

THE



Bombay Government Gazette

Published by Authority.

THURSDAY, 3RD MAY 1888.

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

PART V.

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PRESENT:

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

Lieut.-General His Royal Highness the DUKE OF CONNAUGHT, K.G., K.T., K.P., G.C.I.E., G.C.S.I., G.C.M.G., C.B., A.D.C.

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

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The Honourable the ADVOCATE GENERAL.

The Honourable KASHINATH TRIMBAK TELANG, C.I.E.

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The Honourable Ráo Bahádur MAHADEV WASUDEV BARVE, C.I.E.

The Honourable PHEROZESHAH MERVANJI MEHTA, M.A.

The City of Bombay Municipal Bill.

The honourable Mr. Pherozechah Mehta moved that "sections 56 and 57 be omitted, together with all references to a Deputy Municipal Commissioner in every other part of the Bill", and said:—Your Excellency,—I beg to propose the omission of all the sections relating to the creation of the new appointment of a Deputy Municipal Commissioner. Though section 56 is in form an empowering section only, it will not be disputed that the provision is made with the view of its being set in motion very soon after the Bill is passed. The burden of proving the necessity for creating such a place

Consideration of the City of Bombay Municipal Bill in detail.

lies on those who bring forward the new proposal. It will be remembered that a Deputy Municipal Commissioner is unknown to the Acts of 1872 and 1878. The short Act of 1885, though general in form, was passed only for a temporary and different purpose, and my honourable friend Mr. Telang, who was then on the Council, was distinctly assured that it was passed without prejudice to the full discussion of the question if it was thought desirable to incorporate such a measure in the Municipal Bill which was about to be drafted. The object of that short Act was to enable Mr. Ollivant to go out of Bombay on special duty, and it was thought undesirable that during a short absence the direction of municipal affairs should entirely pass into other hands. That object was essentially different from the present one, which is to give the Commissioner a permanent deputy to assist him in the discharge of his duties while he is fully engaged on the work himself. Such a deputy has been utterly unknown to our municipal law, and I confess I am not satisfied with the reasons which have been advanced to justify the new measure. The question has been more than once carefully discussed by the Corporation, and on every occasion it came to the conclusion by large majorities that it was undesirable and unnecessary to have a Deputy Municipal Commissioner of the sort now proposed. The sole reason given for providing a deputy is that the work has so increased that a single individual cannot perform it. Now there is a certain haziness about this argument which it were well to bear in mind. I remember the time when such a complaint was first started, but it was in reference not to the legitimate work of the Municipal Commissioner, but with regard to a mass of mechanical and routine work, such as the signing of an enormous number of documents by the Commissioner's own hands, which was legally required to be done by him by the peculiar wording of some of the sections of the Municipal Acts. Up to very recent times that was mainly the complaint. So far as such work was concerned, and a large amount of other work now done by the Commissioner, the Council will remember that the Bill has provided a special and extensive remedy. Section 67 enables the Commissioner to delegate a large portion of his work to subordinate officers, and I will ask the attention of the Council to the long list of sections in respect of which the work can be so delegated. The Commissioner will be thus relieved of an immense amount of work. Now I have asked over and over again for some figures, some statistics, some detailed account of the sudden increase of the work of the Commissioner, not of the sort for which a remedy is already provided, but of work to which he must legitimately attend himself; but beyond vague and general assurances no detailed evidence of it has up to the present moment been produced. But assuming for a moment that the work has increased, I deny that the remedy proposed is the right or proper one and in conformity with the constitutional arrangements for the purpose. According to those arrangements the Commissioner is to have deputies for special classes of work, and I believe it was pointed out in the debates on the Bill of 1872 that the Health Officer and the Executive Engineer were Deputy Commissioners for special purposes. If the work has increased in reference to any of the great municipal departments, let that be established, and the departments can be strengthened. The Corporation has always been ready to give such assistance to the Commissioner whenever he showed that there was temporary or permanent need for it. They gave a personal assistant to Mr. Ollivant; they also gave him a special officer to do special work in the re-organization of the Assessment Department. And I have no doubt that if a case for any further assistance was made out, the Corporation would sanction it. But there is no need for a special provision for that purpose, and the proposal to create a general Deputy Commissioner seems to me to be an utterly inappropriate remedy. So far, I have tried to show that the proposal to create a Deputy Commissioner is not proved or justified on the grounds urged for it. But I have a strong objection of a positive character to urge against it. To have a Deputy Municipal Commissioner would be to mar and destroy the integrity of the constitutional principle on which so much stress has always been laid, *viz.* that there shall be a *sole* Municipal Commissioner vested with full executive power and responsibility. The essential part of the principle lies in the executive officer being the sole officer, so that responsibility may unquestionably attach to him. To give him another officer to whom he can make over certain general duties would be certainly to divide that responsibility; and divided responsibility is no responsibility at all. It would thus be a grave infringement of a most important constitutional principle, and I view with alarm all trifling with important constitutional principles. I have also another practical objection to urge against the measure. As the section stands, the appointment is vested in the Governor in Council.

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I remember the time when such a complaint was first started, but it was in reference not to the legitimate work of the Municipal Commissioner, but with regard to a mass of mechanical and routine work, such as the signing of an enormous number of documents by the Commissioner's own hands, which was legally required to be done by him by the peculiar wording of some of the sections of the Municipal Acts. Up to very recent times that was mainly the complaint. So far as such work was concerned, and a large amount of other work now done by the Commissioner, the Council will remember that the Bill has provided a special and extensive remedy. Section 67 enables the Commissioner to delegate a large portion of his work to subordinate officers, and I will ask the attention of the Council to the long list of sections in respect of which the work can be so delegated. The Commissioner will be thus relieved of an immense amount of work. Now I have asked over and over again for some figures, some statistics, some detailed account of the sudden increase of the work of the Commissioner, not of the sort for which a remedy is already provided, but of work to which he must legitimately attend himself; but beyond vague and general assurances no detailed evidence of it has up to the present moment been produced. But assuming for a moment that the work has increased, I deny that the remedy proposed is the right or proper one and in conformity with the constitutional arrangements for the purpose. According to those arrangements the Commissioner is to have deputies for special classes of work, and I believe it was pointed out in the debates on the Bill of 1872 that the Health Officer and the Executive Engineer were Deputy Commissioners for special purposes. If the work has increased in reference to any of the great municipal departments, let that be established, and the departments can be strengthened. The Corporation has always been ready to give such assistance to the Commissioner whenever he showed that there was temporary or permanent need for it. They gave a personal assistant to Mr. Ollivant; they also gave him a special officer to do special work in the re-organization of the Assessment Department. And I have no doubt that if a case for any further assistance was made out, the Corporation would sanction it. But there is no need for a special provision for that purpose, and the proposal to create a general Deputy Commissioner seems to me to be an utterly inappropriate remedy. So far, I have tried to show that the proposal to create a Deputy Commissioner is not proved or justified on the grounds urged for it. But I have a strong objection of a positive character to urge against it. To have a Deputy Municipal Commissioner would be to mar and destroy the integrity of the constitutional principle on which so much stress has always been laid, *viz.* that there shall be a *sole* Municipal Commissioner vested with full executive power and responsibility. The essential part of the principle lies in the executive officer being the sole officer, so that responsibility may unquestionably attach to him. To give him another officer to whom he can make over certain general duties would be certainly to divide that responsibility; and divided responsibility is no responsibility at all. It would thus be a grave infringement of a most important constitutional principle, and I view with alarm all trifling with important constitutional principles. I have also another practical objection to urge against the measure. As the section stands, the appointment is vested in the Governor in Council.

It is not improbable that the place may come to be systematically given to a junior Civilian, who, bearing in mind the salary that is to be attached to it, will consider himself entitled to have a lien on the Commissionership. In his speech on the first reading of the Bill, the late Sir M. Melvill indirectly indicated the position of the Deputy Commissioner as an officer in training for the place of Commissioner. Now the practical result of such an arrangement would be generally to place the Commissionership in the hands of a junior Civilian, when it is admitted that it is of the utmost importance that the place should always be filled by an officer of long standing and great experience. Under the system at present prevailing, the officers who are appointed Municipal Commissioners seldom continue to act for more than two years on an average; several have acted for much shorter periods. At one time the place changed hands about three times in the course of a few weeks. There is therefore every reason to fear that the Commissionership under the present proposal would constantly pass into the hands of a junior Civilian—a contingency the possibility of which is deprecated on all hands. It is for these reasons that I oppose the creation of the new place of Deputy Municipal Commissioner.

The Honourable Mr. NAYLOR:—Your Excellency,—The arguments which the honourable member has addressed to the Council may be divided into two parts—in the first his arguments are intended to show that there is no necessity for a Deputy Commissioner, and that there never will be any such necessity; and in the second place he argues that such an appointment would clash with the constitutional principles upon which the Bill is based.

With regard to the first statement that the Deputy Commissioner is not needed, I may mention to the Council that it is now three years since I was deputed by Government, in consultation with Mr. Ollivant, to draft this Bill, and during that time I have been associated constantly both with the present Municipal Commissioner and his predecessor, Mr. Ollivant, and if anybody has had an opportunity of learning what the work of the Commissioner amounts to, and what it requires of the person who holds that office, it is I; and I must say that I have been very greatly impressed with the enormous amount of work which devolves upon him. In the first place, he is the responsible executive officer of the Municipality, and a very large amount of outdoor work falls upon him in the way of inspection, of ascertaining local wants and of hearing complaints, both against municipal officers and with respect to demands for sanitary repairs and improvements. Bombay, honourable gentlemen are well aware, is a very large city, and the distances in it are very considerable. If, therefore, the Commissioner has to rise in the morning and go to the other end of the city towards Máhím or Parel and inspect anything going on there he has a long journey to make before he gets to the spot. The inspection of two or three places in a morning takes up considerable time, and if he does his work with anything like thoroughness he cannot be back home before 10 or 11 o'clock, and by that time may well be fairly exhausted. Having performed this portion of his duty, he is not immediately fit for indoor duty. Were outdoor occupation even confined to the mornings, there would be less difficulty in finding leisure for office work; but I understand it is frequently desirable that he should go morning and evening to inspect works. Having reached his office as soon as may be after the outdoor work of the morning is over and the body has been refreshed, the Commissioner has frequent calls upon him for consultations with heads of departments concerning works—important works going on inside and outside of the city; consultations with his solicitors—the municipal solicitors—regarding cases for Civil or Criminal Courts which have to be heard; consultations with gentlemen from outside, who come with complaints and applications of all sorts and descriptions; consultations with members of the Corporation and Town Council, who come to him seeking information; in addition to all which, on one afternoon a week there is a meeting of the Town Council, at which, if it is not absolutely necessary, it is at least extremely desirable that he should be present. Then, also, as we have been told, there are meetings of the Corporation which now-a-days are becoming extremely frequent, their average number being something like two per week. Though it is not absolutely necessary for him to attend them, yet his presence is very much to the interest of the Corporation. As a matter of fact, both the present Commissioner and his predecessor have made a point of being present at them whenever possible. After all these duties are completed, there still remains what I may term the office work,—and gentlemen who have any experience of such work can very well imagine what an amount of it there must be in connection with such a very large concern as the Municipality of this city. Now I am not prepared to say, or to give figures, to show how the work of the Municipal Commissioner has increased of late years.

