

THE



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PART V.

PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

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

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

The Council met at Poona on Saturday the 23rd July, 1887.

PRESENT.

His Excellency the Right Honourable LORD REAY, G.C.I.E., LL.D., Governor of Bombay, *Presiding.*

The Honourable Sir M. MELVILL, K.C.I.E., C.S.I.

The Honourable J. B. RICHEY, C.S.I.

The Honourable the ADVOCATE GENERAL.

The Honourable KA'SHINA'TH TRIMBAK TELANG, C.I.E.

The Honourable F. FORBES ADAM.

The Honourable J. R. NAYLOR.

The Honourable Ráo Bahádúr MAHA'DEV VA'SUDEV BARVE, C.I.E.

The Honourable Mr. RICHEY moved that Bill No. 3 of 1884, a Bill to amend the Bombay Hereditary Offices Act so far as it relates to Matádars, be read a third time.

Mr. Richey moves the third reading of Bill No. 3 of 1884.

The motion was agreed to, and the Bill was read a third time and passed.

Bill read a third time and passed.

The Council then resumed consideration of Bill No. 7 of 1886, a Bill to declare and amend the Law relating to Toda Girás Allowances.

Mr. Richey resumes his motion for the second reading of Bill No. 7 of 1886.

In resuming his motion that the Bill be read a second time the Honourable Mr. RICHEY said :—

With reference to the discussion which took place at the last meeting of the Council, I have given notice of some new amendments. The first of these relates to section 3. The object of the amendment is to give legal effect to the executive standing orders on the subject of succession to *toda girás* allowances. So far as this section is concerned, it is merely to give validity to existing standing orders, and as one of these orders is that, failing male heirs, the widow of the last recipient shall be allowed the annuity during life-time, this provision should be made, that the allowance shall duly be payable during life-time of the widow. The Honourable Kázi Sháhábudin called attention at the last meeting of the Council to the form of sanads issued for allowances in pursuance of the settlements in 1862-63, in which provision was made for failure of heirs in direct male line, and indicated that he was not quite sure that the discretion, which is provided in section 3, as to the continuance of these allowances to the heirs of the brother of the first recipient under British rule truly represented the existing state of the rules. It appeared to me there was no question about this. I have compared the Bill with the rules made in 1863, which are to the effect that in case of failure of heirs in the male line, if the Revenue Commissioner finds that any hardship will occur, the brother of the first recipient is to be allowed to succeed. That is the rule, and under these rules a large number of allowances has been declared continuable through the brother of the first recipient, and many sanads have been issued since 1863 under the settlement which embodied that privilege. There is therefore no question as to this proposal properly representing the existing rules and procedure. But as we want to make the Bill as consistent as possible with the existing facts, I ask you to make an amendment to the proviso, making it read: "Provided that, on failure of such heirs, the allowance, or some portion thereof, shall whenever the Governor in Council has already so directed, or shall hereafter so direct, be continuable hereditarily to the lineal male heirs in male descent of a brother of the first recipient of such allowance under British rule." I have given notice of an amendment to substitute for the first sentence of section 6, as it appears in the Bill: "(1) Nothing in this Act applies to a *toda girás* allowance, which has already been alienated." This will meet the amendment in section 6, proposed by the Honourable Mr. Telang, by which the date before which the alienation should be recognised is altered from the 19th November 1886, (the date of the publication of the Act), to the date of its becoming law. With regard to the other amendments proposed in section 6, the object which should be kept in sight in these provisions is that while no *bona-fide* alienation is invalidated by the Act, no room should be left for people interested in securing an alienation to do so hereafter by any collusive means. Therefore, in accepting Mr. Telang's suggestion that the date of passing of the Act should be substituted for 19th November, I have also to ask that only *bona-fide* and complete transfers should be recognised. Therefore I propose that the test of the transfer should be that any document effecting it should be registered before the passing of the Act, and that the provisoes as regards alienation shall be—"(a) If the instrument purporting or operating to effect such alienation has *before the date on which this Act comes into force* been registered under any law for the time being in force relating to the registration of documents; or (b) if the said instrument not being compulsorily registrable and not having been registered under any such law as aforesaid *has been executed before the date on which this Act comes into force* and is presented for inspection, together with a copy thereof for record, at any time within six months after the *said date*, to the Collector of the District in which such allowance is payable; or (c) if, when such alienation has not been effected by an instrument, proof thereof is produced within the period, and to the Collector aforesaid." Then it has been suggested that it will be useful for the Courts if the Act should provide some simple proof of the validity of the transfer, and I have therefore to move an additional amendment, which is this—"(2) *When any instrument is presented to a Collector under clause (b), he shall, before returning the same, endorse thereon, under his signature and official seal, the date of such presentation. When proof of an alienation is produced before a Collector under clause (c), he shall give to the alienee a certificate, under his signature and official seal, that the toda girás allowance so alienated is not subject to the provisions of this Act.*" Mr. Telang has given notice of another amendment to substitute "one year" for "six months." Six months are allowed for inspection. We only know of fourteen instances at present in which alienation has taken place, and it is very improbable that since the Bill was published there have been any more. It seems entirely unnecessary to make the time

any longer than six months, as there is risk that proof will become more difficult and more doubtful.

The Honourable Mr. TELANG :—Having regard to the explanation given by the Honourable Mr. Richey at the last meeting of the Council, I shall ask the Council to consider that I withdraw the first of my proposed amendments. As to the other amendments, I think (a) of section 6 even as now proposed should be amended.

His Excellency THE PRESIDENT :—Perhaps these remarks had better be deferred till after the motion for the second reading has been put.

Bill read a second time and considered in detail. The motion that the Bill be read a second time was then put and agreed to, and the Council proceeded to consider it in detail.

The Honourable Mr. TELANG then withdrew the amendment he had given notice of to section 3, namely to omit all words from "to the lineal male heirs" down to the end of the section.

The Honourable Mr. RICHEY moved that section 3 be amended as follows, viz. :—

- (1) In lines 8 and 9, omit the words "the Governor in Council may, if he thinks fit, direct that."
- (2) In line 10, after the word "shall" insert : "whenever the Governor in Council has already so directed or shall hereafter so direct."

The motion was agreed to.

The Honourable Mr. RICHEY moved that for section 6 the following section be substituted, viz. :—

6. (1) Nothing in this Act applies to a *toda girás* allowance which *has already been alienated* :

- (a) If the instrument purporting or operating to effect such alienation has *before the date on which this Act comes into force* been registered under any law for the time being in force relating to the registration of documents ; or
 - (b) If the said instrument not being compulsorily registrable, and not having been registered under any such law as aforesaid, *has been executed before the date on which this Act comes into force* and is presented for inspection, together with a copy thereof for record, at any time within six months after the *said date*, to the Collector of the district in which such allowance is payable ; or
 - (c) If, when such alienation has not been effected by an instrument, proof thereof is produced within the period and to the Collector aforesaid.
- (2) *When any instrument is presented to a Collector under clause (b), he shall, before returning the same, endorse thereon, under his signature and official seal, the date of such presentation. When proof of an alienation is produced before a Collector under clause (c), he shall give to the alienee a certificate, under his signature and official seal, that the toda girás allowance so alienated is not subject to the provisions of this Act.*

The motion was agreed to.

The Honourable Mr. TELANG then moved that in section 6, clause (a), the words "is duly" should be substituted for the words "has been." He said :—My Lord, with reference to clause (a) of section 6, I would suggest to the Council that it is desirable that a certain change should be introduced, so that clause (a) should read in this way : "If the instrument purporting or operating to effect such alienation *is duly* registered under any law for the time being in force relating to the registration of documents." I do not object to the provision that the instrument should be executed before the Act comes into force, but why should it also be registered before that time? Of course there is the danger of collusion, but there is no greater danger as regards an instrument coming under clause (a) than there is as regards alienations falling under clauses (b) and (c). It is also to be remembered that in no case can the instrument be registered after eight months from the date of execution. And as clauses (b) and (c) provide for six months, clause (a) will provide for eight months. The effect of clause (a) as proposed by Mr. Richey will be practically to curtail the period allowed by the general registration law, and it may, in practical operation, become a retrospective enactment. In cases of collusion, too, in such a matter as this, it should not be difficult to prove such collusion. But by clause (a), as now proposed, some alienations, even though not collusive, will be rendered invalid. I am willing that six months should stand. Twelve months were suggested to

me by the old Registration Act. Still if Mr. Richey thinks six months should not be extended, I am quite willing to accept that. But by adopting my amendment, clauses (a) and (b) will be brought into unison.

The Honourable Mr. RICHEY: Mr. Telang's argument that the period for documents coming under (a) and (b) should be assimilated as far as possible, has some force; but it will be observed in the amended proviso (b) that we have worded it so as to secure that these documents shall have been executed upon a date before this Act shall come into force. Transactions provided for under (b) would be of very small values, and it is very unlikely that any of a high value has been begun since the first reading of the Bill; it is reasonable to give a certain amount of latitude to parties interested in any small transactions, if there are any in progress, and yet it is desirable to check any important alienation at once.

