMPBELL observed that that was the opinion of the Select Committee.

On the question being put, the Honourable Mr. Campbell's motion was negatived.

On the amendment proposed by the Honourable Colonel Marriott, the Council divided. The amendment was not carried, the Honourable the Mover alone voting for it.

The Honourable Mr. MANSFIELD withdrew his amendment in favour of the amendment of the Honourable Mr. Ellis, and the Section was passed as follows:—

"VI. Government shall from time to time appoint a Commission for hearing appeals as hereinafter provided, and also, under such rules as may from time to time be framed by Government, for controlling the Inspector appointed under this Act: such Commission shall consist of not less than five members, of whom three shall be professional Engineers; and all or any of them shall be removeable at the pleasure of Government."

On Section VII. the figures "II." were struck out in line 11, and the figures "VI." inserted in place thereof.

The Honourable The ADVOCATE GENERAL said he thought some power ought to be given to the Commission to award costs in certain cases.

The Honourable Mr. ELLIS did not see what costs could be incurred, unless people were so rash as to employ Barristers.

The Honourable The ADVOCATE GENERAL moved the omission, after the word "certificate" in line 14, of the words "as under Section V. of this Act," and the insertion in place thereof of the following words: "If the Commission are of opinion that any appeal is unfounded or frivolous, they shall have the power of awarding any sum not exceeding Rupees 50, as costs."

The Honourable Mr. ELLIS said he could not see what necessity there was for granting costs.

His Excellency The President said, unless the Commission had power to grant costs in frivolous appeals, he thought the gentlemen serving on it would have a somewhat laborious office, for there might be a very large number of appeals, without any grounds for appeal.

The Honourable Mr. ELLIS said he presumed that the Inspector was to pocket the costs allowed?

The Honourable The ADVOCATE GENERAL was quite willing that the money paid in fines should be disposed of in some other channel than directly into the Inspector's pocket.

The Honourable Mr. MUNGULDASS NUTHOOBHOY decidedly objected to the fines going to the Inspector. If an appellant made a frivolous appeal, he would have to pay the costs, and very properly; but at present, there was no provision for making the Inspector pay the costs when he made an improper charge, or refused to perform his duty properly. Supposing an Inspector made a frivolous objection, the person to whom a Boiler belonged might be put to a loss of Rs. 5,000.

His Excellency The PRESIDENT remarked that the best security against that was, that the Government would always have the power of dismissing the Inspector for any misconduct. As to an error in judgment on the part of the Inspector, it would be unreasonable to grant costs against him—it would be a most unusual proceeding to allow costs on that ground.

The Honourable Mr. MUNGULDASS NUTHOOBHoy submitted that in cases where the Municipal Commissioner was wrong, that Officer was made to pay the costs,—which, of course, came out of the Municipal fund,—and thus a person could not be annoyed unnecessarily.

The Honourable Mr. ELLIS suggested that the objection raised by the Honourable Mr. Munguldass Nuthoobhoy might be met by its being enacted that a person who had been refused his certificate by the Inspector without just cause, should receive his certificate for nothing.

His Excellency The PRESIDENT said it was one of the requirements of the Government of India that the system of inspection should be self-supporting.

The Honourable Mr. ELLIS remarked, that if upon appeal the person appealing was proved to be in the right, he should receive his certificate without fees. What the Honourable Mr. Munguldass objected to was, that when the Inspector was in the wrong, there was no power for compensating the appellant. He (Mr. Ellis, therefore suggested that that objection might be met by a provision that such person should receive his certificate without payment.

His Excellency The PRESIDENT said the payment of the costs in these appeals would form the penal part of the Act. The provision was meant to prevent frivolous appeals. As to frivolous refusal on the part of the Inspector, the best protection against that was, that if the Officer employed on inspection abused his authority, he would be dismissed. These costs were only meant to be given against persons who appealed without the slightest cause.

The Honourable The ADVOCATE GENERAL amended his proposition, and the clause was passed as follows :—

“If the Commission are of opinion that any appeal is unfounded or frivolous, they shall have the power of awarding any sum not exceeding Rupees 50, as costs, to be paid, which sum shall be disposed of as directed by Section XIII. of this Act.”

On Section VIII. the Honourable The ADVOCATE GENERAL suggested that the provisions it contained might possibly clash with the amendments which had just been made to the Bill.

The Honourable Mr. ELLIS expressed a different opinion, and said he thought this Section just fitted in with the amendments that had been made.

The Honourable Colonel MARRIOTT thought it was unnecessary to amend Section VIII.

His Excellency the PRESIDENT said it seemed to him that the words in this Section were required.

The Section was then passed.

On Section X. His Excellency The PRESIDENT said the certificate was to be granted for a certain period, but some accident might happen in the meantime, or there might be an alteration in the machinery which made the Boiler dangerous. Under the Bill, however, no power was given to the Inspector, he having granted a certificate for such Boiler, to interfere before the period for which the certificate was granted had expired.

The Honourable Mr. CAMPBELL said no: no power to interfere in such a case was provided under the Bill as it now stood.

The Honourable Colonel MARRIOTT said there was such a power given under Section VI., but that Section had been omitted from the Bill.

His Excellency The PRESIDENT thought such a power was requisite, but the new Sections would be considered later.

Section X. was then passed.

On Section XI. the Honourable Mr. MUNGULDASS NUTHOOBHOY said he did not see why the Railway Companies were exempted from the operation of the Act. He thought the engines on the railways were likely to be a source of danger.

The Honourable Mr. CAMPBELL believed that the Railway Companies were compelled to have inspections of their engines, under their own Acts.

The Honourable Mr. ELLIS observed that the Railway was a department served by a large and highly paid staff, and that inspection under the present Bill was unnecessary.

The Section was then passed.

After the Schedule had been passed, the Honourable Mr. CAMPBELL moved the insertion of the following Section, the first part of which had previously stood as Section VI. :—

The Commission appointed under Section VI. of this Act may revoke any certificate
 Revocation of Certificate. granted under this Act, in any case in which there shall be reason to believe that such certificate has been fraudulently obtained or erroneously granted, or has been granted without sufficient inspection, or in case there shall be reason to believe that the Boiler or Prime Mover, in respect whereof such certificate shall have been granted, since the granting such certificate, has sustained injury, or is not in good condition. After such revocation, the Boiler or Prime Mover, in respect whereof a certificate has been revoked, shall not again be used until a further inspection shall have been made as in Section IV. of this Act, and until a certificate shall have been granted by the Inspector with the countersignature of a majority of the said Commission.

The Section was passed and inserted as Section VIII.

Short Title. The Honourable The ADVOCATE GENERAL said it would be as well to have a short title to the Bill, and he begged to move that the following new Section be inserted :—

Short Title "XIV. This Act may be cited as the 'Bombay Boiler Inspection Act, 1869.'"

The Section was added to the Bill.

The Preamble was agreed to.

His Excellency the President then adjourned the Council.

By order of the Right Honourable the Governor in Council,

N. DANIELL,

Acting Under-Secretary to Government.

Bombay Castle, 12th March 1869.