But if honourable members will reflect how rapid has been the increase of the city, it must be patent to them that the increase of work has been very great indeed. The population has greatly increased. The care and closeness with which the members of the Corporation as a body inquire into matters affecting municipal government is, I am happy to state, very much on the increase. The works which are now under construction are on a scale and of a number which in past years have had no parallel whatever. Thus in many ways it is obvious to any one who thinks over the matter that the work of the present must be very considerably greater than it was ten or fifteen years ago. And to all these arguments I can add, as I said at the beginning, my own personal impression that the work of the office at this present moment is far beyond the powers of endurance, especially in a trying climate like that of Bombay, of any ordinary individual. I am quite prepared to admit that in the altered circumstances which will obtain when this Bill comes into operation, the work of the Municipal Commissioner may become less, and the demands upon him personally may be decreased; but that is a small chance to look forward to. There are indeed very many reasons for thinking that the work will not decrease, but rather go on increasing. But whatever may be in the future, I think I have shown sufficient reasons for holding that it is at least very probable that on some future occasion, and perhaps not a very distant occasion, not merely the Government, but the Corporation also, will be satisfied that the work devolving upon the Commissioner is greater than can reasonably or fairly be expected of one person.

In supporting section 56, which provides for the appointment of a Deputy Commissioner, it is not necessary for me to establish that a Deputy Commissioner is actually needed at present or ever will be needed. All that it is necessary for me to establish is that it is very possible that such an officer may be needed, and I think the facts I have adduced are more than sufficient to establish such a possibility. I think, moreover, that I have established not only the possibility but the probability—a considerable probability—that such an officer will be needed. The section, as it stands, does not say that such an officer is necessary, or will ever be necessary; but it empowers the Governor in Council—if, after consulting the Corporation and the Commissioner, he shall at any time consider that such an addition to the strength of the Municipal Executive is requisite, to supply the necessary addition. It is a cautious provision which provides for a contingency which may arise, and in my opinion, is likely to arise.

Possibly the Governor in Council may never be persuaded that the appointment of such an officer is necessary for the ordinary execution of the duties of the Municipal Commissioner. But even if this be so, this section will still be useful in that it will enable the Governor in Council to provide temporarily, as he did a year or two ago, for the appointment of a Deputy Municipal Commissioner during the absence of the Commissioner on special duty. On the occasion to which I refer the Corporation were desirous that the Municipal Commissioner should be relieved for a time from his ordinary duties, and have power to depute them to a gentleman who was specially appointed for the purpose, who should exercise them under the control and supervision of the Commissioner. For this purpose a special Act was passed and the Commissioner, Mr. Ollivant, repaired to Poona and there in consultation with myself prepared this Municipal Bill. Perhaps the Corporation may not again feel inclined to trust the Municipal Commissioner on such another special errand, but it is conceivable that other occasions may arise when they may desire their Commissioner to be relieved from his ordinary duties to consult with the authorities on some large engineering scheme which Government may have in view—or some other matter in which the Corporation may be interested. If any such occasion should arise, here is the machinery by which it may be provided for. On this ground also I ask the Council to accept the proposals embodied in these two sections.

With regard to the second argument of the Honourable Mr. Mehta—namely, that the appointment of a Deputy Commissioner will be objectionable on the ground that it cuts at the root of the theory on which the Municipal Commissioner exists, that he is to be the sole executive officer and should be vested with sole responsibility—I would reply that to my mind the appointment of a Deputy Commissioner cannot in any way affect the position of the Municipal Commissioner towards the Corporation. Whether the Commissioner be aided by an assistant in each department supplied by the votes of the Corporation, as the honourable gentleman suggested at the second reading, or by a Deputy Commissioner appointed by the Governor in Council under this section, the responsibility

of the Commissioner for the carrying out of the executive work of the Municipality will remain precisely the same. An assistant would act under the orders of the Commissioner, obeying his behests, receiving special and general orders from the Commissioner, and the Commissioner would be responsible for his assistant's acts done under his instructions. The proposed Deputy Commissioner is to be subordinate to the Commissioner and subject to his general directions, that is to say, that the Deputy Commissioner is not to strike out a line of his own, but to look for his instructions to the Commissioner and to carry them out and to give effect to the orders and policy of his chief. If those orders and policy are wrong the responsible person will be the Commissioner. I think there is no difference, and can be no difference, between the position of the Deputy Commissioner and one or more assistants appointed by the Corporation, as far as regards the responsibility of the Commissioner; but there will be a very considerable and important difference in another respect. The officers whom the Corporation may appoint, or whose appointment the Corporation may sanction, will be officers of the same class as all the Commissioner's assistants are—officers receiving a salary of from Rs. 300 to Rs. 500, whereas the officer who, as we propose, may be appointed under section 56, is to receive a monthly salary not exceeding Rs. 1,500 and not less than Rs. 1,200, as Government shall determine. The object of having such a man is that he may be one with previous experience and of high standing, one fit and capable of taking part with the Commissioner in the exercise of the powers and the performance of the duties of that authority.

Then as regards the remark that was dropped by the late Sir Maxwell Melvill to the effect that the Deputy Commissioner would be a young officer in training for the Commissionership. That was a thought which occurred to Sir Maxwell Melvill at the time, and I think not unnaturally. It is the one complaint I have heard against the appointment of the Commissioner, that he is usually brought from the provinces without any previous knowledge of Bombay or of the special class of work which will devolve upon him in his new appointment; and that, consequently, he is for some time engaged at the expense of the Corporation in learning his work. This objection I have heard made against the present system, and it is one which it must be admitted has some force. If, however, it should hereafter prove necessary to appoint a permanent Deputy Commissioner, then if that officer turns out to be apt at his duties and one worthy of promotion to the position, I cannot say that the Governor in Council would exercise an unwise discretion in appointing him, after he had obtained sufficient experience in the lower grade of Deputy Commissioner. There is nothing in the Bill which will lead the Deputy Commissioner to think that he is in training for the Commissionership, or that he will have a vested right to succeed to that office. The Governor in Council, in exercise of his discretion, will look to the fitness of individual claimants, as he always has done hitherto, and appoint the one who is best qualified.

I cannot think that any of the grounds which the Honourable Mr. Mehta has brought forward are of sufficient force to induce this Council to approve of the omission of these sections and thereby to deprive the Governor in Council of the power, whenever the necessity arises, of supplementing the *personnel* of the executive branch of the Municipality.

The Honourable Mr. FORBES ADAM:—Your Excellency,—After the very able and clear way in which the arguments of one side and the other have been stated by the Honourable Mr. Mehta and the Honourable Mr. Naylor, I will not take up the time of the Council at any length. But after listening to Mr. Naylor there are one or two points which I would like to lay before the Council. Mr. Naylor told us of the work which falls upon the Commissioner, and specified several minor details. He also spoke of the very large and important works which are now going on, on a larger scale than was ever known before in the history of Bombay. But, Your Excellency, I do not think these large and important works, which it appears to me must necessarily occupy a large portion of the Municipal Commissioner's time requiring a great deal of thought and attention, are likely to increase. I should rather take the opposite view and say that they would most probably diminish in a year or two. Bombay by this large water scheme at Tansa Lake will have secured a sufficient supply for an immeasurable period, and a large drainage scheme has been thought out and will be completed in the course of a few years. There are other important matters of a similar nature which, in a certain time, will come to an end. Therefore, the great works will no doubt cease to trouble the Commissioner, and if I might criticise what Mr. Naylor has said, it does not seem to me that his arguments show any strong reasons why the care of minor works and the labor connected with the superin-


tendence of large works when completed and in operation should not be properly and fitly deputed by the Commissioner to assistants in contradistinction to a deputy. It seems to me—and I speak with experience, if one may compare small things with great, in connection with a large business firm—that it is quite possible that the Municipal Commissioner should depute a very great part of his day's work and his inspection work to subordinates and thus save a great deal of time. I am sure the Corporation will never grudge the necessary assistance. I do not say that the honourable gentleman has overstated the amount of work devolving upon the Municipal Commissioner. I have had the privilege of the acquaintance of both Mr. Ollivant and the present Commissioner, and I know that both these are diligent and efficient officers who are required to work hard. Still I think it quite possible for them to depute a certain quantity of work, to enable them to accomplish the duties required of them, without overburdening or overtaxing themselves. I don't think it desirable that an important officer should be overburdened in this climate. He should have time for daily recreation, but he should so depute his work to competent subordinates that he shall not be so overburdened. What the Honourable Mr. Mehta has said in regard to the appointment of a deputy possibly interfering with the constitution and uniformity of the Bill I don't wish to speak about. What I would like to lay stress upon is that I do not see, having very carefully listened to the remarks of the Honourable Mr. Naylor, the necessity, so far as the work of the Municipal Commissioner is concerned, for the appointment of a Deputy Municipal Commissioner.

The Honourable Mr. WEST:—Your Excellency,—When I first took this Bill into consideration my opinion was not in favour of the proposal that it should be open to the Governor in Council to appoint a Deputy Commissioner. I was not so well acquainted then as I am now with the actual business devolving upon the Municipal Commissioner, and I must confess that on a fuller study of the subject I think the power should vest in the Government subject to the conditions and qualifications specified in section 56. It appears to be admitted by the Honourable Mr. Forbes Adam that the Commissioner has a very heavy task. The Honourable Mr. Mehta has partly suggested that the work is not so heavy as is generally thought, but if it is, he says,—so I understand him,—that the Commissioner may relieve himself of it by a practical delegation, under the law as it stands, by handing over minor or less important duties to existing subordinates or subordinates who could be appointed for a particular purpose by the Corporation. This is the way in which the Honourable Mr. Mehta thinks the Commissioner could be sufficiently relieved. Under the Act, as it stands, there is in section 67 provision made for the delegation of duties or the dispersion of the work of the Commissioner to a certain extent to his subordinates. That section, if honourable members will look at it, is a reproduction in great part of the existing provisions of the Acts now in force. The Commissioner can disperse his functions of the lower kinds among some of his subordinates, yet in spite of that the Commissioner, who is a most industrious and hardworking official, declares that what remains is too much for one person. The Honourable Mr. Forbes Adam has said in reply to the suggestion made by the Honourable Mr. Naylor on the subject of important public works that it is to be expected that when the Tansa scheme is carried out and the drainage scheme completed, the work will very considerably diminish. That is a fancy with which legislators in every age are deluded. We are always putting before ourselves the idea that by and by our work will be accomplished, and that we shall be able to take matters very easily. But that time in my experience has never arrived, and I doubt whether it ever will arrive, or at least, not before human progress has lapsed into a state of decay. It is inevitable in a great and growing community like this that the wants of people will increase, as their horizon widens and their ideas rise upwards. Thus I venture to speak in a prophetic strain, as I anticipate that whilst intelligence is growing the wants and desires of the people grow, and the Corporation will find that other great works will become necessary. Thus the work of the Municipal Commissioner of Bombay is not likely to diminish; for, even if it do not greatly increase, the work entailed by the large schemes at present under construction will be great. Though the constructive part will be over, surely the administration will not be at an end. It is necessary, I think, that the power, if we are not to have fresh and odious legislation on municipal matters every year, should be in the hands of the Governor in Council to appoint a deputy when the necessity becomes evident. The Corporation is not likely to receive the proposal, if one is made to it on this point, in absolute silence, and if there be good reason why he should not be appointed, the Corporation, to judge from the past, will not be ashamed to state what that reason is.