The Council divided:

<i>Aye.</i>	<i>Noes.</i>
The Hon. Káshináth Trimbak Telang.	The Hon. Sir M. Melvill.
	" J. B. Richey,
	" the Advocate General.
	" F. Forbes Adam.
	" J. R. Naylor.
	" Ráo Báhadur Mahádev Wásu- dev Barve.

So the amendment was lost.

The Honourable Mr. TELANG then withdrew the other amendments to section 6 of which he had given notice, *viz.*, to omit the words "which was", and for the words "19th November 1886" to substitute "passing of this Act"; and in clause (b) for "six months" to substitute "one year".

The Honourable Mr. RICHEY then moved that the Bill be read a third time.

Bill read a third time and passed. The motion was agreed to, and the Bill read a third time and passed.

The Honourable Mr. NAYLOR moved the first reading of Bill No. 4 of 1887, a Bill to

Mr. Naylor moves the first reading of Bill No. 4 of 1887.

consolidate and amend the Law relating to the Municipal Government of the City of Bombay. He said:—Your Excellency, —I appear before this Council to-day on behalf of the city of Bombay. In saying this, I do not lay claim to be in any special sense the representative of the city. I owe to your Excellency the honour of being placed in charge of the Bill for consolidating and amending the law relating to the municipal government of that city, which now lies before us. But I describe my position in regard to this legislative project in these terms, because it seems to me to be desirable that I should clearly state at the outset that the object we have in view is the advancement of the interests of the city of Bombay. The consolidation and the amendment of municipal enactments, the extension of the municipal franchise, the promotion of local self-government, the definition of the powers and duties of the several municipal authorities are things which are, no doubt, desirable in themselves, but they are only means to an end. The end is the perfection of municipal government, the attainment, in the highest possible degree, of those conditions which will secure to the inhabitants of the city, health, convenience and comfort, and which will enable the city to maintain its place amongst the finest cities of the world, without imposing upon the people undue taxation. I am sure that I rightly interpret the intentions of Government, when I say that this was the main object with which they commissioned me, in consultation with the late Municipal Commissioner, Mr. Ollivant, to draft the Bill which is now before the Council; I can testify to the fact that the provisions of the Bill, from first to last, have been carefully designed to effect this object, and I do not doubt that the honourable members of this Council will approach its consideration and deal with it in all its stages with this object in view.

It is nearly a century ago since the first municipal enactment for the city of Bombay was passed. That was a very simple provision enacted by Parliament in the year 1793, which empowered Justices of the Peace, assembled at their General or Quarter Sessions at Bom-

bay, "to appoint scavengers for cleaning the streets, to order watching and repairing of the streets as they shall judge necessary," and to assess houses, buildings and grounds, in order to defray the expenses, at a rate not exceeding one-twentieth of their annual value. Between that time and the present the affairs of the city of Bombay have always enjoyed a large share of the attention of the Indian Legislatures, both Supreme and Local. I need not trouble the Council with details. I will only say that at this moment there are no less than eleven Acts of the local Legislature, relating exclusively to the Bombay Municipality. If, therefore, the length of the present Bill, with its 528 sections, creates surprise, I must explain that, if passed, it will take the place of all these eleven enactments in the statute book, containing between them 417 sections, and of several rules and orders which have been passed under them, and that it, moreover, supplies provisions on many new and very important and useful matters, which the existing municipal enactments either do not deal with at all, or provide for very imperfectly. The principal of the existing enactments is Bombay Act III of 1872. That Act was passed only fifteen years ago, but its administrative provisions were not essentially different from those of the preceding Municipal Act, Bombay Act II of 1865, which again were copied, without much alteration, from two Acts passed by the Government of India for all the three presidency towns of India in 1856. The two last-mentioned Acts were prepared at a time when municipal institutions were only beginning to be tried in this country, and it was impossible for the Government to know what special provisions would be adapted to the peculiar requirements of oriental towns, and so it happened that, with few exceptions, the provisions of these two Acts were taken almost bodily from English statutes. Thus the Municipal law in force in Bombay for the last thirty years has been obtained almost exclusively from English sources, and but little attempt has hitherto been made to shape and adjust it to the local conditions of that city.

In the meantime, also, Bombay has been making immense strides in everything that lends importance to a city. Within it have sprung up a great number of mills and other manufactories, which whilst they are a source of employment and profit to large classes of the inhabitants, are on the other hand the cause of new species of nuisances and danger to the community at large, which it is absolutely necessary that the Municipality should have power to control. The population which in 1871 was found to be, in round numbers, $6\frac{1}{2}$ lákhs, had increased in 1881 to $7\frac{3}{4}$ lákhs, and is now, probably, not far short of $8\frac{1}{2}$ lákhs. The last quarter of a century has seen Bombay brought into connection by railway with Calcutta, Madras, Delhi and the Punjab, and it is now the focus towards which all the principal railway systems of this vast empire converge. The importance of this fact to Bombay may be estimated when it is remembered that the total mileage of Indian railways is now approaching 16,000 miles. The opening of the Suez Canal and the development of trade in the country have added enormously to the ocean-borne traffic which is either shipped or landed at its port. Figures, with which I have been obligingly supplied by the Collector of Customs, exemplify the immense expansion of the trade of Bombay during this period in a remarkable manner. Five and twenty years ago, *i.e.*, in the year 1862-63, the total number of steamers entered at the port of Bombay was 105, with a tonnage of about 80,000 tons; last year, 1886-87, the number entered was 1,816, with a tonnage of over $1\frac{1}{2}$ millions of tons. The total value of the trade, *i.e.*, of imports and exports together, amounted in 1862-63 to a little over £59,000,000 sterling; it last year exceeded 84½ millions. And as illustrating the growth of our city in importance, comparatively with the two other presidency towns, I may mention that Bombay's share of the total foreign trade of British India (exclusive of Government transactions), which stood at 37 per cent. in 1878-79, has since, year by year, steadily increased, till in 1885-86 it was nearly 44 per cent. Calcutta's share in 1878-79 was 44 per cent., and it has since steadily fallen off, until in 1885-86 it was only 36 per cent. The share enjoyed by Madras has in the meantime continued pretty constant at about 5 per cent.

To these statistics I may add the following, which have been kindly given to me by Mr. Charles, the present Acting Municipal Commissioner of Bombay. In 1864 the municipal revenue was a little over 15 lákhs only. In the following year it was increased to nearly 33 lákhs. In 1881 it had grown to $38\frac{3}{4}$ lákhs, and in the last year, 1886-87, it exceeded 48 lákhs. In addition to this ordinary revenue, the Municipality has raised loans during the last twenty-five years, which, including the Vehár Water works' debt

due to Government, aggregate 223 lakhs; and other loans to the extent of 106 lakhs, for the completion of the Tansa Water-works, and 50 lakhs, to complete the drainage and house-connections in the city, are in early contemplation.

These figures, I think, illustrate more vividly than any words of mine could, the pre-eminent position which, during the last quarter of a century, the city of Bombay has obtained for itself in our Indian Empire, and the magnitude of the interests confided to its municipal authorities.

The Act of 1872, under which, as I have said, the municipal affairs of the city have for the last fifteen years been conducted, was amended by Act No. IV which this Council passed in 1878, and honourable members will observe from the frequent references to the Municipal Acts of 1872 and 1878 in the margin of the Bill now before us, that these two Acts together, at present, guide and control the municipal government of the city. The amending Act of 1878 was, however, no more than a temporary measure. It left many difficulties unsolved, and the late Honourable Mr. Gibbs, who introduced it, was, I know, fully alive to the fact that in a few years an entirely new consolidating enactment would be required. In May 1881, Mr. Ollivant became Municipal Commissioner, and he found the Corporation already engaged in considering what amendments were necessary in the Municipal Acts. Honourable members will find in Government Selection No. 178 a long series of "proposals for the amendment of the Bombay Municipal Acts" extending over the years 1881 to 1885, and emanating partly from the Corporation, partly from the Town Council, and partly from the Municipal Commissioner. There is also a "Blue Book," referred to at pp. 65-66 of the above Selection, in which Mr. Ollivant, at the request of Government, submitted in November, 1882, a revised Bill embodying the recommendations theretofore made by the Corporation and the Town Council and himself, with such further modifications as his later experience of municipal administration suggested to him. In January, 1883, the Corporation appointed a Committee "to consider and report, in conjunction with the Municipal Commissioner, what amendments in the Municipal Acts may, in the opinion of the Corporation, be desirable in connection with the new local self-government scheme." A second Committee was afterwards appointed by the Corporation for this same purpose, and their report, which was generally approved by the Corporation, was submitted to Government by their chairman, who is at present the honourable member of this Council, Mr. Pherozeshah Mehta, and is printed *in extenso* at pp. 69-100 of the Government Selection No. 178. It is right that I should mention that the Commissioner, Mr. Ollivant, was absent from Bombay for the greater part of the time that this Committee sat, and that he, consequently, participated but little, if at all, in its deliberations.

