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PART V.

PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

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

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

The Council met at Bombay on Wednesday the 14th day of March 1888.

PRESENT:

His Excellency the Right Honourable LORD REAY, LL.D., G.C.I.E., Governor of Bombay, *Presiding*.
 Lieut.-General His Royal Highness the DUKE OF CONNAUGHT, K.G., K.T., K.P., G.C.I.E., G.C.S.I., G.C.M.G., C.B., A.D.C.
 The Honourable J. B. RICHEY, C.S.I.
 The Honourable R. WEST.
 The Honourable the ADVOCATE GENERAL.
 The Honourable KASHINATH TRIMBAK TELANG, C.I.E.
 The Honourable F. FORBES ADAM, C.I.E.
 The Honourable J. R. NAYLOR.
 The Honourable Ráo Bahádur MAHADEV WASUDEV BARVE, C.I.E.
 The Honourable PHEROZESHAH MERVANJI MEHTA, M.A.
 The Honourable Ráo Bahádur BEHECHARDAS VEHARIDAS.

The City of Bombay Municipal Bill.

The Honourable Mr. PHEROZESHAH MEHTA moved that for the latter portion of clause (b), sub-section (2) of section 73, commencing with the words (line 9) "or if he," the words "and not hold any other appointment" be substituted. He said :—Your Excellency,—I do not think that clause (b) is a wise departure from the law on the point as it at present stands. Under sections 44 and 45 of the present Acts, the Health Officer and the Executive Engineer are precluded from holding any other appointment or office and are required to devote the whole of their time and attention to the duties of their respective offices. The object of my amendment is to return to the present state of the law. When so much is said of the growth of municipal work it seems illogical to imagine that the

heads of the two most important Municipal Departments could have possibly time to attend to anything else. Nor is it desirable that these officers who are appointed by the Corporation should hold even temporarily offices in the gift of the Commissioner, who could thus acquire a special, and, I may be allowed to say, unwholesome influence over these officers. Such a provision would have a tendency to disarrange the constitutional checks which regulate the proper subordination of these officers both to the Corporation and the Commissioner.

The Honourable Mr. NAYLOR:—Your Excellency,—The portion of section 73, to which this motion is directed, was inserted at an early stage of the drafting of the Bill at the suggestion of Mr. Ollivant. I believe his view was that it might occasionally be convenient that either the Health Officer or the Executive Engineer should hold for a short period some other municipal office in addition to his own, and, if I am not mistaken, it has occurred that the Health Officer whilst continuing to be Health Officer was also Municipal Commissioner.

The Honourable Mr. PHEROZESHAH MEHTA:—No, he acted for the commissioner for a short period, but his own duties were for the time performed by another officer.

The Honourable Mr. NAYLOR:—The clause was, as I have said, inserted on Mr. Ollivant's suggestion as a matter of convenience, and in any case the whole time of the officer would be devoted to the services of the Municipality. I do not lay very great stress upon the provision for my own part, and if it be the desire of the Council that it be amended as proposed I shall not oppose the motion.

The Honourable the ADVOCATE GENERAL:—Might I suggest that the words "and not any other appointment" should be dropped so as to have in case of necessity an opportunity for making an arrangement similar to what was made before? The section might otherwise be taken to forbid such a temporary arrangement.

The Honourable Mr. West suggested that the words be dropped.

The Honourable the ADVOCATE GENERAL:—The words which the Honourable Mr. Mehta proposed to drop had better not have any others substituted for them.

The Honourable Mr. WEST:—Yes, let the clause cease at "office."

The Honourable Mr. PHEROZESHAH MEHTA:—I am quite willing to accept the suggestion, which leaves the clause as under: "Each of the said officers shall devote his whole time and attention to the duties of his office." That meets substantially the object of my amendment.

The Honourable Mr. NAYLOR:—I have no objection to the amendment in that form.

The amendment was accordingly accepted.

The Honourable Mr. TELANG moved that in section 79, line 20, the word "one" be substituted for the word "three". He said:—Your Excellency,—The amendment I propose is in reference to the creation of new officers in the Municipal Establishment. As the section stands, no new office of which the aggregate emoluments exceed rupees three hundred per month can be created without the sanction of the Corporation. I suggest that the limit be Rs. 100 instead of Rs. 300. There are not many officers in the various Municipal Departments to whom this regulation as it stands can apply. I believe there are very few who are getting salaries above Rs. 300 per month. But it is necessary, I think, that in the smatter of the sanction of the Corporation, the limit should be lower than Rs. 300. I speak under correction, but I believe that even the Government of Bombay cannot create offices the emoluments of which are Rs. 200 per month or upwards without the sanction of the Government of India, and I do not see why our Municipal Commissioner should have larger powers.

The Honourable Mr. NAYLOR:—Your Excellency,—On this matter I would merely say that the section as it stands is framed upon the basis of the present Act, which place the limit at Rs. 300. That has been the law of the Municipality for the last 16 or 17 years, and I anticipated that the Honourable Mr. Telang would give us some reason for thinking the limit should be lowered. When asking that his amendment should be passed I thought he would have brought forward some sufficient reason for it; but he has not adduced any. The Council will bear in mind that the power of creating appointment which is in question is not given to the Commissioner but to the Standing Committee, whose members are the delegates of the Corporation itself.

The Honourable Mr. WEST :—Might I suggest with the object of effecting a compromise that the limit be Rs. 200? I trust that will meet the views of both gentlemen, and this will assimilate it more closely with the maximum adopted by the Government of India.

His Excellency the PRESIDENT :—Shall we say Rs. 200?

The suggestion was adopted.

The Honourable Mr. TELANG moved :—That in section 81, sub-s. (1), line 6, the words “in consonance with any resolution that may be passed by the corporation” be added after “regulations.”

The Honourable Mr. NAYLOR :—Your Excellency,—I do not object to this proposal.

The amendment was accepted.

The Honourable Mr. NAYLOR moved that the following amendments be made in section 93 :—

in line 35, omit the word “new” ;

in line 43, for “and 1886” substitute “1886 and 1888” ;

at the end of the section, add the following clause :

“(vi) the portion of the drainage and waterworks’ loan of 1888 contracted under the said Act previous to the coming into force of this Act.”

He remarked :—Your Excellency,—The amendments which I propose to section 93 are merely verbal amendments the object of which is to make the section cover loans which have been, or have yet to be contracted during the present year and up to the time of this Bill becoming law.

The amendments were agreed to without discussion.