A love of patronage, nepotism as it is called, cannot be urged against Government. I hold that Government should not and would not appoint without the full assent of the Corporation, or such overwhelmingly good reasons for making the appointment, that it may be properly and fairly made in the public interest, even though the Corporation at the time should not desire it. In the clause about consulting the Council, I find, are some words I would see omitted. I do not see why the Commissioner should be a balance against the Corporation in this way, and I think the words are entirely superfluous. The Governor in Council ought to consult any one who he thinks can give him the advice necessary, and since he cannot be prevented from asking questions he should be under no compulsion to consult the Commissioner on such an occasion. The words to my mind are not desirable and should be omitted. It has been said that an assistant would do the work equally well. Be it so, but whether you call the gentleman assistant or whether you call him deputy, the real point is what are the functions he has to perform. Is it desirable that besides the deputation which exists under section 67 there should be a further deputation? Now it has been found that the duties of the Commissioner are of such a character that they cannot well be delegated to officers of comparatively low rank. It is desirable, therefore, that the possibility should exist of the Commissioner having, when the occasion arises, the assistance of a gentleman of nearly his own social and official status, inferior to him only in comparative juniority. If the deputation is to be made to that gentleman I cannot at all see how the Commissioner's responsibility would therefore necessarily be divided or in any way impaired. If gentlemen are familiar with the sections of the old Bombay Regulations, they will find in Regulation 16 of 1827 that the juniors attached to Collectors are called assistants. A Collector might depute to his assistant such duties as he might think fit, and as a matter of fact the Collector did depute, and does still, under the altered circumstances, certain portion of his district work. Yet, when it leads to an action in the Courts, the Collector's responsibility remains undivided. He is made responsible, and so it would be, I take it, with the Commissioner. In section 57 I would suggest we make a verbal alteration, say "subject to his orders." With this addition, I think no sound objection can be raised to the clause as it stands. Then, under section 57, the appointment will always be subject to consultation with the Corporation. There will be no real fear that the powers of appointment of a deputy will be seriously abused. It is desirable, in my opinion, that the Municipal Commissioner of Bombay should not be an official worked to death or anything like it. When one considers the very great importance of the functions he has to perform, the necessity for a wise forecast in many instances, the desirability of considering with great care and with a fair balance of mind the systems which are worked in other countries and other cities, from which valuable hints may be derived, and which may save this Corporation many lakhs of rupees,—I think it is necessary, from a purely intellectual point of view, that the Commissioner should be a man having some leisure. It is desirable he should have leisure, for excess of work produces irritability. I see that the Honourable Mr. Telang smiles at that. I hope not from the result of any intercourse with former Judges of the High Court. But he knows that it produces a degree of irritability which is not favourable to courteous and kindly intercourse. The Commissioner, being an officer who must be in personal communication with many people, should be of a patient and kindly disposition, or the citizens of Bombay and the members of the Corporation might discover the truth of what I say—that if overworked the gentleman with whom they sought interview might not give their business that calm and courteous consideration they would like. The result might indeed be a general obstruction of public business. Therefore, I do not think we should say "here is a gentleman very well paid; let us get out of him everything we can; he shall not have an assistant. If he does, it shall be an assistant of comparatively low rank, who shall only give him help in small details, leaving all important matters to the Commissioner's individual management." I would remark with reference to one other point on which the Honourable Mr. Mehta dwelt, and which he says is worthy of consideration, I cannot say that I have been convinced by his argument. He seems to think that the officer who is appointed Deputy Commissioner will look forward to succeeding to the Commissioner, and that such promotion would be expected. The Act does not contemplate this. The deputy may be an excellent officer, and if he shows himself, after having been in office for a certain time, particularly well qualified to be Commissioner, then I ask why should he not be appointed Commissioner. He is the very man who should be. But, on the other hand, if he shows that he is not so qualified he will not be promoted. As to his being a junior civilian, I

can assure Mr. Mehta that, on the salary contemplated, it would be possible to obtain at this moment several gentlemen of pretty well established competence who are senior in the ranks of the service to the position occupied by Mr. Ollivant when he was directly appointed Municipal Commissioner. Therefore, it is not likely that the Corporation or the community will be saddled with some young gentleman who is put here to swallow up their funds and simply learn his work. It is not necessary that he should be a member of the Government Civil Service at all. It is quite possible that he may be found in another class altogether, a man who may occupy a comparatively lower position, who may have a moral claim to promotion, and, looking at the subject from that point of view, it also seems to be fitting that the power should rest in the hands of the Governor in Council with the safeguards which the Act provides.

The Honourable Mr. RICHEY:—Your Excellency,—The honourable mover of this amendment, in the opening of his speech, said he sought for some figures or facts in support of the case put forward for an assistant to the Municipal Commissioner. Well, that seems to me very natural. Probably, more might be done to satisfy the honourable member. Such hasty inquiries, as I have been able to make since this point was introduced, have given me some data which may be interesting to the Council. I think you may take it that an executive officer's duties are very much in proportion to the amount of money he has to spend. We know that the superior executive of the Municipality has not increased since the Act of 1872, and in that Act, as the Honourable Mr. West has pointed out, there is a provision which is contained in the present Bill for the dispersion of certain minor duties among subordinates. Since the enactment of 1872, the current income of the Municipality has increased from something under 30 lakhs to 49 lakhs. That seems to me to speak almost without admitting of an answer as to the enormous increase of the duties and responsibilities of the chief of the executive. Besides the current revenue there is a very large expenditure going on in loan works, which involves an immense amount of correspondence and harassing references. With regard to what the Honourable Mr. Forbes Adam said, that when these works were finished they would then cause the Commissioner a decrease of work, the Honourable Mr. West has answered this. Besides the continuation and growth of work which we must look for, as the Honourable Mr. West has said in this community, the specific works themselves leave a permanent legacy of duties. You cannot throw two or three millions into a big work, and imagine it will not be represented by any additional labour. These great works will not perform their own functions of administration automatically. They will involve an enormous amount of additional financial and administrative work. Houses are increasing, and applications for building sites have grown to the rate of 1,000 per annum from about 400, when Mr. Ollivant assumed the office. With reference to the correspondence carried on in the Municipal Commissioner's office, I have received a note showing that in the Commissioner's personal office this correspondence has increased as follows:—In 1876 the inward letters were 7,867; in 1880, 14,029; in the present year 1887-88, up to the 9th of March, 18,036. The outward letters have increased from 8,492 in 1876 to 18,000. Well, now, I quite agree with the remark made by the Honourable Mr. Forbes Adam that it is very probable the Municipal Commissioner would be able to get his detailed and minute work brought up in a better form and despatch it better. Some internal improvements might be decided on, but where the officer is overworked it is not possible for him to devote any attention to the improvement of the internal economy of his office. I appeal to Your Excellency and my honourable colleagues whether in our experience we have any time to find out methods for reducing work. Current work being at a maximum, it is impossible to find leisure to produce a scheme, with this object in view. During late years in India we have had a change from personal government to government by law, and between 1865 and 1872 was a period of strong personal government. But government by legal methods has grown and is yearly growing with the spirit of independence and the readiness with which our people realise their rights and resent any encroachment upon them. The facilities they have of getting their petitions and complaints heard will demand more and more care in procedure and will require more and more method necessitating increased correspondence and greater work of responsibility. The figures I have given you ought to satisfy the honourable mover of the amendment that there are sufficient facts and figures if they could be carefully elaborated to support the case put forward in this Bill.

 Please substitute these pages for pages 211 and 212 of the *Bombay Government Gazette*, Part V, dated 3rd May 1888.

The Honourable Mr. TELANG :—I must make a confession similar to that made by the Honourable Mr. West, namely, that I formed an opinion at first somewhat different from the one I hold now. But the change with me has been in an opposite sense to that of the honourable gentleman. When I first sent in my proposals to the honourable mover, the only suggestion I made was the one I brought forward at the first reading of this Bill, viz. that the power of appointing to the office of Deputy Commissioner should be vested in the Corporation and not the Governor in Council. Since then I have come to the conclusion that it is not in the interests of the Municipality even to create this new office, and for the reason that there is in the other sections of the Bill ample provision made for meeting the difficulties. I feel myself to be in perfect sympathy with what has been said by the Honourable Mr. West and the Honourable Mr. Richey as to the necessity of a high officer like the Municipal Commissioner not having his hands too full of current work, and having ample leisure not only for his health's sake, but also for the purpose of enabling him to take a general and comprehensive view of matters elsewhere such as will enable him to adapt them to the working of the system in Bombay. But it seems to me that we have not to look at section 67 alone though even in that section there are not only, as the Honourable Mr. West pointed out, many provisions of the present Act re-enacted, but also a considerable number of provisions enacted for the first time, by which the Commissioner can transfer some of his work to others, and we must also look at section 79 under which provision is made for the Commissioner getting all such assistance as he can require. And I point to that section because with reference to the statement concerning the great amount of work in the Municipal Commissioner's office, I am not satisfied that it is work which is necessarily required to be done by the Commissioner or a Deputy Commissioner. I must confess speaking with great respect of the argument of the Honourable Mr. West in reply to the Honourable Mr. Forbes Adam, that he did not convince me that the argument used by Mr. Forbes Adam was wrong. I know that Bombay is not yet, if I may so say, like an extinct volcano, and that there will be plenty of work for the Municipality to do in future. But I repeat I am not sure that it will be the sort of work for which an officer of the kind suggested by Mr. West would be required. Though with the growing intellectual capacity of the people the result may be as the Honourable Mr. West predicts, and work may increase, still the probabilities are that the work will, for the most part, be such as can be done by officers of the sort contemplated in section 79. Again as to responsibility I quite agree that we have to look at moral responsibility, not merely technical responsibility. But in view of section 57 (2) (b), I think the moral responsibility will in effect be shifted when powers and duties are deputed to the deputy. I would make one further remark. The Honourable Mr. West proposes to change the words "subject to general direction" to "subject to the orders of the Commissioner." The effect of this would be that the officer appointed under section 79 would be quite as good as one appointed under section 56, and it is much better he should be appointed under section 79, the Municipal Commissioner passing off his own shoulders whatever was sufficiently unimportant to be entrusted to his subordinate, retaining to himself only such duties as require the attention of a more experienced and qualified officer. On the whole I am of opinion that this office should not be created. The Corporation does not want it, and has said so over and over again, and I do not see why we should say that such an officer should be appointed.

The Council divided :—

Ayes.

Lieut.-General H. R. H. The Duke of Connaught;
The Honourable Kashinath Trimbak Telang.
The Honourable F. Forbes Adam.
The Honourable Pherozechah Merwanji Mehta.

Noes.

The Honourable J. B. Richey.
The Honourable R. West.
The Honourable J. R. Naylor.
The Honourable Mahadev Wasudev Barve.