But although absent from Bombay, Mr. Ollivant was, for three months in 1883, very usefully engaged in inquiring into the methods of municipal administration in England. The Corporation, with much wisdom, requested him to remain in England for three months on special duty for this purpose, and having been associated subsequently with Mr. Ollivant in the preparation of the Bill which is before us, I can bear witness to the great use which that gentleman must have made of this opportunity. When we were deputed in the early rains of 1885 to draw up a new Municipal Bill in consultation, I found in Mr. Ollivant a coadjutor, who not only was fully cognisant of every detail of the work of the Bombay Municipality, and of all its intricacies and difficulties, but one, also, who was deeply versed in the municipal and sanitary legislation of the United Kingdom and of many of her Colonies. For the completeness of the provisions on each of the numerous subjects with which this important Bill deals, and for their adaptedness to the circumstances of their city, the people of Bombay are entirely indebted to their late Municipal Commissioner; and it is a matter of very great regret that he should have been compelled by ill-health—ill-health brought on by his too zealous labours on behalf of the city—to take furlough, before the Bill, on which he bestowed such infinite pains, could be introduced into this Council. I fear there are many valuable provisions in the Bill of which I shall be able to give but a very imperfect explanation, but of which the importance and necessity could be demonstrated by my late colleague, were he present, in a manner which would readily carry conviction. During our short official intercourse, I have, however, learnt many things, of which, I confess, I had no previous knowledge, and during the careful scrutiny which the details of the Bill will, no doubt, undergo in Select

Committee, I shall endeavour to give the reasons which led us to frame its several provisions as we find them.

My Lord, the Bill which has thus been drawn by myself, under the guidance and with the able assistance of Mr. Ollivant, is the outcome of his great local experience and of his very extensive acquaintance with the municipal and sanitary laws of other parts of the world; but we have also had before us all the amendments and improvements from time to time suggested by the Corporation and the Town Council, which are to be found in the Government Selection already referred to; and it will, I think, be found, on examination, that we have generally adopted those suggestions, and that where we have not done so, it has been because more recent experience, or a fuller knowledge of facts, has satisfied us that public interests would be better served by the adoption of some other course. If I were to attempt to speak of each of the subjects dealt with in the Bill, my speech would extend to a length which at this stage of the discussion of it would be quite unwarrantable. I will only say, generally, that the object kept in view in every chapter is to secure to the citizens of Bombay the greatest possible efficiency in municipal services with the most complete possible control over expenditure. Many of the provisions in the chapters relating to drainage, water-supply, buildings, and sanitation are strict, perhaps even severe; some may even be found by the Select Committee to be unsuited to the conditions of life in the native quarters of the city; these are points to which I cordially invite the attention of the Native gentlemen who interest themselves in the Bill and of the honourable Native members of this Council. The Bill, if it should pass into law, is likely to take a permanent place in the statute-book, and although we may desire that the provisions of such an important enactment should be thorough and effectual, there is no wish to impose restrictions which would needlessly run counter to popular sentiments, or harass or annoy the people.

But there is one portion of the Bill on which honourable members will, perhaps, expect that I should submit a more full explanation, *viz.*, that part of it which regulates the future municipal constitution. This does not appear to me, in the present condition of things, to be the most important portion of the Bill; there are other portions of it which are much more urgently required, and the future successful operation of the law depends, I think, in a far greater degree upon the careful amendment of its executive provisions than upon any contemplated change in the constitution of the Municipality. But a revision of the whole law involved a reconsideration of this part of it also, and, as I have stated, the Corporation submitted in 1884 certain recommendations on this point, in connection with the impetus which was given in the time of the late Viceroy to the development of local self-government generally throughout India. Great care has been taken in drafting chapter 2 of the Bill which treats of the municipal constitution, to render the provisions regarding the qualifications and disqualifications of electors and candidates, the conduct of elections, the appointment of the Town Council, the proceedings of the Corporation and Town Council, and the respective duties and powers of the Corporation, the Town Council and the Municipal Commissioner, clear and free from ambiguity. These are matters in which the present Municipal Acts are especially defective, and no pains have been spared to make the Bill as free from such defects as possible, although I do not doubt that there may be still much room for improvement. With regard to the constitution itself, no very radical changes are proposed, and I will offer a few observations in explanation of this fact.

Your Excellency, in the mother-country the history of municipal institutions is a part of the history of the people rather than of the history of the Government. A large number of people congregated in a growing town would recognize the need for municipal regulations and for taxing themselves in order to supply public local wants, and out of this desire there would arise an application for a Royal Charter of incorporation. The burgesses, or citizens, having become a corporate body, proceed to elect from amongst themselves a council, and this council, charged with the conduct of the municipal affairs of the town, appoints working committees, each with the control of a different department, and reserves to the whole body only such large questions as can be conveniently disposed of by them at occasional general meetings. All the details of the administration are settled by the committees. The history of the Bombay Municipality bears but little resemblance to those of England. Its commencement dates from that statute of 1793 which I have already mentioned, and which

entrusted the duty of appointing scavengers and of ordering the watching and repairing of the streets to His Majesty's Justices of the Peace. His Majesty's Justices of the Peace at this time consisted of the Governor in Council and of covenanted civil servants and other British inhabitants of Bombay appointed by the Governor-General in Council. The number of Justices of the Peace so appointed in addition to the members of the Government was, in 1793, five; in 1798, nine; and in 1807, when the power of appointment was transferred to the local Government, sixteen. In 1812, a Court of Petty Sessions was appointed, consisting of Justices of the Peace, and including the two Police Magistrates, and the Regulations framed by this Government during the following twenty years imposed municipal functions sometimes on the Court of Petty Sessions, and sometimes on His Majesty's Justices of the Peace at their quarter sessions. In 1832 Parliament passed an Act authorising the appointment of any person not being a subject of a foreign State to be a Justice of the Peace, and as soon as the nomination of natives of this country to be Justices had been thus legalized, the Bombay Government in 1834 enacted that the Court of Petty Sessions should thenceforward consist of not less than three Justices of the Peace, of whom one should be a Police Magistrate, one a European and one a native of India. Municipal matters continued to be managed in Bombay partly by the Court of Petty Sessions, partly by the Police Magistrate, and partly by Her Majesty's Justices of the Peace in Sessions assembled, until in 1845 a Municipal Fund was for the first time established, and a Board of Conservancy was appointed to administer it. This Board consisted of seven members, *viz.* the Senior Magistrate of Police as chairman, the Collector of Bombay and two European and three Native resident Justices of the Peace elected by the Bench of Justices. It existed for thirteen years, but it was not found to work satisfactorily, and in 1858 a new experiment was tried. This consisted in vesting the Municipal Fund in three Municipal Commissioners, one, the President, being appointed by Government, and the other two elected by Her Majesty's Justices of the Peace in Sessions assembled. These three Commissioners had very large powers and were subject to very little check or control; but, to use the words of the Honourable Mr. Cassels, who introduced the Municipal Bill of 1865 in this Council, it was found "that three Commissioners with equal powers but divided responsibility almost unavoidably obstructed and counteracted each other." At length, in 1865, this Council passed the Bill, introduced by Mr. Cassels, in which provision was made for the appointment of a highly-paid sole Municipal Commissioner in whom was vested "entire executive power and responsibility." At the same time, all Justices of the Peace for the town and island of Bombay were constituted a body corporate, with power to fix the rates of municipal taxes and to sanction or reject the Municipal Commissioner's budget. This system continued in force for seven years under the able administration of Mr. Arthur Crawford; but experience showed that the whole Bench of Justices formed too large a body for an efficient Municipal Council, and that the check on expenditure provided by the Act of 1865 was insufficient. The result was the passing of the Municipal Act of 1872, to which I have already alluded, as being the principal Act at present in force. That Act still maintained the position of the Municipal Commissioner, vesting in him "the entire executive power and responsibility for the purposes of the Act." The Bench of Justices were displaced by a Corporation of 64 members, 32 elected by rate-payers, 16 nominated by Government and 16 elected by the Justices; and a third authority was created, a Town Council, consisting of twelve members, 8 selected by the Corporation, and 4 nominated by Government, whose special function was "to secure due administration of the Municipal Fund." This is the municipal constitution as it at present exists.