The Honourable the ADVOCATE GENERAL moved that in section 119, (1) after the word *Government* in line 3 the words “addressed to the Standing Committee” be inserted, and that after the word *may* in line 4 the words “with the sanction of the Standing Committee” be inserted.

He said :—Your Excellency,—This amendment is to a new section which gives power to the Commissioner to undertake work which is certified by the Secretary to Government to be urgently necessary for public service. I do not apprehend that it alludes to cases of the State being in danger, but rather to cases of convenience. I do not find any reason for it in the statement of objects and reasons, but I take it that it is intended to cover work which could more conveniently be done for Government by the municipal authorities than at any other place in Bombay. I do not think, as I have said before, that any communication should be addressed from any outside body—and to the Corporation the Government is an outside body—to the Commissioner direct. The Commissioner is an officer of the Corporation; and I think he should neither be addressed or entitled to comply with a requisition, such as that here contemplated, without the consent and sanction of the Standing Committee. He should not be put into a position to use his own judgment as to whether he will comply or will not comply with such a requisition. If the Commissioner is a Government servant,—and although it may not always be that he is a Government servant, yet he may be so for a long time to come,—he is put in a delicate position in having to say whether he will comply with the requisition of Government or not. A nervous man might consider that he was injuring his future prospects by refusing. Therefore I think it should be laid down that any communication should be with the Standing Committee and not with the Commissioner himself, and that without the consent of the Standing Committee he shall not proceed to comply with it.

The Honourable Mr. NAYLOR :—Your Excellency,—The Honourable the Advocate-General appears to me to have somewhat misconceived the kind of occasion on which this section is intended to be brought into operation. The section was really drafted to make legal provision for a contingency which has already arisen once, if not more frequently, when Government, being very much pressed for time in order to fit out some military expedition or to set on foot some other undertaking urgently needed in the public service, has called upon the Commissioner to aid it by having executed at the municipal work-

shops by municipal officers and under their supervision, certain articles of which a sufficient supply could not at once be obtained in the market and which the municipal workshops were in a better position than any similar factory in Bombay to turn out without much delay. The Maltese expedition was one of which I have some knowledge, and on that occasion the Commissioner complied with a requisition from Government and was able to afford very material assistance in enabling Government to send off that expedition with the facility and despatch with which it is well known that expedition was sent. It is not meant that this section should enable Government to require the Commissioner to supply work which can be readily executed elsewhere, and I think that words of the section indicate that this is not the intention, because the work must be certified by the Secretary to Government as being urgently needed in the public service. I may say that this section was considerably discussed by the Select Committee and the *prima facie* objections to it on the part of my honourable colleagues opposite were met, and they eventually concurred in allowing the section to stand as it has been amended by us. The Honourable the Advocate General, however, suggests that it shall not be competent for the Commissioner to comply with a requisition of this nature on his own authority, and that the requisition shall not be sent to him at all, but be made by Government to the Standing Committee, and that they shall decide whether it shall be complied with or not. But the occasions to which the section applies are such that no Standing Committee or Commissioner should wait to consider whether they or he will comply or not, but, having the means of complying, should unhesitatingly comply at once. This is what has happened in the past, and what will happen in the future, whether the requisition be addressed to the Standing Committee or to the Commissioner. Such being the case, to require that the requisition be addressed to the Standing Committee would only involve a certain loss of time. It would take a certain amount of time to get the committee together to discuss the question, and then, like other committees, they would take a certain amount of time to consider the matter, instead of the order going direct to the Commissioner, and being put into immediate execution. The amendment will, if carried, entail in this way a certain loss of time, which, in the exigencies of the occasion, may prove of material importance. Moreover, I fail to see that any object is gained by sending the requisition to the Standing Committee. We may be sure that Government would not make any such requisition unless it was of the utmost importance that the work should be speedily completed. It seems to me to be wrong in principle that we should ask the Standing Committee to determine whether a requisition made by Government should be complied with or not. If a requisition comes from Government in such urgent cases, as those to which the section refers, then I say, the section surely means that the work shall, if possible, be done by the Commissioner without any delay or dissent whatever. As to the further question which the Honourable the Advocate General has raised incidentally, namely that the Commissioner is an officer of the Municipality, and that no correspondence whatever should take place between him and Government direct, I do not wish at this moment to state my reasons fully, but I may say that this is a position which I have never accepted on behalf of the Commissioner. It is not the position which he has occupied up to the present time, and it is not the position which is now, according to my interpretation of the Bill, to be given to him. He, as the executive authority of the Municipality, is not a subordinate either of the Corporation or of the Standing Committee, but is co-ordinate with those bodies, who constitute, with himself, the three "municipal authorities" charged with carrying out the provisions of the Bill.

The Honourable Mr. PIEROZESHAH MEHTA:—Your Excellency,—I should like to emphasize what has fallen from the Honourable Mr. Naylor as to the readiness of the Corporation to give such aid to Government as may be in their power in times of urgent public need. I cannot imagine that under such circumstances as are indicated in the section, the Standing Committee would feel or evince the slightest hesitation in cheerfully meeting the call upon them. But with regard to the objection of the Honourable Member that it is wrong in principle that the Standing Committee should be allowed to sit in judgment upon a requisition of Government, he forgets that the section places the Commissioner in the very same position, for the words are not 'the Commissioner shall,' but that 'the Commissioner may undertake' the work. If there has been therefore no objection to place the Commissioner in such a position, why then any objection to the Committee being placed in the same position? The amendment of the Honourable the Advocate General is simply directed as to the individual to whom the requisition should

be addressed and it seems to me that the Honourable Mr. Naylor fails in meeting his argument on that point. I do not apprehend any danger of serious delay if the requisition were addressed to the Committee.