The amendment was lost on His Excellency the President's giving his casting vote against it.

The Honourable Mr. TELANG moved that in section 56 the words "Governor in" in line 1 of that section, and the words in italics in lines 6 and 7 be omitted; and that in line 8 the word "it" be substituted for the word "him".

The honourable member in moving the amendment said :—I have a double proposal to make here, either that the appointment of a Deputy Commissioner be made by the Corpo-

ration, or that, if the power be retained by the Governor in Council, such power should not be exercised except on the application of the Corporation. There is one point, in addition to what has been said in the course of the previous debate, which I should here mention. It seems to me that the Governor in Council, however well-informed in reference to municipal matters, must necessarily be, I say it with all respect, much less well-informed than the Corporation. And it appears to me that it is not enough that the Government should merely "consult" the Corporation on the subject, but it is necessary at least that it should only exercise the power on the application of the Corporation. I myself am prepared to go further. I think that the Corporation should itself make the appointment. The Executive Engineer and the Chief Officer of the Health Department are both appointed by the Corporation subject to confirmation by Government, and I do not see why the Deputy Municipal Commissioner should stand on a different footing than the other two officers. I may, as the matter has been incidentally referred to, at once disclaim any intention of imputing to the Governor in Council or any one else any love of patronage or nepotism in this matter. But it seems to me that the proper authority for making such an appointment as is now under consideration is the Corporation, who should know the exact purpose for which the officer is required and for which he ought to be appointed.

The Honourable Mr. NAYLOR:—Your Excellency,—The effect of the proposal the honourable member now makes is, that the appointment, when necessary, shall be made not by the Governor in Council, but by the Corporation. To that proposal my answer is that if it is right, as this Bill asserts it is, and as it is generally admitted to be that the Commissioner should be the nominee of Government, it appears to me we cannot draw any distinction between the grounds which affect the Commissioner's appointment and the grounds which affect his deputy's appointment. The two officers would virtually be one officer divided into two, the one assisting the other. The same reasons which render it expedient for the Commissioner to be appointed by Government apply to the deputy. One great argument in favour of the appointment by Government is that the section contemplates that the appointment shall usually be a temporary one merely, and that Government, having at their disposal a large number of officers in the several branches of service, are at all times able to select a competent person for such a post even temporarily, and when the term of such person's appointment has expired, Government are able also, without any loss to him or the Corporation, to transfer him again to his proper position in the Government service. This is a convenience which the Corporation does not and cannot possess, and one which points strongly in favour of the appointment being made by Government.

The Honourable the ADVOCATE-GENERAL:—I was unable on the last amendment to come to any decided conclusion. I am not in the same difficulty with regard to this proposal. Of course it may be said that I am not a very fair judge of the matter as I am prepared to let the Corporation appoint the Commissioner himself; but apart from this I cannot agree with Mr. Naylor that the appointment by Government is in accordance with the spirit of the Bill. It seems to me that the head of the executive is to be appointed by Government and all minor officials by the Corporation. It is not long since the Health Officer and Chief Engineer were appointed by Government; and the present tendency is to transfer such powers to the Corporation. If it be only necessary to appoint a Deputy Commissioner for a temporary period, I see no reason why a Government servant should be appointed at all. I shall vote for the amendment.

The Honourable Mr. WEST:—Your Excellency,—It appears to me that the arguments advanced in favour of the Deputy Commissioner being appointed by the Corporation are really arguments for the appointment of the Commissioner by the Corporation. It is said they would know better what they wanted. The two officers are so intimately connected that it seems to me it would be a serious mistake were they not both appointed by Government. If it were not so, differences of opinion and friction might be the result. For the Deputy Commissioner who would be a man having the greatest influence with the members of the Corporation would thus hold his head quite as high as the Commissioner whose subordinate he is supposed to be. The American constitution furnishes us with almost an exact analogy. The heads of the different departments of the United States hold positions in which they may be invited and they are frequently invited to bring statements before Congress. But the President may dismiss his Secretaries of State and it is therefore improbable that they will venture to make any statement unpalatable to the

President. I do not say that the section here ought to make similar provision in the case of the Commissioner. But if the amendment were carried there would be occasions when the deputy would be opposed to his superior. There would be divided councils and general obstruction of business. These considerations alone are enough to show that the Deputy Commissioner ought to be appointed by the Governor in Council. I think the arguments of the Honourable Mr. Naylor in favour of his appointment by Government should weigh very powerfully. If the Deputy Commissioner is made an officer with an independent status, as he would inevitably be, we should have public work obstructed and the interests of the city sacrificed.

The Honourable Mr. PHEROZESHAH MEHTA :—Your Excellency,—There are two questions involved in the Honourable Mr. Telang's amendment, firstly as to who should be the judge of the necessity for the appointment, and secondly, who should make the appointment when necessary. With regard to the first point, I take it that the Corporation who must be practically and intimately acquainted with municipal work are in a better position to judge of the necessity than Government who would have to act upon other peoples' statements, and are perhaps liable to be influenced by those of the Commissioner who would be personally interested in the matter. As to the second point, the arguments of the Honourable Mr. West against vesting the appointment in the Corporation are refuted by actual experience. The Health Officer and the Executive Engineer are officers entirely subordinate to the Commissioner. Yet, ever since the passing of the Act of 1872, their appointment has been vested in the Corporation, and it is well known that there has not been the slightest break of harmony between these officers and the Commissioner. I think this is a complete answer to the apprehensions entertained by the Honourable Mr. West.

The Council divided :—

Ayes.

The Honourable the Advocate General.
The Honourable Káshináth Trimbak Telang.
The Honourable F. Forbes Adam.
The Honourable Ráo Bahádur Mahadev Wasudev Barve.
The Honourable Pherozechah Mervanji Mehta.

Noes.

Lieutenant-General His Royal Highness the Duke of Connaught.
The Honourable J. B. Richey.
The Honourable R. West.
The Honourable J. R. Naylor.

So the amendment was carried. The Honourable Member's alternative amendment that in the event of the last proposal not being carried, the words "on the application of the Corporation" be substituted for the words "after consulting the Corporation and the Commissioner" in lines 6 and 7 of section 56, was therefore dropped.

The Honourable the ADVOCATE GENERAL suggested that, as in the case of the Health Officer and Executive Engineer, the words should be added "subject to the sanction of Government."

The Honourable Mr. TELANG :—Certainly; that is entirely in consonance with my view.

This suggestion was accordingly adopted.

The Honourable Mr. WEST :—And I would suggest as a further alteration that the word "orders" be substituted for "general direction." It seems to me more necessary in that shape than in the one in which it now appears.

The Honourable the ADVOCATE GENERAL :—Yes; several minor alterations will be now necessary.

This suggestion was also adopted.

The Honourable the ADVOCATE GENERAL moved that in *section 58 (2)* after the word *time* in line 2 the words "with the sanction of the Council" be inserted; and that the words "with the sanction of the Council" in line 21 be omitted.

The honourable gentleman in introducing his amendment said :—I think it only fair that the Corporation, whose officer the Municipal Commissioner is, should give their sanction before he takes up any work other than the work for which he is specially nominated. I admit, as the Honourable Mr. Forbes Adam said in his speech on the second

reading, that the duties falling on an additional member of your Excellency's Council are not very onerous. But there are times when we know it might cut very seriously into our own work, especially when the meetings of the Council are held at a place outside Bombay. As the Honourable Mr. Naylor urged, we should be careful about overburdening the Municipal Commissioner; and I think therefore we ought not to entail additional duties upon him, which may take him away from Bombay without the consent of the Corporation. The office of Port Trustee is one which must occupy much of the Commissioners's time. For these reasons I propose the amendment.

The Honourable Mr. NAYLOR :—Your Excellency,—The arguments of the Honourable the Advocate General admit of a very simple and a very natural answer. This section has excited a discussion which I certainly did not anticipate when I inserted it. For its insertion I am entirely responsible, and my reasons for inserting it were simply these, *viz.* as regards clause (a), because I found a similar provision in the Calcutta Municipal Act; as regards clause (b), because, as a matter of fact, the Municipal Commissioner has hitherto, I believe, always been a Port Trustee; and as regards clause (c), because it seemed desirable, in the interests alike of the Corporation and of the public, to provide for the Commissioner's occasionally being a member of such committees as are therein described. The rider which the Honourable the Advocate General now proposes to add at the end of the second line would have the effect of limiting the power of His Excellency the Governor to select for the position of a member of this Council any person whom he thinks worthy of that honour. I think it would be unbecoming that anything should be enacted by this legislature which should subject His Excellency to have to ask the sanction of the Corporation or of any body or person before selecting any gentleman to be the recipient of the honour of being one of his Council. As to clause (b) the appointment of a trustee of the Port of Bombay is a post which has been held by the Municipal Commissioner for some years, and I am bound to say that before the last sitting of the Council I had never heard any suggestion to the effect that his presence on that Board has not been extremely useful and valuable. As it is a point upon which opinions apparently differ, I, of course, cannot continue to hold the opinion which I held up to Wednesday last, that it is admittedly desirable in the interests of all concerned that he should be a member of the Board. At the same time, although opinions differ as to the desirability of the Commissioner being upon the Board of trustees, it is not at all improbable that from time to time his presence on that Board will be thought by the Governor in Council to be useful, and as the Port Trust Act vests in the Governor in Council the power to select and appoint fit persons to be trustees, it would, I think, be inconsistent for the Council, by this Bill, in any way to restrict His Excellency's free choice.

The Honourable Mr. FORBES ADAM :—Your Excellency,—In regard to the section now being discussed by the Council, I occupied the attention of honourable members on the second reading at some length and do not now wish to go over the matter again, but I would like to say a word or two as to the remarks which fell from the Honourable Mr. Naylor. First, as to the Commissioner being appointed as a member of your Excellency's Council, and second as to being appointed a member of the Board of trustees for the Port of Bombay. If the amendment which has been suggested by the Honourable the Advocate General is carried it would simply work in this way—that the Municipal Commissioner would be put in the same position as many other gentlemen at present in Bombay who possibly at one time or another your Excellency would wisely select for the honour of taking a seat on the Council. There are many gentlemen upon whom your Excellency's choice might fitly fall who would require to get the sanction or approval of some one else. That is I think how the amendment would work. As regards the Commissioner being a member of the trustees of the Port of Bombay, I was very careful in making my remarks on Wednesday last to state that I considered the presence of a gentleman like the Commissioner distinctly valuable and useful to the trustees, because necessarily a man of presumably his sound judgment and common sense would be an acquisition in conducting the affairs of the Trust; but I fail to see how the municipality could reap much benefit; for my experience has been that work between the Port Trustees and the Municipality is practically carried on by correspondence, and, I think, as to work being facilitated by the intercourse between the Chairman of the Port Trustees and the Municipal Commissioner I can repeat what I said on Wednesday that the intercourse may be carried on without the Municipal Commissioner being a member of the Port Trust. These are my chief objections to power being given to appoint the Commissioner to either post without

the consent of the Corporation. So much stress has been continually laid upon the work the Municipal Commissioner has to do, and I know his duties are very onerous and very great, that it would not be well to increase them unless the Corporation judged it advisable. The duties of both offices may or may not be very great in themselves, but there is every possibility they might interfere with his work in Bombay, about which the Corporation can best form an opinion and I therefore shall support the amendment.