The essential difference between this Municipality and those of England is that whereas the latter are the creation of the people themselves, the Bombay Municipality is distinctly the creature of English legislation, and its present constitution is the outcome of a long series of experiments. The result of the experiments is that for the last twenty-two years the city of Bombay has been under a form of municipal government which has worked smoothly and well, which has given satisfaction both to the people and to the Government, and which has effected in the aspect of Bombay, in its beauty as a city, in its conveniences, its healthiness and its cleanliness—in fact, in everything which betokens a sound municipal administration, changes which are little short of marvellous. If I should appear, in these remarks, to be using the language of exaggeration, I will only appeal to those who knew Bombay, as I knew it, five and twenty years ago. I will also quote the observation of His Excellency the Viceroy, who, in replying to the address

of the Corporation in November last, said "he knew of no Municipality imbued with a more enlightened, wisely progressive and thoroughly practical spirit than the Municipality of Bombay;" and that the work of the Municipality has been thorough and not merely on the surface is evidenced by the following passage which I take from the Memorandum of the Army Sanitary Commission—a body by no means easy to please—on the Municipal Commissioner's Reports for 1885-86. The Commissioners say: "The municipal work * * * up to the present has considerably reduced the mortality from epidemics, which in other Municipalities and in the country villages have, in the absence of effective sanitary work, been left year after year to inflict great loss and suffering upon the people. And these results have been obtained in, perhaps, the most unfavourable population group to deal with in the whole Presidency and in one of the most densely-populated cities anywhere to be met with."

A constitution under which such results as these have been achieved is one which should, I think, be continued. At least, it should not, in the face of previous failures, be in any way seriously altered, without grave reason. Moreover, no such alteration has been asked for. I am not aware that any application has been made by the rate-payers, or by the general public of Bombay, for any change in the municipal constitution. As I have already shown, no thought was entertained before 1883 of altering the constitution, and the recommendations of the two Committees of the Corporation appointed about that time to consider what amendments were desirable in connection with the new local self-government scheme are contained in the report which is printed at pp. 69-72 of the Government Selection No. 178. They are in effect—(1) that the number of members of the Corporation be raised from 64 to 72; (2) that the respective functions of check and control vested in the Corporation and Town Council be in no way lessened; (3) that the chairman of the Town Council be elected by that Council; (4) that the position and duties of the Commissioner remain unaltered; and (5) that his appointment continue to be made by Government. But Mr. Ollivant, for reasons which are very clearly set forth in his letter to Government, No. 2009 of 18th May, 1885, printed at pp. 101-105 of the Government Selection No. 178, was desirous of inducing the representatives of the Bombay tax-payers to take an active part in the municipal government of the city, by sharing with the Commissioner the executive power and responsibility. His idea was to assimilate the Municipality to the English models by requiring the Town Council to distribute itself into sub-committees, each of which, with the Municipal Commissioner as chairman, should have charge of one or more branches of the executive work of the Municipality. This view commended itself to me, as being an important step in the direction of real self-government, and the first draft of our Bill was devised to give effect to it. That draft proposed to deprive the Commissioner of the sole executive authority, and to vest such authority in sub-committees of the Town Council, of which the Commissioner would be the chairman. The draft was referred by Government to the Corporation for the favour of their opinion, and honourable members will find from para. 10 of their chairman's letter, No. 1943 of 1886, which is printed at pp. 106-107 of the Government Selection No. 178, that that body disapproved of the proposed change. Government did not press the new departure, when those in whose interest it was suggested were unwilling to accept it, and the Bill had therefore to be entirely recast. It appears that there does not exist in Bombay the class of gentlemen upon whom municipal institutions in England so greatly depend—gentlemen who are both able and willing to devote a considerable share of their time and attention, without remuneration or for comparatively little remuneration, to local public affairs, and to incur the responsibility which participation in the conduct of such affairs necessarily involves.

I may mention that the first draft Bill also proposed that, following English precedents, the "Corporation" should henceforward be called "the Municipal Council" and "the Town Council" "the Standing Committee." In deference to the views of the Corporation, which were in favour of retaining the old names, the existing nomenclature has been restored in the present Bill; but I venture to hope that this Council may see fit to adopt the amended names. The so-called "Corporation" is in reality the Municipal Council, and although it is by its constitution a body corporate, there is no particular reason why its designation should proclaim this fact. If the body is designated a Council, each member of it is necessarily a Councillor, a term which not only implies dignity, but is also much more convenient and simple than the term

"member of the Corporation." The ugly words "Corporator" and "Corporationer" I leave out of account altogether. The "Town Council" is a clear misnomer. The body which bears that name is not a distinct council; it is a committee selected from the members of the Corporation, and it performs vicariously the duties of the Corporation. It is, in fact, a standing committee of the Corporation, and it would seem fitting that it should be so called. The term "*Town Council*" is quite inappropriate. In England a Municipal Council is popularly called the Town Council, if it is the council of a town. But Bombay has for many years past discarded that appellation, and with every right claims to be a city. A *Town Council* in a city is evidently misnamed. Moreover, the *town* of Bombay meant originally only the Fort; when what we now recognise as the city was intended, the expression "town and island of Bombay" was used. The word "town" still survives in the term "presidency-town" and under the Government of India's enactment, Justices of the Peace are still appointed "for the town of Bombay." The Government of India in their Legislative Department have not yet recognized our claim to be a city; but that I submit is no reason why we in our local enactments should speak of a "*Town Council*" when, for all other purposes, we call Bombay a city.

In the Bill which is before us, the wishes of the Corporation have been followed, not only in this matter of nomenclature, but also in other more important particulars. Upon their suggestion, the number of members of the Corporation is proposed to be raised from 64 to 72. This is a change which, in my opinion, is inexpedient. The number of members is already very large, and the more that number is increased the greater will be the difficulty in obtaining the prompt disposal of business by the Corporation. Upon the recommendation of the Corporation, also, it is proposed that two members of that body be elected by the Fellows of the University and by the Chamber of Commerce. Another proposal of the Corporation which has been accepted is that the Town Council shall have power to elect their own chairman. In some points, however, Government have not been able to concur with the Corporation. They are, for instance, of opinion, that it will promote the despatch of business, if the Commissioner is *ex-officio* a member of the Corporation and of the Town Council; and in view of the unwillingness of the Corporation that the Town Council should share with the Commissioner the executive administration, it appears to be absolutely necessary to provide for the possible need of appointing a Deputy Municipal Commissioner. The experience of the last few years is that the work is increasing far beyond the capacity of any one officer, and although provision is made in section 67 of the Bill by which the Commissioner will be able to depute many of his duties, under his control and subject to revision by him, to Municipal officers, it is still feared that the work of the Municipal Commissioner may be too great for one man.

The only other important feature of the constitutional provisions of the Bill which I need trouble the Council to notice is the careful attempt which has been made to define the respective functions and duties of the three municipal authorities—the Corporation, the Town Council and the Commissioner. The idea that the Commissioner should be simply the executive officer of the Corporation, obeying and carrying out the behests of that body and of the Town Council, does not appear to accord with the lines of the constitution as at present existing. The great success of the administration of the last twenty-two years is, no doubt, very largely due to the fact that "the entire executive power and responsibility" have been vested in the Commissioner, who is an officer specially selected by Government for this very important and difficult post. The history of municipalities in other parts of the world in which the administration is vested exclusively in an elective body does not encourage us to think that in a city like Bombay such a system would answer; and, as I have endeavoured to show, our own experience in Bombay teaches us that we should adhere to the system which we already have. The interests centred in Bombay are not merely local; the proper administration of its municipal affairs is a matter of vital importance to the whole presidency, to the whole of India. On all these grounds, it seems to me to be imperative, not only that the existing position and authority of the Commissioner should be maintained, but also that, in order to avoid all future conflict of authority and overlapping of jurisdiction, the respective powers and duties of the Corporation, the Town Council and the Commissioner should be explicitly defined. This is also of importance, I think, for the credit and usefulness of the Corporation itself. To those who take an interest in the progress of popular institutions in this country, it is obvious that such bodies as the Corporation cannot reasonably be expected

to acquit themselves satisfactorily of their public duties, unless their sphere of action is well defined. The principles upon which the division of duties and powers has been made in the Bill are stated in para. 17 of the Statement of Objects and Reasons. It is impossible for me to attempt on this occasion to explain their application in detail. This is a matter which will, no doubt, receive very careful attention at the hands of the Select Committee, and it is possible that that Committee may see fit to make several alterations. I am not prepared to say that I myself concur in all the allotments of authority in the Bill, as it stands, and it is very likely that after interchange of views with the honourable members who will form the Select Committee, my opinion will change even in respect of some of the instances in which I at present think the Bill is right. But I would invite the special attention of the members to sections 66, 68, 92 and 113 and 116 of the Bill, under which the exercise by the Commissioner of any power with which the Bill will invest him is strictly limited by the provisoes—(1) that he will be bound by budget provisions; (2) that he cannot enter into any but minor contracts without the approval of the Town Council; (3) that he cannot dispose of any municipal property, exceeding in value Rs. 500, without the approval of either the Town Council or the Corporation; and (4) that he cannot draw a rupee from the Municipal Fund except on a cheque countersigned by a member of the Town Council and the Municipal Secretary, who are strictly enjoined not to countersign any cheque, until they have satisfied themselves that the Commissioner has due authority for the proposed expenditure.