The Honourable Mr. WEST:—I think, your Excellency, it is necessary to go back once more to the central principle of this section to determine what the proper wording should be. It is a case in which Government, being pressed by some great emergency, finds it necessary to exert all its powers. Such a case would arise when, as might be done on the Continent of Europe at this time, it might temporarily place this city in a state of siege. I could put many cases in which it would be undesirable that there should be any obstacle put in the way of Government when a case of this kind has arisen. Take a case of this kind: Government has received private information to the effect that an attack is meditated upon Bombay, though war has not yet been declared. It would be obviously very indiscreet to have the matter discussed in the Standing Committee, which might consist in great part of timid men, or possibly of injudicious men. The whole secret which Government is anxious to keep would be out, and the chief object of Government would be at once defeated. This is one case. I could quote a great many more. When an emergency of this kind is to be met, Government should be enabled to act very promptly, and I take it that *may* is equal to *must* or *shall*, and I think it would be competent to substitute the one for the other. If the Honourable Mr. Mehta would prefer having *shall* inserted for *may*, I suppose the Honourable Mr. Naylor would not object, but I think the honourable gentleman opposite will recognise that in a great many enactments the word *may* is constantly construed by the Courts as *shall*. I think, however, the Commissioner would find himself sufficiently constrained by the word *may* if he received a requisition from Government, and, therefore, I think, we may leave the word *may*, as it looks more constitutional than *shall*. As to the communications, we must bear in mind that the Standing Committee is not the Corporation, nor is it the Executive Officer of the Corporation. The communication should be addressed either to the Corporation or the Commissioner, the Standing Committee being merely a delegated body for carrying on certain business of the Corporation. If it were any general measure the communication would only be to the Corporation, but for any executive measure of pressing emergency, the proper thing for Government to do is to go straight to the officer who can carry out their orders as quickly as possible, and then he may communicate with his Committee that he is doing it, so as not to act behind their backs. Looking at the very serious results which might occur from delay, this section had really better be left as it stands.

The Honourable Mr. TELANG:—Your Excellency,—The Honourable Mr. Naylor having raised the question of principle, I am bound to say that on the principle my opinion agrees with that of the Honourable the Advocate General. I am content that the section should stand in the form in which it is merely as a matter of convenience, and having regard to the necessities of the case which have been pointed out by the Honourable Mr. West. As originally drafted, the section appeared to me very objectionable on grounds of principle. But a deviation from principle in such a case as this may be justified by the necessities which may arise, and may be allowed in view of the necessary precautions which are taken in sub-clause 2, under which the Commissioner is bound to report forthwith to the Corporation. I may point out that the Corporation do not object to the form in which the section now stands. All they say is, that in an adjustment of accounts between the Corporation and the Government, Government should apply the same principle which is applied by them to the work they obtain from other bodies. I take that to be a matter of course which need not be provided for in express terms.

The Honourable the ADVOCATE GENERAL:—I think the section is a mistake. In case of emergency the Government has the power to transcend the law, and use every facility it can.

The Honourable Mr. WEST:—Might I call attention to one important point—Government is not bound to state its reasons to the Corporation. They would be as blind in case of emergency as the public at large.

His Excellency the PRESIDENT:—Do I understand that the Honourable the Advocate General withdraws the first part of his amendment as well as the second?

The Honourable the ADVOCATE GENERAL:—Yes.

The Honourable Mr. WEST :—If you put in that the Corporation shall thereon pass the orders which the Commissioner shall obey ; you thus force them to make public what may have a most pernicious influence upon the policy of Government.

The Honourable the ADVOCATE GENERAL :—That is already provided against.

The Honourable Mr. PHEROZESHAH MEHTA :—Taking all things into account and remembering that a case of this sort will be of extremely rare occurrence, it would be advisable, perhaps, not to press the amendment.

The Honourable the ADVOCATE GENERAL :—If the Corporation desires the section to stand, I withdraw ; but the clause is in my opinion contrary to the principle of the Bill.

The amendment was accordingly withdrawn.

The Honourable Mr. TELANG moved that in section 126, clause (1), line 4, "first" be substituted for "tenth" ; and in clause (3), line 37, "first" be substituted for "fifteenth;" and that in section 128, clause (1), line 3, "thirty-first" be substituted for "twenty-fifth." The honourable gentleman said :—Your Excellency,—The proposals embodied in the amendments now before the Council are in accordance with the suggestions of the Municipal Corporation and in substance the same as I proposed in the Select Committee. The Corporation point out that the person most affected by the changes of dates suggested is the Municipal Assessor and he has no objection to the suggestion made ; therefore there is no need to apprehend any practical difficulties arising through the extension of time. The result of the amendment if accepted will be that the Town Council or Standing Committee will commence the consideration of the Budget on the first of November instead of the tenth, and the Budget so considered and passed by the Council will be in the hands of the Corporation on the first of December instead of on the 15th, and the rates and taxes proposed in the Budget will be finally sanctioned by the 31st January instead of the 25th. That is to say the Council or Standing Committee will begin deliberating on the Budget nine days before the present date and the rates and taxes will be sanctioned a week later. I do not think these changes are revolutionary ; there will be no inconvenience to any one if they are made ; and I think the Council will be exercising a wise discretion in accepting the proposal.

The Honourable Mr. NAYLOR :—Your Excellency,—The financial year of the Corporation commences, like that of the Government, on the first of April. The Bill now before us, like the present Acts, provides that some time before the commencement of that year the Commissioner shall prepare and submit to the Standing Committee an estimate of the probable requirements and expenditure and shall lay before them suggestions for taxation for that year. In fact, the Commissioner has to prepare a draft Budget, which is submitted by him to the Standing Committee, who having thoroughly investigated it and modified it according to their views, send it forward to the Corporation, who finally pass their orders upon it. There are two considerations with regard to the time of preparing this Budget which are of great importance. In the first place it is very important that the Commissioner shall not be called upon to prepare it at too great a distance of time before the commencement of the year to which it relates. The Finance Minister of India is able to present his Budget for the year about to begin on the first of April, somewhere towards the end of March—about a week or ten days before the commencement of the year. But the need for having the municipal budget considered and discussed both by the Standing Committee and by the Corporation renders it necessary to require the Commissioner to prepare his draft several months before the first of April. That, under the circumstances, is inevitable, but what we seek is to bring him as near as possible to the first of April and not to impose between him and that date any unnecessary waste of time. Then, on the other hand, after the Budget has been passed by the Corporation, or at least, after the Corporation has determined what shall be the taxation in the coming year, a considerable period must be allowed before the first of April in order that the subordinate officers of the Municipality may be able to complete the assessment-book, details concerning which are given in section 155, and to get the property-tax bills ready for presentation by the ensuing 1st April. One clause of section 155 requires that, when the rates of the property-taxes have been determined, the amount of tax at which each building or land is assessed shall be entered in the assessment-book—a highly important book which is the record of the liability of all property in the city for taxation for municipal purposes. When the assessment-book has been finally completed and signed by the Commissioner, the subordinate municipal officers have to