The Honourable Mr. WEST :—Your Excellency, —I must admit that the arguments do appear to me to have a certain degree of force which your Excellency may recognise. But what was observed by the Honourable Mr. Naylor, namely, that it puts your Excellency in Council in a somewhat invidious and not altogether desirable position when he is to appoint a Municipal Commissioner, perhaps only temporarily, to the Legislative Council, to have to go to the Municipality for their permission, and similarly with regard to the Port Trust. In the Port Trust, it is admitted, that the presence there of the Municipal Commissioner is in itself a very useful element. But the objection is made on the ground that it is undesirable to deprive the Municipality of his duties. Then I must say it seems undesirable that when the Governor in Council should be of opinion that the services of the Municipal Commissioner are necessary to the Port Trust that the Corporation should step in and say we appreciate this gentleman so highly that we will not allow him to serve anywhere else. I believe that several honourable members are of opinion that clauses (a) and (b) should be left out. I do not know how it would meet the views of the Honourable the Advocate General if we remove them altogether, or if these words be added—“He shall not hold any other office or place of emolument or any other duties which will withdraw him from Bombay.”

The Honourable the ADVOCATE GENERAL :—I did not quite hear your exact form of words.

The Honourable Mr. WEST :—After ; “being in force clause (1)” : “He shall not “without the sanction of the Council hold any other office or place of emolument or one “the duties of which will withdraw him from Bombay.”

The Honourable Mr. PHEROZESHAH MEHTA said :—I think it right to mention that when this matter was discussed in Select Committee I thought that so far as membership of Council was concerned, the Governor in Council would not ask the Municipal Commissioner to be a member of the Council unless some proper occasion arose, which would not be, I confess, very often. As to his being a member of the Port Trust I was of the same impression as the Honourable Mr. Naylor that he was a very useful member, not as regards the Port Trust only, but also as regards the Municipality. And I must also confess that it was the first time I ever heard anything to the contrary when I listened to the remarks of the Honourable Mr. Forbes Adam. As to section (c) the Select Committee consented at my instance to put in these words—“with the sanction of the Council.” I have always held that Government should be at liberty to make demand on the services of the Municipal Commissioner as on those of any other public citizen on special occasions of general public utility.

His Excellency the PRESIDENT :—After what has fallen from the honourable member I feel bound to state that in this Bill, which has for its main object to safeguard the interests of the town, it seems to me important to secure that the town should be represented on the Port Trust, seeing how interwoven are the management of the town and of the port, and I hold strongly that Government should be left unfettered in this matter. With respect to the appointment of the Municipal Commissioner, clause (b), I think, had better stand. With regard to clause (a), I may mention that as the occasions on which the Governor would be inclined to make the Municipal Commissioner an additional member of his Council are so rare, and as I also feel the force of the argument used by the Honourable Mr. West, that the Municipal Commissioner should not be taken away from his duties in Bombay, I think clause (a) need not be retained. I would suggest therefore that we drop clause (a) and otherwise leave the section as it stands.

The Honourable the ADVOCATE GENERAL :—I think that the suggestion will hardly meet my objection as to the appointment to the office of Port Trustee which no doubt takes up considerable time. And I hold that this appointment should not be made without the Corporation having an opportunity of expressing its sense on either side.

His Excellency the PRESIDENT :—I take it that the Municipal Commissioner ought to know what is going on in the Port Trust, and that this knowledge will save him time and

save correspondence to the Corporation and the Port Trust. The Municipality should be represented on it by the officer who will naturally be most intimately acquainted with executive details.

The Honourable Mr. FORBES ADAM :—If my honourable colleagues are of opinion that the interests of the Municipality require that the Municipal Commissioner shall be a member of the Port Trust, I will withdraw my opposition though I have expressed myself in a contrary sense.

The Honourable Mr. WEST :—Then I think, Your Excellency, that it really appears to be the opinion of the majority of members present, and I think it would be better to strike out the amendment in the shape in which I put it, and let it be that clause (a) be removed.

The Honourable the ADVOCATE GENERAL :—I will alter my amendment in the sense suggested by His Excellency.

The Honourable Mr. PHEROZESHAH MEHTA :—Then, I think, we need not press the matter further.

The amendment was accordingly withdrawn, and the suggestion of His Excellency the President adopted.

The Honourable Mr. PHEROZESHAH MEHTA moved that in section 58, lines 29 and 30, the words "a commissioner who has held the appointment for a period of not less than five years" be substituted for the words "the commissioner." Your Excellency, I am strongly in favour of power being given to the Corporation to increase the salary of the Commissioner from Rs. 2,500 to Rs. 3,000. With the arduous and responsible duties which the Commissioner has to discharge, it is but right and proper that his remuneration should be adequate and sufficient and even handsome. I believe the power of increasing the salary will work beneficially in two ways. It may be of use at times in inducing a Commissioner to stay on, when with the knowledge and experience acquired by him it may seem desirable to retain him in the place. It also gives to the Corporation a certain influence over the Commissioner; he will have then something to expect from that body, and we know how wonderfully such a prospect is calculated to promote harmonious co-operation and to smooth all difficulties. But while I am in favour of the increase, I think it should only be granted after a certain period of approved service to a deserving officer. I think five years should be that period.

The Honourable Mr. NAYLOR :—Your Excellency,—Sub-section (3) of this section 58 provides that the salary of the Commissioner may be raised to a sum not exceeding Rs. 3,000, with the sanction of the Corporation. This sub-section was inserted by the Select Committee on the suggestion of the honourable Mr. Mehta himself. But since the report of the Select Committee has been published, the honourable member has apparently become so afraid of his proposal that he seeks to limit the power which it will confer on the Corporation by adding a proviso to it that no Commissioner shall receive any such increased emolument till after five years' service. To the principle of this amendment I take no objection, but five years is too long a time; it postpones the benefit to a time when a Commissioner is utterly worn out by the cares and labour of his office and when instead of looking for more pay as Commissioner he would be glad to take less somewhere else and be free of the appointment altogether. I think the honourable member's object would be much better served if he would consent to change five to three. Three years is the term for which a Commissioner is in the first instance appointed. At the end of that term he may be re-appointed, and then, I think, the Corporation may fittingly step in and increase his pay if he will consent to stay on. I may mention with respect to this question that the salary of the Chairman of the Calcutta Municipal Corporation may be, from the first year of his appointment, Rs. 3,000; and in addition to this the Calcutta Corporation may, and I believe do, grant him a house-rent. So that the salary we propose to be the maximum is still less than that of the Chairman of the Calcutta Corporation, although considering their respective duties and comparing the areas of the two municipalities the Municipal Commissioner of Bombay should have higher emoluments than the Calcutta Chairman.

The Honourable Mr. PHEROZESHAH MEHTA explained, saying :—It is true that it was at my suggestion that the sub-section was introduced. But I took care to explain that it was only after a service of some years that the increase should be given in case the

Commissioner had served well and given satisfaction. That was the real object of the suggestion I then made and which should be incorporated in the section.

The Honourable Mr. WEST:—This increase of salary after five years may operate injuriously in two ways—first, when the gentleman who has been devoting his services to the Municipality has become very much fagged and worn-out they may be induced to give him this increase of salary as a solatium, because he is unlikely to get a place outside the Municipality, and as to the gentleman himself, he may be induced to stay on instead of going away for recreation and to refresh himself. I think the Honourable Mr. Naylor's suggestion of three years is better in the interest of the community than five, and the Honourable Mr. Mehta might adopt it.

The Honourable Mr. PHEROZESHAH MEHTA:—The Commissioner's duties are so various that he requires at least three years for fully learning the work, and the next two years to show what is in him.

The Honourable Mr. WEST:—To arrive at his maximum of efficiency?

The Honourable Mr. PHEROZESHAH MEHTA:—I do not say maximum of efficiency, but to show what he is capable of.

The Council divided on the point whether the number of years in the amendment should be three or five:—

For three.

Lieut.-General His Royal Highness
the Duke of Connaught.
The Honourable J. B. Richey.
The Honourable R. West.
The Honourable J. R. Naylor.
The Honourable Ráo Bahádur Mahá-
dev Wásudev Barve.

For five.

The Honourable the Advocate General.
The Honourable F. Forbes Adam.
The Honourable Pherozechah Merwanji
Mehta.

So the amendment was carried substituting three for five years.

The Honourable Mr. TELANG:—We shall have to make some changes in sections 59 and 60 in consequence of what has been done now.

His Excellency the PRESIDENT:—All these changes will be made.

There upon in line 6 of section 59 the word 'Corporation' was substituted for 'Government.' The changes required in section 60 was left over for consideration.

The Honourable Mr. TELANG moved that in section 65, line 25, the words "limitations and conditions" be substituted for the words "and limitations." The Honourable gentleman said:—Your Excellency,—This is principally a change of words. I wish to insert the word "conditions" before "limitations," as bringing out more clearly the necessity, for instance, of a grant of money being made by the Corporation as a condition for the Commissioner's action even in executive matters.

The amendment was carried.

The Honourable the ADVOCATE GENERAL moved that in section 65, clause b, after the word "servants" in line 39, the words "except the Municipal Secretary." be inserted, but said:—Your Excellency,—I withdraw my amendment in favour of that of the Honourable Mr. Naylor which supersedes mine.

The Honourable Mr. NAYLOR moved that in respect of the clerks and servants subordinate to the municipal secretary the following amendments be made in the Bill, viz.:

(1) that in clause (b) of sub-section (3) of section 65, line 39, the following words be inserted after the word "servant," viz.: "other than the municipal secretary and the municipal officers and servants immediately subordinate to him";

(2) that the following new section be inserted after section 77, viz.:

Appointment of clerks and servants "77A. (1) The standing committee may from subordinate to the municipal secretary. time to time:

"(a) appoint such clerks and servants to be immediately subordinate to the municipal secretary as they think fit;

"(b) determine the nature and amount of the salaries, fees and allowances to be paid to the said servants and clerks respectively;

“(c) prescribe or delegate to the municipal secretary the power of prescribing the duties of the said clerks and servants.

“(2) The municipal secretary, subject to the orders of the standing committee, shall exercise supervision and control over the acts and proceedings of the said clerks and servants, and the standing committee, subject to the regulations at the time being in force under section 81, shall dispose of all questions relating to the service of the said clerks and servants and their pay, privileges and allowances.”

(3) that in section 80, line 6, the word and figures “77 or 77A” be substituted for the word and figures “or 77”;

(4) That the following words be added to sub-section (1) of section 84, viz. :
“other than an officer immediately subordinate to the municipal secretary”;

and that the following be substituted for sub-section (2) of the said section, viz. :

“(2) Leave of absence may be granted, subject as aforesaid, by the standing committee :

(a) to any clerk or servant appointed under section 77A.

(b) for a period exceeding one month, to any other municipal officer, the power of appointing whom is not vested in the commissioner.”