The Bill has been drawn with the full knowledge that it will be very widely discussed by the public and by the Corporation, and that many changes and improvements will be suggested before it is finally passed. I am not instructed that it is the desire of Government to adhere to any particular provisions of the Bill, if it can be shown that some other would be more suitable or more workable. The object of the Bill is, I repeat, the promotion of the best interests of the city of Bombay, and not the enforcement of any fixed, unalterable views.

In conclusion, it may be convenient that I should state the course which is contemplated with respect to the progress of this Bill through Council. It will be seen from section 23 that the time prescribed for the first elections under the Bill is in January and February, 1888, and all the other dates throughout the Bill are fixed with reference to those elections. But these dates were inserted at a time when it was hoped that the Bill would be introduced into Council last rains. They will now all need to be made a year later. To permit of the first elections being made under the new law, even in January and February, 1889, it will be necessary that the Bill be passed by this Council in the ensuing cold weather. The Select Committee will, it is hoped, be able to meet in October, and to submit their report before the end of this year. If that can be accomplished, the second reading may be taken on some convenient day, during the cold weather session in Bombay.

I beg now to move that the Bill to consolidate and amend the law relating to the municipal government of the City of Bombay be read a first time.

The Honourable Mr. TELANG :—Your Excellency,—The Bill now before the Council is one of such great importance, not only to the city of Bombay, but also indirectly to the whole Presidency, that I trust I may be allowed to say a few words upon it even at this stage—only, however, as to its general principles rather than as to its details, which can scarcely be properly discussed on the present occasion. After hearing the speech of the honourable member in charge of the Bill, it is satisfactory to me to think that there is, at least to some extent, a common platform occupied by those who, like myself, are interested in the advance of popular government in Bombay and the honourable member. He seems to agree with us as to the success which the application of the principle of popular government in Bombay municipal matters has hitherto achieved. At the same time I must confess that I find it impossible to perceive how this Bill, framed in the manner in which it has been framed, can harmonize with the views which the honourable member has expressed on his own behalf, as well as on behalf of Government, regarding the success of municipal government in Bombay. Looking at the Bill as a whole, I must say that I consider it to be a retrograde measure—so retrograde, indeed, that if in voting I had to make my choice merely between this Bill and the old law, I should unhesitatingly give my voice in favour of the law as it at present exists, with all its anomalies, its laxities of phraseology, and its conflicts of jurisdictions. But having regard to what the honourable member has said, and what we believe as to the intentions of Government in this matter, I think it still possible that, in the later stages of this Bill, improvements may yet be made

which will make it more acceptable, not only to myself, but also to those—and they are many—who agree with me upon this. And that being so,* I shall not vote against the first reading of this Bill, but ask leave to point out those of its general features to which I am inclined to take more or less strong objections.

It will be convenient to take the points in the order in which they occur in the Bill. On Chapter 2, referring to the constitution, I must say a few words. And I must state, at the outset, that I am quite prepared to take my share of responsibility as one of the members of the Corporation who rejected the proposal referred to by the Honourable Mr. Naylor as made in the draft of the Bill first published—the proposal, namely, by which the Town Council was to be converted into an executive body to act with the Municipal Commissioner. When that proposal was first made in the Corporation, as it had been made before the publication of the original draft of this Bill, I and others strongly opposed it. And I am still of opinion, that our position was well-founded. Having regard to the circumstances of Bombay and its society, as at present constituted, I am convinced that a provision of this sort cannot possibly work well. I say that it must prove either an obstruction in the way of efficient executive action, or—and this is much more likely—a perfect sham and a delusion, preventing responsibility being imposed upon the persons on whom it ought properly to rest. As, however, this matter is not now before the Council, I will not deal further with it at present, but proceed to other matters which seem to me to call for criticism. And, first, I should like to say that I entirely approve of the addition to our municipal constituency of the University of Bombay and the Chamber of Commerce. I am sorry to see from the public prints that there is an inclination in some quarters to oppose this provision. I think the opposition is ill-advised, and I entirely approve of this part of section 5. But in regard to the other portion of section 5, making the Municipal Commissioner of Bombay one of the members of the Corporation, I must confess I take a different view from that of the framers of this Bill. It seems to me that no sufficient reason has been shown, and none can be shown, why the position of the Municipal Commissioner at the Corporation should be altered from what it is at present. The true principle which ought to guide us here is, I think, that the Municipal Commissioner should be merely the head of the Municipal Executive; and whatever important proposal he may bring forward should have to be sanctioned by the Corporation before it is carried out. It will not do, then, to make the head of the Executive an integral member of that body. I have had some conversation on this topic with our Municipal Commissioner, Mr. Ollivant, to whose ability I gladly take this opportunity of offering my tribute of appreciation. I have heard from him his views on this proposal, but have never been satisfied by them. The main reason adduced was that the Commissioner's attendance was always necessary,—that it was necessary that he should be always at hand to guide the Corporation and Town Council. But I do not know that making him a member of those bodies will secure his attendance more regularly than will his interest in his work. We cannot secure the regular attendance of members. I can speak to that from personal experience, for my attendance recently at meetings of the Corporation has, I regret to be obliged to acknowledge, been so irregular, that I fear I shall be disqualified under section 18. Besides, it seems to me, as already indicated, that the principle here is wrong. It mixes up the head of the Executive with what should be a purely deliberative body. Furthermore, when the Act of 1872 was passed, this matter was fully gone into, and the provision, as it at present exists, was generally approved. It is true, as I have said before in this Council, that I do not consider myself absolutely bound by what the Council has done on previous occasions, and I am not now asking the Council to accept without question what was done by our predecessors in 1872. But what I do say is that the arrangement made in 1872 has worked satisfactorily; it was arrived at after full discussion; and it is not in itself unjust or unfair. And I do not think we should be justified now in disturbing an arrangement of such a character. This is the first great change here proposed, and it is one, be it remembered, which the Corporation has not asked for, but has distinctly rejected in its communication to Government. If we are to be guided by those who have had experience of municipal matters, I will refer to my honourable friend Mr. Phirozesháh, who has had such experience in larger measure than most people, and who entirely agrees in the view I have expressed. Having mentioned my honourable friend's name, I may add that I have been in communication with him about this Bill. He regrets his inability to be present in Council on this occasion. But he holds generally the same views as I do upon this whole question.

I shall pass over many of the other sections in this chapter, for they deal with matters merely of detail, upon which I may have something to say on another occasion. But there is one clause which I must strongly object to. Section 37 (g) provides that "if the Commissioner shall, at any time before any business or proposition is finally disposed of at a meeting, certify to the presiding authority of such meeting that the said business or proposition is of special importance, it shall not be competent to the said meeting, or to any subsequent meeting, notwithstanding anything contained in clause (f), to dispose of the same, unless at least twenty-five members of the Corporation, inclusive of the presiding authority, are present during such time as the said business or transaction is under consideration and until it is finally disposed of." I cannot consent to this power being given to the Commissioner. It comes to this, that the Corporation is not to be trusted to decide whether a matter is so important, as that it should not be disposed of by the number of members present on any particular occasion, though the Commissioner is to be trusted. I will venture to say, that there is no ground for such a want of confidence in the Corporation, or for reposing in the Commissioner such unlimited trust. If this clause is carried, we may have such a scene as that of the Municipal Commissioner sending members of the Municipal Corporation away, although they may have attended the meeting at considerable personal inconvenience. It reminds one of Lord Protector Cromwell sending about their business the Commons of Great Britain. I can assent to no such section which would place the Municipal Commissioner over the head of the Municipal Corporation.

Another point in Chapter 2 is a matter of detail, but one which I am apt to consider of so much importance that I should like to refer to it even on this occasion. It is dealt with in section 41 about educational grants-in-aid. Clause 2 of that section provides that "a schools' committee may be appointed under this section to administer the school-fund, as defined in section 120, to manage and provide for maintaining and suitably accommodating primary schools which vest in the Corporation or partly in the Corporation and partly in Government, and for affording aid, in accordance with the Government grant-in-aid rules from time to time in force, to private primary schools and for the promotion of primary education generally." I do not know whether I shall be considered by others to be right or wrong, but I must say that I do not think the Government grant-in-aid rules to be by any means the *ne plus ultra* of educational wisdom. We—and when I say 'we' I mean the Municipal Corporation—may, perhaps, be able to suggest alterations and improvements in them. But if we cannot, as we frequently cannot, get Government to see as we do, I do not understand why we should nevertheless be entirely bound by the rules made by Government. This provision, therefore, seems to me to be in itself unjustifiable, and it also betokens a want of confidence in the Corporation.

In the same chapter comes a provision about the appointment of a Deputy Municipal Commissioner. That appointment should, I think, be left to the Corporation, although I would not object to the appointment being made by that body subject to the confirmation of Government, as is the appointment of a Health Officer or an Executive Engineer to the Municipality. I come next to section 58, which provides, among other things, for the Municipal Commissioner serving as a member of this Council or of certain local Committees. These provisions seem to me to be open to objection. It is admitted that the Municipal Commissioner has already too much work to do, yet by this Bill we give him much more; and proceed further to impose on him a liability to do the work of the Presidency at large, when he is a paid officer of the Municipality of Bombay city. I do not see what equity the Presidency has to entitle it to such service.