set to work to get ready their bills. It is necessary that there be no delay in this matter because, by section 195, it is provided that each property-tax shall be payable in advance in half-yearly instalments on each first day of April and each first day of October, and by section 198 it is provided that when a property-tax or any instalment of any such tax shall fall due, the Commissioner shall with the least practicable delay cause to be presented to the person liable for the payment thereof a bill for the sum due. To be able to present all these bills in respect of some 60,000 separate properties soon after the 1st April, requires that an enormous amount of work shall first be performed in their preparation. Punctuality must be observed in the presentation of these bills in order to secure prompt payment of the taxes and regularity and order in the administration of the Municipality's financial affairs. In the consideration of the amendment before us these details cannot be lost sight of. According to the present Acts the Budget must be circulated to the members of the Corporation by the 27th December and the taxes must be voted by them on or before the 15th January. As the matter was provided for in the Bill as it originally stood, it was proposed that the Budget should be before the Corporation by the 22nd December and that the Corporation should pass the taxes by the 15th January, allowing 24 days for this purpose instead of 19 as before. Your Excellency will remember that on the occasion of the first reading of this Bill the Honourable Mr. Telang appealed to the sympathy of this Council to save him his Christmas holidays by requiring the Budget to be circulated to the Corporation before Christmas. In consideration of this appeal the Select Committee altered the dates. Under the sections as amended by them, it will be necessary for the Budget to be approved by the Standing Committee and forwarded to the Corporation not later than the 15th December and we have also extended the latest date on which taxes may be voted by the Corporation to the 25th January, thus allowing 40 or 41 days. It is reasonable and fair to allow the Corporation a sufficiently long time for the consideration of details and to enable them to arrive at a conclusion as to what shall be the amount of the taxation. But in Select Committee the Honourable Mr. Telang did not bring forward any further amendment of what we then fixed upon, nor does he now do so on his own account. He has taken up the wish of the Corporation as expressed in their most recent letter and asks the Council to give effect to it. The suggestion in that letter as to the extension of time is said to be based on information obtained from the Assessors. The Corporation would perhaps have shown more consideration for the Commissioner had they consulted him as to whether or not their proposed further alteration of dates would be a source of inconvenience. The assessor is subordinate to the Commissioner, and I am not aware in what terms his opinion was asked or given. But a subordinate cannot possibly be aware of all the circumstances telling for or against a change which are known to the heads of his department and, I think, we should listen to the officer at the head of the Executive Department, whose opinion on such a point as this must be more trustworthy than that of any subordinate.

The Honourable Mr. PHEROZESHAH MEHTA:—Allow me to point out that an amendment will be required in section 125 if this amendment be passed.

The Honourable Mr. NAYLOR:—Yes, quite so. I was going to suggest that.

The Honourable Mr. FORBES ADAM:—Your Excellency,—It seems to me that this is not a matter of very great importance, but as there is a wish on the part of the Corporation that if possible the dates, as suggested by the Honourable Mr. Telang, should be altered, I think their convenience might be met. As to what the Honourable Mr. Naylor has said about taking the opinion of the Commissioner, rather than the Assessor, in this matter the Commissioner would have had to go to the Assessor I expect to ask if he could do the work in the time.

The Honourable Mr. WEST:—Your Excellency,—It would perhaps be possible to hit upon a compromise which would meet the view of both parties. If we fixed the dates as the 10th November and the 31st January the time will possibly be sufficient. The matter was the subject of considerable deliberation in the Select Committee. From my experience I think it is a decided disadvantage to allow too long a time. A certain measure connected with the University was to be discussed. There was too much time allowed. It was expected by the Fellows that other opportunities of studying it would present themselves. Very few of the interested persons attended and the measure was exposed to the risk of being thrown out altogether. The Budget might afford a similar experience as the measure to which I refer. I hope the Honourable Mr. Telang will accept the compromise.

The Honourable Mr. TELANG :—Under the circumstances I will accept it.

The amendment was accordingly accepted as modified.

The Honourable the ADVOCATE GENERAL moved that in section 129 after the words "Budget Estimate" in line 5 the words "or any item therein" be inserted. He said :—Your Excellency,—My amendment is a very simple one and might be accepted at once. I propose that the section shall read "Subject to the exigency of sub-section (1) of the last preceding section, the Corporation may refer the Budget Estimate or any item therein back to the Standing Committee for further consideration, or adopt the Budget Estimate or any revised Budget Estimate submitted to them, either as it stands or subject to such modification as they deem expedient: provided that the Budget Estimate finally adopted by the Corporation shall fully provide for each of the matters specified in clauses (b) and (c) of section 126." The Corporation has a right to refer any item back. It would be a cumbersome process to refer back the whole Budget on account of a single item, and it will be far better to send back any item or items separately.

The Honourable Mr. NAYLOR :—Your Excellency,—When a proposal of this kind was first set forth I was myself disposed to agree to it; but the question was very carefully considered by the Select Committee and for reasons which the Honourable Mr. Mehta placed before us, we decided that it was better to leave the section as it stands. The Honourable Mr. Mehta has very much more experience than I can claim, of the proceedings of the Corporation, and I shall leave it to him to express his views on this matter.

The Honourable Mr. PHEROZESHAH MEHTA :—Your Excellency,—It seems rather odd that I should be against this proposal, but my experience of the manner in which alone the Corporation can deal with the Budget has led me to form a somewhat strong opinion against the utility of the amendment. The power to refer back separate items to the Committee can serve no useful purpose, while it is likely to be productive of unnecessary delay. It will be remembered that a Budget is not sprung upon the Corporation all at once. It is prepared by the Commissioner in the first instance who lays it before the Committee. The Committee carefully discuss and settle it, and send it with their remarks to the Corporation. If the Corporation do not agree with the main principles on which the Budget is framed, it is right and proper that they should have the power of referring it back to the Committee. That power is given by the section as it stands. If the main lines of the Budget are approved, then the Corporation are competent to deal finally with the separate items themselves, and they have the necessary powers to do so. The Commissioner, the Chairman of the Committee who introduces the Budget, and the members of the Town Council are all there to give any information that may be required. And as there has been an opportunity for every member of the Corporation to consider it beforehand, there will also be thus an opportunity of previously obtaining information a member may require. I consider it of some importance that members of the Corporation should be encouraged and required to study the Budget before it comes on for discussion. The power of referring back items would lead to a very loose way of dealing with the Budget; and items would be referred back to escape the effort of grappling and dealing with them at once, a tendency which is not unfrequently discernible in the deliberations of large bodies. The settlement of the Budget might be thus unnecessarily delayed indefinitely. Experience has shown to me that a power like that proposed to be given by the amendment would have very few occasions on which it could be at all usefully exercised, while it is very likely to be loosely and incautiously used so as to cause needless delay. There is an alternative, though rather circuitous, course by which the same object, so far as it is an useful one, can be gained. The Budget is never passed at a single sitting; and there is, besides, the power of adjournment with the new provisions contained in clause (o) of section 37. Any information that may be required to enable the Corporation to deal finally with a separate item, can always be asked for and obtained in the interval of two sittings.