The honourable gentleman said:—In proposing the second reading of the Bill I had to confess that an oversight had been made in respect to the transfer of certain powers from the Town Council to the Commissioner. The present Act very properly provides that the Municipal Secretary, now called the Clerk to the Town Council, and his office shall be under the immediate control of the Town Council. In some manner, which I am at present unable to explain, this special provision with regard to the Municipal Secretary and his two or three clerks was overlooked and in section 65 we have given the Commissioner power to exercise control over all servants of the Municipality. The Municipal Secretary should not; however, be responsible to the Commissioner but to the standing committee; and in order to correct the mistake which has been made I propose the insertion of appropriate words in line 39 of section 65; and that having been done, it is necessary in subsequent parts of the Act to provide for the appointment of, the control of, and for the granting of leave to, the Municipal Secretary and his assistants. Honourable members have, I doubt not, considered the notice of motion which has been before them for some days and as I anticipate that my proposals will be acceptable, I need not lose time in making any further explanation of them.

The amendment was adopted without division.

The Honourable Mr. PHEROZESHAH MEHTA moved that clause (c) of section 65 be omitted, and said:—Your Excellency,—When I addressed the Council on the second reading, I specified this clause as one to which I had a very strong objection and indicated my reasons for that opinion. I will briefly state them again. In the first place, the clause is so worded that even for the purpose for which it is designed, it is, if I may say so, excessive. It gives to the Commissioner in case of urgency *any power given by the Act to the Council or the Committee*. Now in no conceivable case of emergency could it be necessary to exercise a great many of the powers vested in the Council, e.g. of levying taxes, &c. I think it cannot and will not be denied that the clause is thus extravagantly framed. But I should object to it, even if it was limited, for the reason that experience has shown that while on the one hand no necessity has ever been felt for the existence of such a power, on the other, such a provision is liable to be misused. We have instances to guide us either way. No Corporation would ever refuse to ratify any proper action taken by the Commissioner in a case of real and undoubted emergency. In the only case that occurred within the last fifteen years, viz. the bursting of the Vehar dam, there was not the slightest difficulty in obtaining the requisite sanction. The Council will remember the case I cited on the other side. I should mention that though the resolution I read to the Council on a former occasion was worded as if the money was to be spent, the fact was that sanction was sought after the expenditure had been incurred on the plea of urgency. * I fear that such a power as that proposed to be given by clause (c) will be a refuge for irregular action on the part of the municipal officers. It will be putting a temptation in the way of the Commissioner to put a very liberal construction upon the word *emergency*, and under cover of it, incur expenditure for which he ought

properly to obtain previous sanction. It is because I strongly feel that clause (c) is excessive, unnecessary and liable to abuse that I move its omission.

The Honourable Mr. NAYLOR:—Your Excellency,—This is another of those harmless little clauses inserted on my own responsibility, with a view of providing a practical code for the working of the Corporation and of the municipal institution generally, and it has much surprised me to find that this clause has excited considerable opposition. In the case of Local Boards in the provinces of this Presidency there is a provision for meeting pressing emergencies, and with that before me and with the knowledge of one case to which the Honourable Mr. Mehta has alluded, I thought it was desirable to provide for such a contingency which at any time might occur again. The Honourable Mr. Mehta urges that it is not wanted and that there is no use whatever for it. But in the next breath he himself admits that in the history of the Corporation one occasion has arisen where such a power was wanted, and in the absence of such a power the Commissioner, being a man of considerable courage, did what he thought was best, and asked the sanction of the Corporation afterwards. That, I submit, is not a course which every Commissioner would care to take, and I think that, so far as possible, it is expedient that the legislature should provide against the Commissioner having at any time to commit an irregularity and afterwards go to the Corporation to ask them to ratify what he has done. With regard to the future, the probability or possibility of such cases again occurring is stronger than it has hitherto been. It must be remembered, for instance, that the Tansa scheme, which is being carried out, involves the construction and future maintenance of a lake of very large area situated some fifty miles from Bombay. If telegraphic communication were received here to-day that the dam of that lake was leaking and likely to burst, it would be such an urgent matter that the Commissioner would have to proceed at once to the spot and do what he could, in the interests of the community generally, and of the residents in the immediate locality particularly, to prevent such an untoward event. One need scarcely say that other such emergent cases may occur. It is very improbable that they will occur more than once or twice in a life-time, but it seems only fair to the Commissioner that in passing an Act of this description we should provide for them. The Honourable Mr. Mehta has quoted a case in which the words "urgently required" were used by the Commissioner some years back with regard to some petty repairs and alterations, and he bases upon this fact an argument that this clause will be made use of in a similarly petty, trifling manner. Now I think that is a very unusual kind of argument to address to the Council. I cannot for a moment suppose that with the words "in any case of pressing emergency" clearly written in the Act, the Commissioner would propose to the Standing Committee to take action in any such trumpery case as the Honourable Mr. Mehta has alluded to, or that the Standing Committee would for a moment entertain such a proposal. I am not in possession of the facts of the case to which he has referred, and it is scarcely my business to attempt to justify any action taken by the Municipal Commissioner some years ago; but I may say that the words "urgently required" are of course capable of many degrees of meaning. And as we all know from our experience in other departments, it is not an uncommon thing when a work has been carried on to find, on the accounts being finally made up, that there has been an excess of expenditure—something not provided for in the estimates, and that the sanctioning authority must be asked to sanction the extra expenditure. It is quite possible that the Municipal Commissioner, having exceeded the amount specified by the Corporation, found it necessary to get sanction afterwards, and considered the obtaining of such sanction a matter of some urgency. But to suppose that the getting of the Corporation's sanction to an excess expenditure in a small matter of some Rs. 2,000 was considered by the Commissioner to be a case of emergency such as we have at present in contemplation, is to credit the Commissioner with a want of sense of which no Municipal Commissioner, who has held this important office in my time, could ever have been guilty. I may say that the words originally used in the clause were "case of emergency" and in order that there might be no mistake as to the kind of emergency in which the power was to be used, I inserted the words as they now stand. The Honourable Mr. West has suggested some words which may be added after the word "emergency," and which will still more pointedly emphasize the nature of the occasions on which it is intended that the clause should be put in force. If the Council concur in their adoption I shall be very willing to see them inserted. They would come after the word "emergency" in line one, and the words are: "in which irreparable mischief may arise from want of prompt action."

The Honourable the ADVOCATE GENERAL:—I do not see that the clause is of any use whatever. And I think that the Honourable Mr. Naylor will on reflection agree with me that any reference to the Corporation in this section is a mistake, because the Corporation has no power to take action, their functions not being executive; and I think that he will agree that such reference should be struck out.

The Honourable Mr. PHEROZESHAH MEHTA:—The Honourable Mr. Naylor says that he never expected any opposition to this clause. He does not seem to be aware that the matter has been very fully and carefully discussed by the Corporation. The attention of the Corporation was forcibly drawn to the matter at the time when the resolution about urgent expenditure which I have already quoted, was placed before them, and two members of the Town Council brought a proposition before the Corporation to provide for cases of emergency. I will read that proposition from the Municipal Record for 1883-84:—“That, as recommended by the Town Council in their Resolution No. 1121, dated 15th August 1883, the Corporation request Government in the Legislative Department to include the following section in the new Bill for the amendment of the Municipal Acts:—‘It shall be lawful for the Town Council, on the written application of the Municipal Commissioner, to sanction the payment, from surplus cash balance of any sum not exceeding Rs. 5,000, for the purpose of providing for any emergent work, charge, or duty: Provided that the Council shall record their reasons for making such grant without the previous sanction of the Corporation; and that the said grant shall be reported at the meeting of the Corporation then next ensuing.’” The Corporation rejected the proposition by 26 votes to 6. The Council will observe how modest this proposed clause was as compared to clause (c); and no Municipal Commissioner has ever suggested that he required more extensive powers. The Honourable Mr. Naylor has observed that no Commissioner should be placed in the predicament of having to act on his own responsibility in case of real emergency. To that I would wish to say that a Municipal Commissioner who would feel unequal to such a task, would not be worthy of that high and responsible position.

The Honourable Mr. WEST:—Your Excellency,—It strikes me that the arguments addressed to the Council by the Honourable Mr. Mehta are open to a logical objection, which he, as a distinguished logical student, will know. He has drawn an induction in this case from a single instance, because the Commissioner did some irregular act and the Corporation ratified it, he would have us infer that anything he does which is of considerable emergency will be ratified by them again. That I believe is not in consonance with the canons of the inductive science. Another objection arises, that at the very time he may be seeking to have his action ratified there may be a certain degree of asperity of feeling between the Commissioner and the Corporation as to that very work. A certain amount of friction and warmth will be the result. You cannot make an induction from a single instance, and what harm can there be in expressing that in the Act? When put in the position of having violated the law, why should you then put him before the Corporation or Council with that blot on his character, and have him say “make me an honest man again?” The best security is to allow the Commissioner to take such steps as are really necessary in cases of pressing emergency. What I mean is that he should take such steps as are really necessary and avail himself of the powers of this section when some grave or irreparable mischief is likely to occur from want of prompt action, and I would suggest that words embodying that restriction be added. The only difference between the sanction provided here and that of the Council, or, as we are to call it, the Standing Committee, is this, that the Standing Committee may be called together within 24 hours, and then they are so few in number that, being called upon in some terrible emergency, he might take upon himself to run round to their houses, and having ascertained their views, would feel certain of having obtained the approval of a majority, and proceed with his duty. But it would be a very difficult business to call upon a majority of seventy-two members of the Corporation, and the business might be embarrassed, and he would have to act illegally, that illegality having to be battled out by the resolution of the Corporation afterwards. I hope the honourable member will not be inclined to take the matter further than introducing the words I propose if he thinks the safeguard necessary.

The Honourable Mr. FORBES ADAM:—I had intended to support the amendment because I thought there was a danger that great difference of opinion might prevail as to what was a really emergent matter. But after hearing what the Honourable Mr. West has said I see the danger can be avoided. I can quite see that if any serious accident took

place immediate action would be necessary, but with the addition of the words which Mr. West suggests I think the clause should remain.

The Honourable Mr. WEST:—I would suggest another word after “reporting,” “forthwith,” and then there is not much room left for abuse.

The Honourable Mr. TELANG:—I do not quite understand how the arguments of the Honourable Mr. West support the section as it stands, for although the condition is in his amendment made more precise the power is not diminished. And the power extends not merely to the expenditure of some municipal money but to the exercise of any of the authorities of the Corporation or the Standing Committee. It is admitted you are providing for an emergency which may occur but once in a life-time; yet the clause is one which covers events that may occur many times in a life-time. It seems to me that the power would in every probability be misused. The legislature should not thus put the Commissioner in possession of powers which are very extreme. Supposing urgent measures are wanted and five lakhs is required, there is plenty of time to bring the matter before the Corporation. A meeting might be held at three days' notice to authorise whatever was necessary. All the five lakhs cannot have to be spent before such an urgent meeting can be held.

The Honourable Mr. WEST:—Perhaps Your Excellency will allow me to explain to the Honourable Mr. Telang that I suggested the addition of the words “where grave and irreparable mischief may arise from want of prompt action” and that such be the only cases in which he would interfere. The Honourable Mr. Naylor suggests that clause (h) in this section appears to cover this very case.