I come next to what is probably the most important point in this Bill, relating to the obligatory and discretionary duties of the Corporation. We have in section 62 a large number of matters mentioned as incumbent on the Corporation. And, in the first place, it is said that the Corporation shall be bound to make "adequate" provision for them; but we are not told who is to judge of the adequacy or inadequacy of the provision made. It is the Corporation that ought to be the judge of that. Again, you find in the enumeration various matters which are dealt with in their respective places elsewhere in the Bill. For instance, take the construction and maintenance of drains. It is the first of the items under section 62 incumbent on the Corporation. Yet by section 219 all drains belonging to the Corporation are to be under the control of the Commissioner, and he is to construct such drains as he may consider necessary. In fact, he is master of the whole thing. I confess I find it impossible to harmonize sections 62 and 219. And be

it remembered, again, that the Corporation, which has asked for various changes in the law, has not asked for any change in this direction. Take, again, the construction and management of water-works. Under the old law, this was expressly left to the Corporation, but now we have the Commissioner throughout, and he may do pretty much as he pleases. Look, again, at section 65, clause (2), which says: "Except in so far as authority is expressly vested by or under this Act in the Corporation or in the Town Council, or in any such committee as aforesaid, and subject, whenever it is in this Act expressly so directed, to the approval or sanction of any of the bodies aforesaid, the duty of carrying out the provisions of this Act vests exclusively in the Commissioner." The key-note of the Bill may be said to be sounded in that clause. The result of it is that the one municipal authority whose powers are deliberately left indefinite in this Bill is the Municipal Commissioner; yet it is his powers, before all others, that ought to be strictly defined. The powers of the Corporation and Town Council, on the other hand, are strictly defined, while it is the Corporation, if any authority, that within the Municipality ought to be omnipotent. I may remark, too, that it is not only the Corporation and Town Council which have their powers limited by this Bill, but even the executive Health Officer is placed on a lower footing than under the old law. Under that law he had authority, in special cases, to make reports to the Town Council direct, and to exercise some powers independently of the Commissioner. But in the present Bill all his independent authority is absorbed into that of the Commissioner.

I shall now pass over the intermediate sections to come to section 135, which is remarkable as dealing with a matter about which there has recently been some considerable feeling inside and outside the Corporation. Comparing section 135 of the bill with section 30 of the present Act, we find that while under the latter section the Town Council has power to call for all municipal records, under section 135 of the Bill the Town Council is to have "access" only to "all the municipal accounts and to all correspondence relating thereto." Obviously the powers of the Town Council are here considerably curtailed. I do not say that the question is one entirely free from all difficulties. But I certainly do say that this is not a satisfactory mode of dealing with those difficulties. The next section vests the appointment of municipal auditors in Government,—the Corporation no longer appointing them, as it has done hitherto. What advantage to the Municipality is to result from this provision I do not know; for I do not understand it to be contended that the audit hitherto has been unsatisfactory. I can quite understand that the Central Government should wish to examine the accounts of local bodies. I do not see anything objectionable in that. And I should probably not have objected to the change had Government not required payment for the audit thus provided for. I need not say more on this point at present, but proceed to the provisions about the annual Budget. The framers of this Bill do not seem to have had it present to their minds that its provisions in regard to the important work of considering the Budget will either deprive members of the Corporation of their Christmas holiday, or make them neglect their most important civic duty. I cannot see why they should be placed in this position. The Budget is to be in the hands of members of the Corporation not later than the 22nd of December; they are to proceed to consider the same not later than the 5th of January—a date that often falls before the expiry of the holiday available to myself, for instance, and others connected with the High Court; and, before the 15th of January, the taxes are all to be finally determined. I can only say that the lot of a man who has the misfortune to be a member of the Municipal Corporation with such duties is much to be pitied.

Section 336 and following sections relating to building regulations can, in my judgment, be only characterized as providing, not for local self-government, but for autocratic government run mad. The Commissioner has power to decide how I shall build my house, of what materials, to what height, what shall be the situation and size of the rooms in it, and, after all has been done, whether I shall live in it or not. I will venture to say that autocratic government could not be reduced to an absurdity more clearly. When such interference with individual liberty was attempted under by-laws proposed during the Municipal Commissionership of Mr. Pedder, I was one of those outside the Corporation who took part in the popular protest against it. I have not had time to compare those proposed bye-laws with the regulations proposed in this Bill; but my general idea is that those bye-laws were not more objectionable than these regulations. I will make only one other remark on these regulations by way of illustration of my general objection to them. You may provide by an Act of the Legislature for means of ventilation to all houses, but

you cannot by any Act of the Legislature compel the use of such means when provided. We know that there are many houses used by our people where such means, though existing, are not availed of. This illustrates the inefficacy of such provisions interfering with individual liberty. Look, again, at section 372, clause 2. The occupier of any land is bound to cause dust, &c., to be deposited upon a part of his land which the Commissioner may appoint. Why should this be so? If a man places rubbish in any place so as to cause a nuisance to his neighbour, the law gives such neighbour a remedy. Why, then, should the Commissioner have power to come and tell me where I am to put the dust and ashes on my land? I confess the thing is beyond my comprehension. Again, sections 382 and 383 deal with buildings unfit for human habitation and overcrowded dwellings. Under these sections, the Commissioner has only got to say the buildings shall not be used, and the owner who afterwards uses them or allows them to be used becomes liable to a penalty. Under section 222 of the present Act the Commissioner has no such despotic power. The Health Officer's certificate and the Presidency Magistrate's order are now necessary for such interference with individuals. Under the present Bill the Health Officer and Presidency Magistrate are both ignored. I do not see what there has been in the every-day life of Bombay hitherto to justify such legislation.

I come next to the provisions relating to markets. At present, the Commissioner can only establish a market with the sanction of the Corporation and Government. But, under the Bill, the Commissioner is the sole authority in that respect. To take another point—small in itself, but still of importance, and kindred to this one about the markets. Section 414 prohibits the hawking about of articles of human food without a license from the Commissioner. Under section 314 the Commissioner may summarily remove from the streets any man creating an obstruction by hawking, and seize his goods. Now I must say that I object to these provisions very strongly. There is no doubt it would be desirable, if it were possible, that all things should be purchased by all people in well-appointed markets in æsthetic buildings, with nice-looking stalls, and everything arranged in the most beautiful and symmetrical style. This would be desirable, if possible. But how does this provide for the poorer classes, to whom it is obviously a very great convenience to have their food supplies brought to their doors by these people who go about hawking their goods? The proposed arrangement belongs, perhaps, to a higher platform of civilization than those people can imagine. They cannot appreciate it; it is entirely foreign to their habits. And on behalf of these poor people, these provisions must be objected to.

The Honourable Mr. NAYLOR :—It simply prohibits hawking without a license being taken out.

The Honourable Mr. TELANG :—Yes, but the people affected would belong to the poorer classes, who have no voice to give utterance to their complaints, and no means of getting them redressed. It is easy to imagine the great oppression to which they must be exposed under the operation of such regulations as these.

Section 438 and following sections deal with sanitary measures to be taken in the event of an outbreak of any dangerous disease. The Commissioner is to take the proper steps in such a case. This is well enough, as he is the head of the Executive of the Municipality. But in the performance of his duty he is not to communicate, according to this Bill, with the chief authorities of the Municipality. His communications are outside the Municipality,—that is to say, with Government. It ought to be provided that he should also report to the Town Council and the Corporation. Again, section 516 provides that Government should call on certain Municipal authorities to do certain things. This seems to me not the proper mode of proceeding. The Government should address the Corporation, and be addressed by or on behalf of the Corporation: the chief Executive Officer or any other Municipal authority should not be dealt with by Government as if he was an independent authority.

I now come to section 474, a long section providing for penalties. This will have to be very carefully considered, for I have noticed some provisions not easy to defend. For instance, if the provisions as to notice of transfer of property under sections 148 and 149 are not complied with, a man becomes liable to a fine under section 474. Why should this be so? If notice is not given, the original owner remains liable to the Municipality. That is a sufficient safeguard for the interests of the Municipality. The last point I wish

to refer to, is contained in section 515. The Commissioner is to take or withdraw from all proceedings against any person for offences under the Act, &c. The Town Council and Corporation have nothing whatever to do with this. I am not satisfied with this provision. I know it is said that bodies, like the Town Council and Corporation, are not the most fit for dealing with such questions. There is some truth in that. But we must not forget that, under the operation of rules similar to those now under notice, the Municipality has actually suffered, before now, heavy pecuniary losses. This aspect of the matter, too, is one to which special attention must be paid. I am not now in a position to say how the provision before us should be modified. But I think it necessary that some check on the Municipal Commissioner should be provided.