The Honourable the ADVOCATE GENERAL :—The items may be referred back by a round-about process, and I think it preferable that the Corporation should have the power to do so by a straight-forward process.

The Honourable Mr. FORBES ADAM :—With all due deference to the views of the Honourable Mr. Mehta I think it would be a great advantage if the Corporation were able to send back particular items instead of the whole Budget which must occasion great delay.

The Honourable Mr. WEST :—Your Excellency,—The objection appears to be this, that members of the Council might go not quite prepared and knowing they could adopt this plan might have recourse to it and would, as was done in another public body to which I have already referred, put the matter off to such a degree as would occasion great inconvenience. It is obvious it would be a much longer process and would spin out discussions on the estimates to an interminable extent. I believe there are practical difficulties in the way. I have not the experience in the matter that the Honourable Mr. Mehta possesses. But if the estimates were discussed item by item I can see how great the inconvenience might be, which such a plan would almost inevitably occasion. I do not think we should be justified in departing from the view which has been put before us.

The Honourable the ADVOCATE GENERAL :—I did not suggest “item by item.” The Corporation will just possess the same power as they have done to send back the Budget or any of its items.

The Honourable Mr. WEST :—Do you mean “any one item.”

The Honourable the ADVOCATE GENERAL :—One or more items; but not perpetually doing this. Instead of sending back the whole Budget they will send back the item to which they object—the item or any number of items. This will prevent them from sending the whole Budget back—that is the principal thing.

The Honourable Mr. FORBES ADAM :—Under the section as it stands they would have to send back the whole Budget though it were but one item they objected to.

The Honourable Mr. PHEROZESHAH MEHTA :—The Corporation have every facility to deal with and dispose of that item themselves. There is nothing which the Committee can do which they cannot do themselves. While, on the other hand, facility to refer back one item, means facility to refer back any number of them in detail, and I am apprehensive that the power is likely to be incautiously misused.

The Honourable the ADVOCATE GENERAL :—But the present system seems to me like burning down the house to make a roast pig.

His Excellency the PRESIDENT :—It seems to me to be highly necessary that the Corporation should be enabled to pass the Budget within the time we have specified. If cases occur in which a single item involves a question of great importance there will be no great harm in sending back the whole Budget. In matters of minor importance the process of reference would be dilatory and undesirable.

The Honourable the ADVOCATE GENERAL :—The aim of the amendment is to prevent the necessity, such as recently occurred, of sending back the whole Budget instead of a part of it.

The Honourable Mr. PHEROZESHAH MEHTA :—The Honourable member is under a misapprehension; the Budget was not sent back.

The Council divided :—

Ayes.

The Honourable the Advocate General.
The Honourable Káshináth Trimbak
Telang.
The Honourable F. Forbes Adam.

Noes.

Lieutenant-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 M. W.
Barve.
The Honourable P. M. Mehta.
The Honourable Ráo Bahádur Behechar-
dás Veharidás.

So the amendment was lost.

The Honourable Mr. PHEROZESHAH MEHTA moved that in section 129, line 10, the word “alteration” be substituted for the word “modification”; that in section 133, lines 29 and 30, the words “as far as may be” be omitted; and that in section 136, lines 6 and 27, the words “Governor in” be omitted.

The Honourable Mr. NAYLOR :—I am prepared to accept these amendments.

They were accepted accordingly.

The Honourable Mr. WEST moved that with respect to the appointment of auditors the following amendments be made, *viz.* :—

(1) that in section 136, lines 26 to 28, the words “not exceeding, in the whole, five thousand rupees per annum” be omitted.

(2) that in section 137, line 1, the following words be inserted after the word “shall,” *viz.* :—

“forthwith report to the Standing Committee any material impropriety or irregularity which they may at any time observe in the expenditure or in the recovery of moneys due to the Council or in the Municipal Accounts, and shall”.

The honourable gentleman said :—The amendment I have given notice of in this section connects itself closely with the general theory of the relation of the officers of the Municipality to the Commissioner and the Corporation, some parts of which I have already stated to the Council. It appeared to me the other day, when we were discussing the question of keeping the municipal accounts, that as the Municipal Commissioner is responsible for keeping those accounts, he ought to have in the person of his Head Accountant some one directly responsible to himself under his control and in a general way nominated by himself. But at the same time, I think, I threw out what I felt very strongly, that the control of the Corporation should in the interest of that body as the representative of the public of the city be an effectual control, one exercised quite independently of the Commissioner and of his office; and on reading the other sections of the Bill, it appeared to me that the establishment of auditors furnished the means by which this could be done. It was only necessary to somewhat raise the status of the auditors, and make the appointment of them the duty of the Corporation, and place them functionally in a position to exercise powers of control, which were requisite to keep the Corporation thoroughly informed of what was going on. But in order that the auditors should possess a technical qualification, such as would enable them to discharge this very important duty and give up their time to it, it is necessary that they be skilled accountants, and I think it desirable that their emoluments should not be limited in the way in which they are by clause 3 of section 136. You cannot obtain two auditors at the rate of Rs. 5,000 per year for the two who will be able and willing to exercise the very important duties which should be discharged by the auditors. They should practically be controllers and have access to the accounts of the Corporation on an independent footing at any moment they may desire. And they should report forthwith every instance of irregularity which they may discover. Therefore, I thought it was very necessary that this clause should be amended so as to enable the Corporation to put their auditors on such a footing that they might be officers of the greatest ability, and devote the whole of their time and be encouraged to do their duty in an effective manner by a certain increase of remuneration. That is the object I have in view. I trust from the point of view I have taken the proposal will commend itself to the Legislative Council.

The Honourable the ADVOCATE GENERAL :—Might it not be worth while to specify the sum of money to be paid to the auditors and that it should be put in the section. I am not prepared to suggest the sum.

The Honourable Mr. WEST :—That is a matter which should be left in the hands of the Corporation. My desire was to leave their hands free, as I thought they would find out what sum they would have to expend to get auditors of the required ability. But if the honourable members opposite would desire to have a limit imposed, I have no objection to it, but it should be much higher than Rs. 5,000.