His Excellency the PRESIDENT:—I understand this clause simply anticipates such action as the Corporation itself would be bound to take in circumstances of such a nature as to leave no option. I consider this clause would only come into operation when *vis major* compelled the Commissioner. We find a similar provision in clause (c) of section 360, where the chief officer of the fire brigade obtains the power to set aside the Land Acquisition Act simply because *vis major* interferes. The pressing emergency is not created by the Commissioner, but by circumstances unforeseen, independent of his will, though it may occur through neglect of proper precautions. Perhaps it would be as well if some change were made in the drafting of this clause so as to make this quite clear. However, we may return to this matter when we come to sections 115, 2 “h,” and meanwhile the Honourable Mr. West and the Honourable the Advocate General will be able with the honourable mover of the Bill to agree on words which will specify the very exceptional circumstances under which the Commissioner would be able to avail himself of the powers contained in this section.

The further consideration of this matter was deferred and the Honourable Mr. PHEROZESHAH MEHTA moved that in section 65A, line 12, and in section 65B, line 27, the words “as far as may be” be omitted. He said:—The amendment I propose is a very short one and one only as to words.

The amendment being read was adopted.

The Honourable the ADVOCATE GENERAL moved that in section 65B, clause (3) be omitted.

The honourable gentleman observed:—This is an amendment having reference to a question which has given rise to a good deal of discussion in the Corporation. It turns upon the point as to whether the Commissioner is a fair judge as to what ought to be brought forward and what not. The Honourable Mr. West has had a good deal of experience with regard to similar matters. I have discussed before him in another place on many occasions questions which he knows are always subjects of the widest difference of opinion between lawyers, namely as to what documents shall or shall not be produced. Mr. Ollivant had, it was believed, some private correspondence with Government. I understand the belief was entirely unfounded; but I think he went so far as to say that if he had had such correspondence he would not have produced it. The Corporation has a perfect right to be jealous of any such statement. The Commissioner ought not to carry on correspondence without the knowledge of the Corporation or without the Corporation having the right to see it. The Commissioner has power to take legal advice, which it is quite right he should have, as to the relation between himself and the Corporation, when necessity arises.

But it is absolutely necessary that the Corporation shall have the opportunity of seeing that advice and the case he has made, for we all know that if you only get your case made out right you may get what opinion you want by laying a judicious statement before counsel. I hold that the Corporation have a right to ask for documents, and I can see no case in which the Commissioner can be justified in refusing to comply. I think, however, he has a right to point out that it will be undesirable to produce any documents. It should be left to his powers of persuasion and explanation to get the members to delay their request.

The Honourable Mr. NAYLOR :—Your Excellency,—The section to which the Honourable the Advocate General refers was not in the Bill as originally drafted, and I may say is due, to a large extent, to the circumstances to which the honourable gentleman has alluded. Under the present Acts the Corporation has no power to call upon the Commissioner for any correspondence or for any such returns, plans or other things as are set forth in this section, and Mr. Ollivant, when stating his views with regard to the contention which arose between the Corporation and himself, was, I gather, expressing what would be his reply with reference to the law as it then was, and as it now stands, and I am not at all sure that under that law he would not have been justified in declining to produce what he considered private correspondence between Government and himself. I only mention this to defend Mr. Ollivant from any adverse view which may be taken of the particular line he adopted in this particular instance. I am quite sure that he himself honestly thought that the course he did take was the course the law as it stood justified him in taking. For myself I must say that from the first I have been in favour of giving the Corporation this power, as I think it is a right and proper one, and it would be impossible for the Corporation to perform their duties properly, unless they could obtain from the Commissioner all such information as they needed from him to enable them to do so. But the difficulty I have felt was with regard to papers, the production of which might be prejudicial to the interests of the Municipality, and upon consulting my colleagues on the Select Committee, I found we were entirely agreed that the Commissioner should have the discretion of declining to produce papers, the production of which he thought prejudicial to the interests of the Corporation. Upon this point in the Select Committee there was perfect unanimity. There is, of course, a danger that the Commissioner may decline to produce what he ought to produce, but the Committee thought the power should be given to somebody to be able to say that in the interests of the Corporation it is not desirable that certain papers should be made public; and that power, most properly we thought, should be vested in the officer who has possession of the papers. Since the Select Committee's report has been published, the Honourable Mr. Mehta has further thought out the question, and he has to-day an additional proposal to make, which is to the effect that the Commissioner shall only be able to decline to comply with an order to produce papers for a time and must specify the time or the event which must occur before he will be prepared to produce the papers. With this additional safeguard, which is a practical and sound one, I think the proviso should, in the interests of the Corporation and of the municipal government of the city, be allowed to stand. I am quite prepared to accept the Honourable Mr. Mehta's proposal, but the Honourable the Advocate General's, I think, would be the cause of injury to the Corporation itself.

The Honourable Mr. PHEROZESHAK MEHTA :—Your Excellency,—I cannot help thinking that the amendment of the Honourable the Advocate General is better than the one of which I have given notice and I shall ask to be allowed to withdraw mine in favour of his.

The Honourable Speaker's amendment was as follows :

That for sub-section (3) of section 65B, the following be substituted, *viz.* :

“ Provided that if the Commissioner shall certify in writing that in his opinion compliance with any such requisition or with any part thereof would be prejudicial to the interests of the Council, he shall not be bound to comply with the said requisition or part thereof, until such time or the happening of such event as he shall in such writing specify, or if on the expiry of such specified time or the happening of such specified event, the Commissioner shall be of opinion, that compliance with such requisition or part thereof would still be prejudicial to the interests of the Council, until such further time or the happening of such other event as he shall then in writing specify.”

I feel sure that the Corporation would not be likely to compel the Commissioner to produce such documents as it would be prejudicial to their interests to produce. The Corporation should have the power to compel the production of all correspondence, and I can scarcely conceive an instance when they would do so if the Commissioner assured them such a course would be prejudicial to their interests. I consider the amendment of the Honourable the Advocate General will meet the exigencies of the case better than mine, and I shall vote in favour of it.

The Honourable Mr. WEST :—Your Excellency,—I am sorry to say that I have been drawn off the rails by the line the honourable gentleman has taken. The Honourable Mr. Mehta's amendment was a sufficient safeguard. I had another amendment to propose, but finding this would in my mind meet the case, I did not give notice of my own. It appeared to me that there was no doubt the Corporation had a right, a general right, to look at all correspondence affecting the municipality, and that is my opinion still. I agree with the honourable gentleman that a case can scarcely be conceived in which they ought not to see it. But a case may arise when the premature disclosure of a document might have a very prejudicial affect—say with respect to a contract or a case—and the facts being disclosed might affect the Corporation to the extent of several lakhs of rupees. It occurs to me that the Commissioner should not have the absolute right to refuse. The traditional custom for all time with respect to disputed production has been to refer documents to a special committee appointed for the purpose. Take the case in Parliament of Queen Caroline. There it was urged by one party that the production of certain documents would be extremely injurious to the affairs of State. A Secret Committee was appointed and stated after careful consideration that the documents ought not to be disclosed and they were not. The Commissioner might hold over documents if he thought it undesirable not to produce them for a meeting or two or three; if he still considered it unwise to produce them it should be competent for the Corporation to appoint a Select Committee to decide whether or not they should be laid before the Corporation. I put to the Honourable Mr. Mehta whether it would not be better to keep to his own amendment rather than accept that of the Honourable the Advocate General.

The Honourable Mr. PHEROZESHAH MEHTA :—When I gave notice of my amendment, I had not seen that of the Honourable the Advocate General. As I consider his a better one, I feel bound to support it in preference to my own.

His Excellency the PRESIDENT :—I propose to defer this matter till the next meeting of the Council. After what has taken place we had perhaps better give the Honourable Mr. West an opportunity of drafting his amendment.

The Honourable Mr. NAYLOR :—I think it is right to mention that it appears that the Corporation do not like trusting their powers to committees but preferring to do all their work themselves. We have that from members of the Corporation, who are also members of this Council. The result may be very awkward indeed, if the question whether secret or confidential papers are to be made public is considered and decided by the full Corporation.

The further consideration of the subject was deferred, and the Honourable Mr. TELANG moved that in section 67, clause (2), line 74, "515 clause (d)" be omitted.

He said :—This clause gives the Commissioner liberty to authorise his subordinates exercising powers which should not be entrusted to any subordinate but should be exercised by the Commissioner only. The Corporation think it should be struck out.

The Honourable the ADVOCATE GENERAL :—It was only yesterday I had a letter from the Chief Presidency Magistrate giving a list of cases before him on behalf of the Corporation. There are a great deal too many, and this perhaps is a result of deputing power to subordinates.

The Honourable Mr. WEST :—It would seem to me that in these matters the Commissioner must depute the power to some other person. If he did not, endless inconvenience would arise. Suppose he is before the Chief Presidency Magistrate and something turns up which shows him he cannot hope to get a conviction. He cannot, unless he has authority delegated to him, say "then I withdraw the case." He would have to admit: Well I am very sorry I cannot withdraw the case without the Commissioner, and I cannot communicate with him; he is at a meeting of the Corporation or out at Máhim. I must do my best to get a conviction."

The Honourable Mr. TELANG :—I see the force of the argument and will withdraw my amendment.

The amendment was withdrawn accordingly, and the Honourable Mr. Pherozeshah Mehta moved that in section 71, line 9, the word "two" be substituted for the word "five".

The honourable gentleman observed:—My Lord,—I should have no hesitation in accepting the section as it stands, but I know that the Commissioner must leave such matters in the hands of subordinates, and perpetration of jobbery must often be the result. I think the amount should be reduced to Rs. 2,000. That is the limit of the present Act which in this respect has worked well.

The Honourable Mr. NAYLOR:—The honourable gentleman thinks Rs. 5,000 too large a sum, but considering the vast extent of the city and its requirements I think it must be admitted to be comparatively small. The only principle involved is one of practical convenience. Considering that the lowest prices at which articles and work can now-a-days be procured are so well known by means of price-lists and otherwise, it seems quite inexpedient to compel the Commissioner to call for tenders down to so low an amount as Rs. 2,000.

The Honourable Mr. FORBES ADAM:—Then I would suggest Rs. 3,000 as a compromise.

The Honourable Mr. NAYLOR:—I am willing to agree to that.

The clause was accordingly amended in the terms of the Honourable Mr. Forbes Adam's proposal.