I do not propose to trouble the Council at this stage of the Bill with any further remarks. I will only say this, in conclusion, that, regarding the Bill as a whole, the effect it seems likely to have is to reduce the powers of the Corporation and Town Council, and to enhance those of the Commissioner, not only at the expense of those bodies, but also of the Health Officer as well. In all these respects I think the principle of the Bill is wrong. I admit that we are all anxious to secure the good government of the city, and that what we have to consider is its true interests. I admit that to conserve those interests properly we ought to have a strong Executive. But to conserve those interests it is not necessary to make the Executive independent of the higher municipal authorities. The Executive ought still to be answerable to the Town Council and Corporation. So far, although we have had the various anomalies, and the conflicting jurisdictions, and the laxities of phraseology to which references have been made, still we have worked on the whole successfully. The Municipal Commissioner has been the head of the Executive, no one meddling with him in that respect. The Corporation has retained the province of supervision. The Corporation has in the past been, in fact, only too glad to support the Commissioner, whether it has been consulted before or after any action taken by him. I do not say that the confidence reposed in the Commissioner has not been, in general, fully deserved. But, on the other hand, it is a mistake to suppose that there will ever be any endeavour to stretch unduly the powers of the Corporation. The tendency of this Bill, however, is, when correctly viewed, towards a material abridgement of the Corporation's powers, and towards allowing the Commissioner the amplest possible scope. This is not as it should be. It may hereafter happen that we shall get a Commissioner anxious to assert his own powers, and not careful about the due powers of other authorities. Friction will then ensue. If you want to have complete success, define the powers of the Commissioner as well as those of the other authorities fairly. Here you have restricted unduly the powers of the Corporation, while the Commissioner's powers are almost unlimited. But it is said that this must be so, because power and responsibility ought to go together. This is true enough, but I say that, under the provisions of this Bill, power and responsibility do *not* go together. They are completely divorced. The power under section 219, as I have already pointed out, does not go with the responsibility under section 62 for identical matters. Again, when it is said that the Municipal Commissioner is responsible for the condition of the city, I ask to whom is he responsible? It is to the Corporation he ought to be responsible, and then the proposition about power and responsibility going together ceases to have any application to the case. My *beau ideal* of municipal government includes a strong Executive responsible to the Corporation, and an enlightened Corporation watchful over its Executive. Under such a constitution you may give full play to the good sense of the Corporation, which has been, on the whole, pretty well shown during the past fifteen years. But the principles of this Bill are as far from my *beau ideal* as they could well be. And I am afraid that this Bill will not accelerate, but rather retard, the approach of it. Local self-government is a sham if no trust is reposed either in the Corporation or the Town Council. I do not say that Mr. Naylor or Mr. Ollivant are actuated by a distrust of popular government, but their confidence in it is weaker than it should be. If it had been as strong as I think it ought to have been, many of the provisions of this Bill would have been very different from what they are. If the pre-eminent position of Bombay, to which reference has been made in the speech of the honourable member, requires a special mode of government, let us by all means consider that point. If popular government cannot be trusted to cope with all the necessities of that pre-eminent position, let us abolish the Municipality altogether, and let us have a strong administration, and rule by means of the Governor in Council. But if we are to have popular government, let us have it in a genuine form, with power and responsibility in the

hands of those who represent the people. Considering the large expenditure which has been incurred and the great development of the city which Mr. Naylor has described as marvellous, there are grounds, in my opinion, for reposing great confidence in those representatives. There may have been blunders, but these blunders are a necessary part of our municipal education, and are not always absent under autocratic rule. We must be prepared to put up with such occasional blunders to secure eventual good government.

Such eventual good government, I hold, is more likely to be achieved under our present law, than under the law as proposed in this Bill. It will, therefore, be my duty to oppose the passing of the Bill, unless it emerges from the Select Committee's hands very much altered from its present form. I would sooner have our lax phraseology, our conflicts of jurisdiction, and our numerous anomalies, than scientific legislation, in which all the substance of self-government will be abolished or starved out. I am quite willing to have a strong Executive under a popular government. But under the proposed Bill we shall have what some people would call a benevolent despotism, but what I should call autocracy slightly tinged with bureaucracy.

I would ask leave to add one word about my friend Mr. Phirozesháh. I wish he had been here to-day, for he is immeasurably more familiar than I am with the history and present working of our Municipality. But I know that he generally agrees with me. Although he is, of course, not pledged to everything I have said, I may state that on the general principles governing this matter he and I are agreed in opinion.

The Honourable the ADVOCATE GENERAL:—I should be sorry to give a silent vote in this matter: so will accompany my vote with a few observations. I trust that I approach the consideration of the Bill with a due sense of the responsibility which must attach to every member of this Council in dealing with it. Of course I take an interest in it as a citizen of Bombay for more than twenty years past. If Mr. Telang and I allowed professional considerations to influence our votes, we should probably not welcome the introduction of the Bill into the statute book, inasmuch as it will repeal the existing cluster of eleven acts, which are a perfect chaos of inconsistencies, repositories, in fact, of legal conundrums, which have, in the past, substantially contributed to the precarious subsistence for which he and I toil in Bombay. But feelings of this kind are subordinated to larger considerations, and as a citizen, from many points of view, I welcome this enactment, which will replace the present unworkable law by one consolidated Act. So far as I have formed an opinion, from the limited attention I have hitherto been able to give to the Bill, it seems to me most logical in its arrangement, lucid in its composition, and in its matter well adapted to the conditions and requirements of life in Bombay. As to details, there may be much ground for difference of opinion; and in the few observations I am making, I reserve to myself most ample liberty to alter my views on any particular section or sections; but, regarded as a whole, the Bill strikes me as being in its conception an extremely satisfactory measure. It seems to me impossible, in a measure of this kind, having regard to the difficulty of drawing a hard and fast line between financial and executive control, to avoid anomalies. But I would unhesitatingly say that the powers proposed to be conferred on the Commissioner are, in the main, only such as are demanded under the existing conditions of society in Bombay. We must consider what is likely to produce the greatest good to the greatest number, and we must remember that the only consideration in this matter is not the education of local self-governors, who themselves are a very limited number of individuals. They have during the past decade or longer been undergoing a course of education at the cost of the general body of unobtrusive rate-payers. One result has certainly been, (as Mr. Telang and Mr. Phirozesháh no doubt would admit), that there has often been a great deal more talk than real work at meetings of the Corporation, and I apprehend that both my friends must themselves have occasionally perused the debates of that body with feelings rather of weariness than of edification. What strikes me as the object which Government has kept in view in the preparation of this Bill is this, the furtherance of the best interests of Bombay as a city. All considerations of the development and expansion of local self-government, though extremely weighty, must be subordinated to this primary object. That Government is anxious to help forward local self-government, was testified by the suggestion of a system of executive committees which was offered to the Corporation. But that scheme, which would have invested them with a very large measure indeed of executive power, was rejected, and if there are any defects in this alternative scheme, it seems hardly to lie in

the mouths of those, who declined to accept additional powers, to object to what Government now offers as being retrograde legislation. I notice that the Committee of the Corporation in their report, pp. 107 and 108, are extremely curt in their rejection of the committee-scheme, assigning no reasons for it, but simply saying that the Commissioner should be the executive officer of the Corporation. As an experiment, I should have been inclined to support the scheme of committees with executive powers, but I should have done so with considerable misgivings. The reason is that the class of men who in England do this sort of work is not forthcoming in Bombay. In England there is a large class of burgesses entirely or almost entirely withdrawn from professional or commercial work while still in the prime of life, and who take a pleasure and pride in doing municipal executive work without remuneration. But the inhabitants of Bombay generally are more indifferent. When Bombay can exist with a form of government such as obtains in English towns, then by all means introduce it. But as yet Bombay is not fit for it. To me, and I believe to many other rate-payers, an increase in the powers of the Municipal Commissioner in matters of detail is acceptable; and I should be exceedingly sorry if, before he could exercise his authority in closing my neighbour's cesspool, he should have to consult a body of twelve or more members. Even if there be some anomalies—and I am not prepared to say there are not—in the proposed new law, it is decidedly an improvement on the old. I admit that progress should be the Government motto and not retrogression. But the progress should be cautious, and with due regard to the experience of the past. The well-being and the sanitary condition of the city must not be sacrificed. It is within my experience that on many occasions the action of the Town Council or Corporation has tended to hamper and baffle the Commissioner in carrying out most desirable undertakings. I remember one instance in particular. It is of recent occurrence in the case of the formation of the Ripon Road. Section 157 of the existing Municipal Act gives the Municipal Commissioner power, with the Town Council's sanction, to acquire for the purpose of constructing roads or streets not only the land on which the road or street itself is to be, but an adequate entourage to admit of the municipal body disposing of the same for sites of houses to abut on the road or street. The sales so effected would produce sufficient funds to drain, metal, and wholly to construct the road. This might have been done in the case of the Ripon Road—and Mr. Ollivant proposed to do it—but in nine cases out of ten he was prevented from doing so by the Town Council. One of the few exceptions, however, occurred in the case of an old woman, who thereupon made a grievance of being treated worse than her neighbours, and complained that she had been very unfairly dealt with, by having all or the greater part of her land taken, while in other cases only so much as was wanted for the road was taken; whereas of course the real unfairness was that all the frontage along the road was not uniformly taken up under the section, and a great economy so secured to the Municipality, without the slightest injustice to any individual. This is an instance which, in my opinion, shows that very great caution should be observed in curtailing the Commissioner's executive powers. It seems to me futile to say that he is not under the control of the Corporation and Town Council, seeing that their financial powers are so complete, and that by section 55 he is liable to dismissal upon the vote of 45 out of 72 members of the Corporation.