The Honourable Mr. PHEROZESHAH MEHTA :—I know the work has become very heavy, and there should be an efficient audit. It is necessary to have a concurrent audit going on from day to day. In these circumstances Rs. 5,000 is too little. At the same time I know the Corporation are always inclined to be rather generous with the money of the ratepayers, and the tendency to give large sums in salaries is generally very strong. I do not say this with regard to the Corporation of Bombay only, for it is a tendency which affects all bodies placed in similar circumstances. I therefore think the Honourable the Advocate General's suggestion a very good one, that we should have some maximum fixed, and I would submit that it should be double the present amount, *i.e.*, Rs. 10,000.

The Honourable Mr. WEST:—Yes, that will do.

His Excellency the PRESIDENT:—Then the amendment and the suggestion are accepted.

The Honourable the ADVOCATE GENERAL:—My only doubt would be whether you could get such a man for Rs. 500 a month. The Honourable Mr. Forbes Adam would be best able to tell us.

The Honourable Mr. FORBES ADAM:—That is quite sufficient. The amendment was accepted, clause (3) standing—“(3) The auditors so appointed shall receive such remuneration, not exceeding, in the whole, ten thousand rupees per annum, as the Corporation shall from time to time determine.”

The Honourable Mr. WEST moved that the following new section be inserted after s. 137, viz. :—

“137 A. (1) The Governor in Council may at any time appoint an auditor for the purpose of making a special audit of the municipal accounts and of reporting thereon to Government: provided that the costs of any such audit shall not, without the consent of the Council, be chargeable to the municipal fund.

A special audit may be directed by the Governor in Council.

“(2) An auditor so appointed may exercise any power which an auditor appointed by the Council may exercise.”

The honourable gentleman said :—Your Excellency,—The object of this is probably obvious. It has been found in England, where municipal matters are looked after with a good deal of interest, that the control of the Local Government Board is still necessary, especially in the matter of audit, and they have a right to institute independent audits on account of various public bodies in the country—all bodies one may say constituted of late years. In many Municipal Corporations formed before the Local Government Board was established that right does not I believe exist. It is a general principle in the constitution of new bodies that the Board shall have such authority, and it is quite obvious that occasions may arise in which the Government would feel it to be its duty to institute an independent audit in the interests of the public. An occasion of this kind might arise—a certain large body of ratepayers might say “we are not being properly used in the accounts, and we have no one to appeal to except the Corporation; they have taken their view, and we desire that the accounts shall be looked into in an independent way.” And on their making such an appeal to Government, it is obvious that Government should have the opportunity of complying with their request. It is desirable also that public accounts should be looked into occasionally from a new standpoint, and if Government sends an official auditor and he takes his stand upon a different method than those which the ordinary auditors in their humdrum way have been accustomed to, he may discover many things which would not otherwise be discovered. As the expense of this is not to be the expense of the Corporation, Government will be quite justified, whenever they feel the necessity, in making an independent audit, and they may do so occasionally to great public advantage.

The Honourable Mr. NAYLOR:—Your Excellency,—On this point I wish only to say a few words on behalf of those unfortunate and much misunderstood gentlemen, the framers of this Bill. The change which was made in the Bill as introduced upon the present law, by which the appointment of auditors of the municipal accounts was vested in the Governor in Council, and not in the Corporation, was made at the desire of your Excellency's Government. Mr. Ollivant was not in favour of the change, or at least he thought that the change, if any need be made, should be similar to that which the Honourable Mr. Telang had intended to propose—namely, that one auditor be appointed by the Corporation and one by Government. For myself, looking at the theory of the matter, it seemed to me more suitable that the auditors of the Corporation accounts should be appointed by an authority independent of and outside the Corporation itself. Besides the practice in England being, as the Honourable Mr. West has pointed out, in favour of this view, there is considerable precedent even in India itself for the adoption of such a course. The auditors of the municipal accounts of Calcutta are appointed by Government. So also are the auditors of the municipal accounts of Madras; and in this presidency the auditors of the Local Boards are

also appointed by Government. Further, on examining into what had been the history of the appointment of auditors by the Corporation, I was informed that for many years the auditors appointed by the Corporation are two gentlemen who have held office from year to year without any change, who are not experts and have no special capacity for auditing accounts. I have not the pleasure of the acquaintance of these two gentlemen, and do not even know their names, so that I shall not be credited with any wish to detract from their merits whatever they may be. But I state what I understand to be the fact merely for the purpose of explaining that on this account also it seemed to me that the proposal of Government was one worthy to be followed. That proposal is, moreover, supported in a memorial which is before this Council from the Bombay Ratepayers' Association. Accepting the principle of the proposal contained in the Bill, they suggest that one auditor should be appointed by Government, and the other by the ratepayers. There would be no objection to this, but that no machinery exists by which the views of the ratepayers in the matter could be ascertained. Thus all the facts appeared to justify the opinion I have expressed, that the appointment of auditors had better vest in Government than in the Corporation. But the proposal of the Honourable Mr. West, whilst being agreeable to the representatives of the Corporation, also practically secures all the objects which to my mind are required. Therefore, I shall certainly support his amendment.

The amendment was unanimously adopted.

The Honourable Mr. WEST then moved, without comment, that in s. 474, line 52, the figures " 137A" be inserted after the figure "(2)."

The Honourable Mr. TELANG subsequently asked:—Is it necessary to have this addition?

The Honourable Mr. WEST:—Yes, otherwise the auditor appointed by Government might meet with obstruction, and without the insertion of 137A he might have the door slammed in his face. It is better for conformity's sake that he should be put on the same footing as the other auditors.

The addition was agreed to.