The Honourable Mr. PHEROZESHAH MEHTA moved that the appointment of chief accountant be included in section 73, the section being amended in its details for this purpose. He said:—Your Excellency,—I beg the most careful and earnest consideration of the Council to this amendment. The conspicuous success with which, it is admitted on all hands, the Corporation have worked the present municipal constitution, justly entitles them to claim extension and development in all directions in which experience has shown they could be safely carried out. With great good sense and moderation the Corporation have confined their demands to two important points. They have asked that the right of electing the Chairman of the Town Council should be vested in that body itself. And their second important demand is the one involved in my present proposal. It is one which is strictly based on and justified by the results and lessons of past experience. When the Bill of 1872 was under discussion, strong objections were raised to vest in the Corporation the appointments of the heads of two of the great Municipal Departments—Health and Engineering. The same arguments that are now used against my present proposal were then used against those proposals. It was urged that as the Health Officer and the Executive Engineer were officers entirely subordinate to the Municipal Commissioner in his executive capacity and that as he was responsible for the working of those departments, it could only lead to friction and insubordination to vest the appointments of these officers in the Corporation. In spite of these forebodings, however, the appointments were so vested, and experience has shown that the apprehensions which were entertained were utterly unfounded. The Health Officer and the Engineer have, in spite of their being elected by the Corporation, uniformly rendered the most cheerful and loyal obedience to the Commissioner. Therefore it is that I now submit that the appointment of the third great department of the Municipality—the Account Department—should also be vested in the Corporation. The only argument that I have yet heard against the proposal is that the Head Accountant stands on a somewhat different footing from the other two chief officers. It seems to me that so far as my present proposal is concerned, the difference, if there is really any, is rather in favour of the proposal. In matters regarding the Health and the Engineering Departments there is room for a considerable difference of honest opinion; the Account Department deals with mathematical matters and figures, and there is hardly any room for serious difference of opinion. I cannot imagine, I will frankly say, why the Head Accountant should be more under the Commissioner's immediate and absolute control, unless it is thought desirable that facility should be given to him for manipulation of accounts to hide irregular and unauthorized action. My proposal will have this further advantage that it will save the Commissioner from all such temptation. I have pointed out that experience shows that so far as legitimate work is concerned nomination by the Corporation does not produce insubordination; at the same time it will have this positive beneficial effect that as their appointment is in the hands of the Corporation, the officers so elected are not likely to lend themselves easily to irregular or improper action. This is a more valuable and important check than is generally imagined. For all these reasons I beg the Council to

yield to what I strongly feel is a most moderate and reasonable and well justified demand for further progress.

The Honourable Mr. NAYLOR:—Your Excellency,—This is a matter which was considered more than once by the Select Committee, and a majority of us decided that the appointment of the chief accountant should continue to rest, as it has hitherto, with the Commissioner. I must explain at the outset that the officer in question is not Controller of the municipal accounts. For a few years past he has been erroneously so called, but his function is not to control the accounts. The real control of the expenditure and of the accounts is vested in the Town Council and in the auditors appointed by the Corporation. If this control is thought to be too weak then, I submit, the remedy is to appoint a Controller; but that officer should hold his appointment outside of the Commissioner's office and not within it. I have seen the appointment of this officer compared to that of the Accountant General, but that is not a correct comparison; he really corresponds to a Collector's Head Accountant. The officer in question is the head of the accounts department under the Commissioner and receives his promotion in the Commissioner's office, rising gradually, according to his fitness, from the lower grades of accountants to be chief accountant. He is and should be entirely under the orders, and, in every respect, subordinate to the Municipal Commissioner. The result of the Honourable Mr. Mehta's amendment would, I think, be that the officer concerned would look rather to pleasing the Corporation than the Commissioner, and that is a state of things which would be intolerable. I do not credit the Municipal Commissioner with any wish to manipulate his accounts or to have the means of enabling him to do anything of the kind. I submit that any such design on his part is completely incompatible with the control which exists from outside his office. If that control is not sufficient, the Commissioner is perfectly willing to have it increased to any reasonable extent. But what I do urge is that the appointment of chief accountant, who is a man upon whom the Commissioner depends for hourly information as to the state of the accounts and whom he has constantly to consult for the preparation of all his financial schemes and for keeping him straight on all questions of expenditure, who is, in fact, his right-hand man, that the appointment of this officer should rest with the Commissioner himself.

The Honourable Mr. FORBES ADAM:—Your Excellency,—I gather from the remarks of the Honourable Mr. Naylor that the chief accountant is, for all practical purposes, a book-keeper. That is to say, certain monies are voted for certain purposes, and the expenditure of these having been carried out by the Commissioner it falls then upon the chief accountant to enter them. Supposing that the chief accountant is appointed by the Corporation I cannot see that it would in any way interfere with the advantages pointed out by the Honourable Mr. Naylor, which are derived by the Commissioner. He would still be able to obtain from him all the information he has been accustomed to obtain. My opinion is that the appointment should rest in the hands of the Corporation who have a right to demand this guarantee against irregularity.

The Honourable Mr. WEST:—The honourable gentleman has stated that the head accountant has only to carry out certain mathematical calculations, and therefore if you secure a man possessed of the requisite mathematical skill you have done all that is necessary. Consequently it is said there is no need for subordination; no room for dispute. It is however an error to suppose that there cannot be disputes about figures, and there is no comparison between the head accountant and the Accountant General with whom he has been compared. Let it be granted that the duties of the head accountant being purely mathematical calculation admit of no dispute, argument, or discussion, yet the most harassing and troublesome correspondence which comes under my observation is the correspondence in which various officers in the mofusil are at war with the Accountant General as to the proper appropriation of various sums. And I may appeal to His Excellency and my other honourable colleagues to bear me out in all I say. Apart from Government altogether, debatable questions of accounts as between firms and banks are continually arising, and I may appeal to another honourable gentleman with whom I have worked together for many years in a Court if these questions of account are not matters of the greatest trouble to counsel, and further as to whether they do not find it the hardest thing to drive them into the heads of judges. The fact is that the ways in which accounts may be presented are just as different as it is possible for any two things to be. There is a great difference between the keeping of English accounts and Native accounts, and no man who has studied English accounts will be made at once *au fait* with Native accounts. They

may be kept in a hundred and one different ways and a thousand different points may arise. If the Commissioner is to have his work well done, and it is only right that he should, for he is really responsible for the accounts, the man who does it under his direction should be made distinctly subordinate to him and should not in any way be above him. The Commissioner names his own head accountant, and as I do not think it has been shown that the method of appointing has in any way failed, why should a system be changed when no failure has arisen from its working? Surely it is better to stand by a system which has worked well than to make experiments the result of which may be doubtful. By reason of allowing the Commissioner to make the appointment, a general system of promotion is carried out in the office, which I think cannot be regarded as other than desirable. But on the other hand, if the head accountant is to be elected by the Corporation, the probability is that the appointment will very seldom be given to the next man in the office who may be thoroughly qualified and entitled to take it, and will in that case certainly be the best man to fill the position. Another point I should like to mention is this, that I think the control of accounts ought necessarily to be vested in a body or an individual standing entirely apart from the establishment. He should be free from the intrigues, jealousies or party-feeling which we know exist in all large offices in this country. Therefore I think the examination of the accounts from outside is highly desirable. The means are left in our hands. We have only to cut away the clause which limits the remuneration of the auditors to enable the Council or the Corporation to give them a proper remuneration and lay on them the duty of perpetually investigating the accounts and of bringing before the Standing Committee from week to week or day to day any instances of irregularity.

The Honourable Mr. TELANG:—Your Excellency,—The chief accountant has been described as the Commissioner's accountant and if that description is correct, the argument on the other side certainly has some force, but I say that that description begs the whole question. I say he is the chief accountant of the municipality. I do not see why the chief accountant of the municipality should not be appointed by the governing body of the municipality. To call him the Commissioner's chief accountant is just as much a misnomer as it would be to call the Health Officer the Commissioner's Health Officer or the Engineer the Commissioner's Executive Engineer. There is no reason, as far as I can see, to apprehend insubordination on the part of the chief accountant any more than there is to expect it on the part of the other two officers, and I cannot understand how the Council can come to the conclusion, while the Corporation is deemed to be fit and competent to appoint the Health Officer and the Executive Engineer, that it is not fit to appoint the chief accountant. As to the argument urged by the Honourable Mr. Naylor of there being rival authorities, I cannot understand how that is possible. If the accountant obstructs the policy of the Commissioner by refusing to allow any cheques to pass for sums which the Corporation has not sanctioned, he is acting in the discharge of his duty and the obstruction is justifiable in the interests of the municipality; but if he says to the Commissioner in regard to sanctioned expenditure "no, you shall not spend the money in the way you desire," he will be clearly going beyond his functions altogether. I confess I am unable to follow the arguments which have been used in favour of his appointment by the Commissioner. I can only say that to my mind it is absolutely manifest that the accountant stands on the same footing as the Health Officer and Engineer, and I do not know how the Council could come to the conclusion that though the Corporation is fit and competent to appoint the Health Officer and Engineer it should not be allowed to appoint the chief accountant.

The Honourable Mr. NAYLOR:—By way of explanation I would like to say that the chief accountant is on a very different footing from the other officers named. They are professional gentlemen doing special work entirely outside the Commissioner's office, whereas this officer is in the Commissioner's office in daily contact with him and in fact is little more than his head clerk.

The Honourable Mr. RICHEY:—The Honourable Mr. Telang commenced his speech by challenging the correctness of the description of the chief accountant and cited the Health Officer and the Engineer as holding analogous positions. The functions of the three officers are so entirely different that one cannot apply the same designation to them all. The Municipal Commissioner himself is the head of the accounts and finance department and is responsible. The officer who works under him in that branch is merely his subordinate, and I can hardly understand the ground taken by the

Honourable Mr. Telang when he tries to put him on a parity with the two other officers who are retained for strictly professional duties. The accountant will in every respect be subordinate to the Commissioner. If he were not, it would upset the basis of authority if he were made an independent officer, owing his nomination or promotion to the Corporation and responsible to them for his position in the world. The Honourable Mr. Telang cannot conceive that he would be tempted to usurp the functions of his superior; but it is constantly assumed that usurpation of authority by the Commissioner must be looked for and guarded against. As the Honourable Mr. West has said not only with people in this country, but all over the world, in official life intrigues and cabals and personal influences are powerful, and it is not impossible to conceive that he would work into the hands of the Corporation as against the Municipal Commissioner. The remarks of the Honourable Mr. West and the Honourable Mr. Naylor commend themselves to our experience much more than the arguments of honourable members opposite, who have supported the amendment. We must legislate with a view to human nature. There should be harmony between the Municipal Commissioner and his chief financial adviser which is essential to the due working of the municipal executive machine. This can only be done if the subordinate is in a position to look for countenance and support to no one outside the office.

The amendment being put to the vote, the Council divided—

Ayes.

The Honourable Kashinath Trimbak Telang.
The Honourable F. Forbes Adam.
The Honourable Pherozechah Merwanji Mehta.

Noes.

Lieut.-General His Royal Highness the Duke of Connaught.
The Honourable J. B. Richey.
The Honourable R. West.
The Honourable the Advocate General.
The Honourable J. R. Naylor.
The Honourable Ráo Bahádúr Mahádev Wásudev Barve.

So the amendment was lost.

The Sind Village Officers Act Amendment Bill.

The Honourable Mr. RICHEY, in moving the second reading of Bill No. 5 of 1887, a Bill to amend the Sind Village Officers Act, 1881, said:—I had the honour at the last meeting of the Council to explain to honourable members the objects of the Bill, and I may now, in moving that it be read a second time, inform the Council that it was published on the 14th of November and since its publication no suggestion on any of its provisions has been made. It may therefore be assumed that it is likely to meet the object desired.

Bill read a second and third time and passed.

The Bill was then read a second and third time and passed.

His Excellency the PRESIDENT then adjourned the Council.

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

J. J. HEATON,

Acting Secretary to the Council of His Excellency the Governor of Bombay for making Laws and Regulations only.

Bombay, 10th March 1888.