The Honourable Sir M. MELVILL :—The present is a case which illustrates the saying *quot homines tot sententia*. Mr. Telang describes the Bill as a monstrous measure, and says that if it were carried, the Corporation and Town Council would cease to exist. He says, too, that if it is not radically altered, he will have to move its rejection on the second reading. The Honourable the Advocate-General says it is an excellent measure, though perhaps subject to alteration in detail, and hopes Mr. Pherozeshah's and Mr. Telang's views upon the subject will be met as far as possible by modifications to be made before the third reading. The chief objection taken by Mr. Telang is that the Bill deprives the Corporation and the Town Council of power, and entails too much upon the Commissioner. I do not think that is altogether so. The Municipal Corporation and the Town Council have power to deal with questions in which the part of the Commissioner is very small indeed. No doubt the present Acts provide that power and responsibility shall rest with the Municipal Commissioner. But their provisions can be regarded as wider than that. They require that matters shall be dealt with with the sanction of the Town Council and Corporation. These restrictions seem to have been removed from the present Act. Of course it is open to consideration whether they should be so. For instance, the Municipal Commissioner is at present in certain cases obliged to consult the Health Officer. It is questionable whether any change is desir-

able in that respect. The Honourable Mr. Telang has taken objection also to the Commissioner being a member of the Town Council. Considering that he has to attend all meetings of the Corporation and Town Council, I do not see why it should be contrary to principle any more than it is for the Home Secretary to be a member of Parliament.

The Honourable Mr. TELANG :—He has to be re-elected after his appointment.

The Honourable Sir M. MELVILL :—Another objection is taken to the provision that the auditors should be appointed by Government. But it is contrary to principle that the auditors should be appointed by the person whose work is to be audited. Again it is urged that the Deputy Commissioner should be appointed by the Corporation and not by Government. I am sure that Government does not desire this as a piece of patronage. Those who are called upon to take part in any function of appointing a person to the public service, find it a very unpleasant task indeed. It has been said that if you have to make an appointment and have twelve candidates, you make eleven enemies and one ingrate. I am sure it is an unpleasant duty, and is not desired by Government, except with the best possible end in view.

The Honourable Mr. TELANG :—I do not suggest that Government wishes it as a piece of patronage.

The Honourable Sir M. MELVILL :—No, I do not say you do. It seems to me that the reason why this power should be given to Government is because Government will be best aware who is or is not qualified for the post. Moreover, Government appoint the Municipal Commissioner, and it seems reasonable that they should also appoint the person who is in training for his place. And a still more important consideration seems to me to be that the appointment should be made by the authority which can most conveniently remove the person from office. It is clearly most important that the Deputy should work harmoniously with the Commissioner. But if he fail to do so, or to work harmoniously with the Corporation, it is difficult to see what the Corporation can do. Of course it could dismiss him, but that is an extreme measure, which should be reserved for cases of grave misconduct. The Municipal Commissioner might say his Deputy was a hardworking man, conscientious and so forth, but he could not get on with him, as he was wanting in tact or discretion. In such a case it would be perfectly easy for Government to transfer him to another appointment. It would be difficult for the Corporation to find a position to which to transfer a man drawing a monthly salary of twelve or fifteen hundred rupees. I do not think it necessary at this stage of the Bill to make any further remarks; no doubt the details will be fully and carefully considered by the Select Committee.

His Excellency the PRESIDENT :—I wish only to make one observation with reference to the concluding remarks of the Honourable Mr. Telang's interesting discourse about the *beau ideal* of local self-government. Now whoever may be responsible for the fact that his *beau ideal* is not more of a reality, it certainly is not the Government of Bombay. The honourable member who in a very able speech introduced this Bill recalled to our memory that a proposal was made to the Corporation on behalf of Government which bore a close resemblance to the ideal placed before us by my honourable friend. That proposal was made by Government in real earnest, and as far as I am concerned with a sincere wish that the experiment should have a fair trial and I may add—perhaps because I have not been so long in the presidency as the Honourable the Advocate-General—without any misgiving. What I had read of the debates of the Town Council and of the Corporation led me to the conclusion that the interests of the town of Bombay might very well be entrusted to working members of these bodies. I do not wish to criticise the reasons which brought about the refusal of the offer of Government. Perhaps on that occasion, as on another occasion connected with educational reform, Government was slightly in advance of public opinion, and too sanguine as to the capacity for self-government at present available. *Timeo Danaos et dona ferentes* may in this case have been prompted by a laudable sense of modesty. But under these circumstances the honourable member cannot accuse Government of having, in the initial stages of this reform, shown a retrograde disposition. Quite the contrary has been proved. Government was so progressive that the Corporation was not prepared to follow it. I am not contending that the diffidence of the Corporation was unwise. But our original offer should guarantee us from any taunt that we are imbued with retrograde proclivities. Whatever illustrations the honourable member has given as to defective detail, none of them touch on irremediable points. His conclusion was pitched in rather a higher tone than the arguments in the

body of the speech warranted. So long as the Corporation and the Town Council have the right to control expenditure, the Municipal Commissioner cannot degenerate into an "autocrat." It should not be forgotten that the Municipal Commissioner being an officer of Government is responsible to Government, and Government is as directly interested in the welfare of Bombay and in its wise administration as any member of the Corporation or of the Town Council. Besides, I cannot conceive that any Government would entrust the administration of Bombay to a Commissioner who could not act harmoniously with the Town Council and the Corporation. No constitution can secure good administration; but the fact is that a strong executive, such as is required in all large cities, is quite compatible with the exercise of proper control by the representatives of those for whose benefit it is instituted. To one sentence in the Honourable Mr. Telang's speech I must take decided objection, that in which it is implied that the Corporation should be an omnipotent assembly and the ultimate master of the destinies of the city of Bombay. I do not see why an assembly should be omnipotent, and I think it undesirable for the same reasons that omnipotence of individuals is to be deprecated. It is certainly contrary to the genius of the constitution of Great Britain; and in those countries where local self-government has reached its highest pitch of perfection—in the Low Countries—after centuries of experience a careful series of checks has been designed to prevent abuses. The Municipal Council checks the Executive in towns and villages, and the Council itself is checked by representatives of the districts—or as we should call them collectorates. The Central Government has a further residuary control. I think the Acts of their Legislatures have been translated, and I shall be very glad to give them to my honourable friend.

The object of municipal legislation is to secure to the rate-payers sound finance, a methodical extension of buildings, good roads, fair sanitary conditions, good schools, medical aid, not to mention other matters. Such legislation cannot but make the discretion of individuals subject to limitations warranted by public requirements, but it also should prevent any section of the community being neglected by those sections which happen at the time to be most influential in the Corporation.

I should not vote in favour of this Bill if I thought it a retrograde measure, and I trust that it will emerge from our deliberations as a measure calculated to secure to Bombay a strong but not an arbitrary executive as well as a thoroughly representative Corporation.

The Honourable Mr. TELANG:—I should like to offer an explanation with reference to one of my propositions which has been misunderstood. I do not want the Corporation to be omnipotent in the sense supposed. Certainly it should be under supervision; and I would not object to some restrictions being devised for this purpose. For instance, as to buildings, I would not let even the Corporation interfere with an individual in that respect to the extent proposed in this Bill.

The Bill was then read a first time, and on the motion of the Honourable Mr. NAYLOR it was resolved that the Bill be referred to a Select Committee, consisting of the Honourable Sir M. Melvill, the Honourable the Advocate General, the Honourable Messrs. Telang and Mehta, the Honourable Khán Bahádúr Kázi Shahábudin, and the mover, with instructions to report by the 1st January, 1888.

On the motion of the Honourable Sir M. MELVILL it was ordered that Bill No. 3 of 1887, a Bill to amend Bombay Act No. VI of 1863, should be translated into Maráthi and Gujaráti, and that the translations should be published in the *Bombay Government Gazette*.

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

Translation of Bill No. 3 of 1887.

His Excellency the PRESIDENT then adjourned the Council.

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

A. SHEWAN,

Secretary to the Council of the Governor

of Bombay for making Laws and Regulations.

Poona, 23rd July 1887.