The Honourable Mr. WEST proposed that the following be substituted for section 65 B (3):—" Provided that if, on such a requisition as aforesaid being made, the Commissioner shall declare that immediate compliance therewith would be prejudicial to the interests of the Corporation or of the public, it shall be lawful for him to defer such compliance until a time not later than the second monthly meeting of the Corporation after he shall have declared as aforesaid. If at such meeting, or any meeting subsequent thereto, the Corporation shall repeat the requisition, and it shall then still appear to the Commissioner inexpedient to comply therewith, he shall make a declaration to that effect, whereon it shall be lawful for the president forthwith to name a committee of three councillors, who shall engage to keep secret, save as hereinafter provided, the existence and purport of such documents and matters as may be disclosed to them; and to the said committee the Commissioner shall be bound to make known and to disclose all writings and matters within his knowledge, under his control, or available to him, and embraced within the requisition, and the said committee having taken cognizance of the information, writings and matters so laid before them, shall determine by a majority, in case of difference, whether or not the whole or any part, and which part, if any, of such matters ought to be disclosed to the Corporation or kept secret either permanently or for a defined time, which decision shall be conclusive, and shall be reported to the Corporation at the next ordinary meeting thereof, where also the Commissioner shall be prepared to produce documents, and to make any report or statement requisite to give effect to the decision of the committee when called on to do so by the Corporation." The honourable gentleman observed: There was a general feeling, your Excellency, as I understand that some method similar or analogous to that adopted in the Houses of Parliament dealing with the question involved in this case would be acceptable to the Council, and I have endeavoured in a somewhat elaborate shape to meet the exigencies which might arise, and I now submit it for consideration.

The Honourable the ADVOCATE GENERAL:—I think the plan suggested by the Honourable Mr. West for meeting the difficulty, is a happy one. I shall be willing to withdraw

my amendment which is at present before the Council in favour of it, if one or two alterations be made. In the first place, instead of a second ordinary meeting, I should say "next ordinary meeting," for it would not be wise to delay the disclosure too long.

The Honourable Mr. WEST :—The next ordinary meeting might be in two or three days.

The Honourable Mr. NAYLOR :—Yes, and sometimes on the same day.

The Honourable Mr. WEST :—I had in view a definite period, say about two months. But I think "the second ordinary meeting" would be only a reasonable time.

The Honourable the ADVOCATE GENERAL :—I must add that I doubt the expediency of the President naming the Committee. It simply leaves the matter in the hands of one man.

The Honourable Mr. WEST :—That has been the subject of a very careful consideration. If the nomination were made by a majority that would nominate three out of the majority, but if the nomination be in the hands of the president, he will be impartial, it may be supposed, as an intermediary between the Corporation and the Commissioner, and will act with a sense of responsibility, which scattered members of the majority might not feel. This seems calculated to secure a more impartial decision.

The Honourable the ADVOCATE GENERAL :—In the House of Commons how is it?

The Honourable Mr. WEST :—Not by the majority. The Committee of Selection does it—one for the Government and one for the Opposition.

The Honourable the ADVOCATE GENERAL :—As to "permanently?"

The Honourable Mr. WEST :—I think there is something in that. There are frequently semi-private communications very good for their own purpose, but which are not altogether expedient for publication in the newspapers, and the Committee should have an opportunity of saying these documents shall not be published. When a controversy is going on between Government and the Corporation some unpleasant words at one stage or other may be made use of on one side or other or not relevant to the state of affairs which subsequently may obtain, and this is a reason why the correspondence had better be kept back. Discretion is left entirely to the Committee, and anything improper for publication will be withheld. I admit, this is a matter in which there is a balance of considerations, but I think it safe to leave it to the discretion of the Committee.

The Honourable the ADVOCATE GENERAL :—After a certain delay I think it might be produced.

The Honourable Mr. WEST :—There may be some frivolous and personal matters which it will not be desirable to publish.

The Honourable Mr. NAYLOR :—In the Commissioner's office, as in any other public offices, letters are frequently received marked "Confidential." Such letters usually are not allowed to leave the office at all.

The Honourable the ADVOCATE GENERAL :—I do not suppose that the Honourable Mr. Forbes Adam would approve of the Secretary of the Chamber of Commerce receiving letters not to be presented to the Chamber.

The Honourable Mr. FORBES ADAM :—I think it is well known that this section does create a great deal of interest. The whole point arose in a manner which was referred to on the second reading—the case in which Mr. Ollivant remarked that if he had received correspondence from Government, he would not have produced it to the Corporation, and I feel personally that this puts the Corporation in a false position, if correspondence would not be forthcoming at such time as it is desirable to produce it. I would like to ask the Honourable Mr. West, and express a hope that he will leave out the words "either permanently or." As a matter of fact such circumstances are likely to be of very rare occurrence, and my own opinion is that it is desirable to leave out the words.

The Honourable Mr. WEST :—I entirely admit the force of what has been said. It is entirely on practical grounds that I thought these words might be put in, and I cannot but feel they are useful there. But we must take a balance between contending claims. Let us consider what the effect would be. Demi-official correspondence goes on very

largely, and so long as people do not expect their letters will be disclosed, they write pretty freely, but directly they got to know that their papers were likely to be pulled out and made public at any moment to be discussed, they would not express themselves with the same degree of freedom, but would mark their letters private, and the Commissioner would feel justified, and indeed, bound, not to put them on the files of his office. Thus the history of the Corporation at a future time might sustain serious gaps through the absence of these letters. Complaints have been made in England several times during late years that matters, the subject of official correspondence, which ought to be on the records of the office, had been treated in this way, and so the history of the country is never to be found in the place where it ought to be. Similarly here unless some safeguard is provided correspondents may feel inclined to write "private," and then the correspondence will become the personal property of the person to whom it is sent. There is that apprehension that correspondence which is now demi-official will become private, and the Corporation records will suffer. However, I do not attach very great importance to the words, and I am quite willing to be guided by the sense of the Council. But, I think, we must see these difficulties will arise.

The Honourable the ADVOCATE GENERAL:—I think the addition of my words will tend to make matters work more amicably.

The Honourable Mr. PHEROZESHAH MEHTA:—To my mind it is difficult to imagine that any circumstances can possibly arise where it would be necessary *permanently* to keep back from the knowledge of the Corporation any documents concerning municipal business. I must confess I very much dislike this part of the proposed amendment. However, in disposing of this matter, it will be remembered that the cases against which it is sought to provide are likely to be of extremely rare occurrence. In the whole history of the Corporation such a case has occurred only once, and even then the Corporation were prepared not to insist upon the production of the document in question, if they were assured by the Commissioner that the production was undesirable. The Commissioner, however, denied that the Corporation had any right to compel him to produce documents, and the real question involved in the dispute on that occasion became one of the assertion of the right of the Corporation. I am convinced that a little tact and discretion were all that were needed on that occasion, and there would have been no dispute at all. With regard to the composition of the Committee, if I were not afraid of suggesting something which would have the effect of still further lengthening out a terribly elaborate provision for a very remote contingency, I would suggest that the Committee may be composed of the President of the Corporation, the Chairman of the Standing Committee, and a third member elected by the Corporation. Such a Committee would be perfectly safe and impartial for all practical purposes.

The Honourable Mr. FORBES ADAM:—I am in favour of the Corporation electing the whole Committee instead of it being elected by the President. I have listened to what the Honourable Mr. West has said, and there is a good deal of force in it. But I would put more trust in numbers than I would in one man; therefore I think the Corporation not the President should have the power to elect. I think that a Committee of five elected by the Corporation would be better than the Committee of three, and I would prefer the wording of the amendment of which the Honourable Mr. Mehta gave notice that the Commissioner shall certify in writing that compliance with any requisition would be prejudicial to the interests of the Corporation.

The Honourable Mr. WEST:—That might involve the loss of a day. I have no objection to a Committee being appointed in the manner suggested by the Honourable Mr. Mehta. The object is to get an impartial Committee.

The Honourable Mr. TELANG:—I think the Corporation might be left to nominate the three members.

The Honourable Mr. WEST:—I think that would defeat the object of the whole thing. The majority would nominate three of their own partisans if there were not feeling. In the House of Commons where there is a division member for member is chosen by either side.

The Honourable the ADVOCATE GENERAL:—I think the Honourable Mr. Mehta's suggestion is a good one, the President of the Corporation, the Chairman of the Standing Committee and one member would form an efficient Committee.

The Honourable Mr. WEST:—I have no objection to that. Then otherwise the section may stand. Does the Honourable the Advocate General agree to that?

The Honourable the ADVOCATE GENERAL:—You would leave out the words “either permanently or”? I think it would be better to specify six months.

The Honourable Mr. RICHEY:—It seems to me after reading the letter of the Corporation that if they had had the advantage of hearing the arguments on both sides they would not have sent the letter in its present form.

The proposal to omit the words “either permanently or” was put to the vote.

The Council divided:—

Ayes.

The Honourable the Advocate General.
The Honourable Kashinath Trimback
Telang.
The Honourable F. Forbes Adam.
The Honourable Ráo Bahádur M. W.
Barvé.
The Honourable Pherozesha Mervanji
Mehta.
The Honourable Ráo Bahádur Behechar-
das Veharidas.

Noes.

Lieut.-General H. R. H. the Duke of
Connaught.
The Honourable J. B. Richey.
The Honourable R. West.
The Honourable J. R. Naylor.

So the proposal to omit the words was carried.

It was further agreed that the Committee of Inspection should consist of the President of the Corporation, the Chairman of the Standing Committee and one member elected by the Corporation. On this understanding the amendment was accepted, so that the section stood as follows:—

“(3) Provided that if, on such a requisition as aforesaid being made, the commissioner shall declare that immediate compliance therewith would be prejudicial to the interests of the corporation or of the public, it shall be lawful for him to defer such compliance until a time not later than the second ordinary meeting of the corporation after he shall have declared as aforesaid. If at such meeting, or any meeting subsequent thereto, the corporation shall repeat the requisition and it shall then still appear to the commissioner inexpedient to comply therewith, he shall make a declaration to that effect, whereon it shall be lawful for the corporation to elect one councillor who with the president of the corporation and the chairman of the standing committee a committee, who shall engage to keep secret, save as hereinafter provided, the existence and purport of such documents and matters as may be disclosed to them; and to the said committee the commissioner shall be bound to make known and to disclose all writings and matters within his knowledge, under his control, or available to him, and embraced within the requisition, and the said committee having taken cognizance of the information, writings and matters so laid before them shall determine by a majority, in case of difference, whether or not the whole or any part and which part, if any, of such matters ought to be disclosed to the corporation or kept secret for a defined time, which decision shall be conclusive and shall be reported to the corporation at the next ordinary meeting thereof, where also the commissioner shall be prepared to produce documents and to make any report or statement requisite to give effect to the decision of the committee when called on to do so by the corporation.”

At this stage of the proceedings the Honourable Mr. Naylor proposed the acceptance of the following section instead of section 65 (3) (c):—

“(c) On the occurrence or the threatened occurrence of any sudden accident or unforeseen event, involving or likely to involve extensive damage to any property of the corporation or danger to human life, take such immediate action as the emergency shall appear to him to justify or to require, reporting forthwith to the standing committee and to the corporation, when he has done so, the action he has taken and his reasons for taking the same and the amount of costs, if any, incurred or likely to be incurred, in consequence of such action, which is not covered by a current budget grant within the meaning of the expression as defined in section 130.”

The proposal was accepted and the Honourable Mr. Mehta's amendment to sections 65 (3) (c), 115, 116 and 117 were dropped.

The Honourable the ADVOCATE GENERAL :— I would suggest that we deal with section 30 now ; there is a slight flaw in it.

The Honourable Mr. NAYLOR :—Yes, but there are also some other clerical errors and I propose to take them all together afterwards.

The Honourable Mr. WEST proposed that the following section be substituted for s. 143, viz. :—

Payment to be made to the council, in lieu of the general tax, by the Secretary of State for India in Council.

“143. (1) The Secretary of State for India in Council shall pay to the council annually, in lieu of the general tax from which buildings and lands vesting in him are exempted by cl. (b) of s. 142, a sum ascertained in the manner provided in sub-ss. (2) and (3).

“(2) The rateable value of the buildings and lands in the city vesting in the Secretary of State for India in Council and beneficially occupied in respect of which, but for the said exemption, general tax would be leviable from the Secretary of State for India in Council, shall be fixed by a person from time to time appointed in this behalf by the Governor in Council, with the concurrence of the council. The said value shall be fixed by the said person, with the general regard to the provisions hereinafter contained concerning the valuation of property assessable to property-taxes at such amount as he shall deem to be fair and reasonable. The decision of the person so appointed shall hold good for a term of five years, subject only to proportionate variation, if in the meantime the number or extent of the buildings and lands vesting in the Secretary of State for India in Council in the city materially increases or decreases.

“(3) The sum to be paid annually to the council by the Secretary of State for India in Council shall be eight-tenths of the amount which would be payable by an ordinary owner of buildings or lands in the city, on account of the general tax, on a rateable value of the same amount as that fixed under sub-s. (2).”

The Honourable gentleman said :—Your Excellency,—The object of this proposal is to define more closely, and as I hope, better, the relation between Government and the Municipality in respect of the taxation of buildings and the lands connected therewith in the occupancy of Government. It is a hopeless task to arrive at a perfectly satisfactory determination as to the method in which buildings and lands, the property of Government and used by Government in the exercise of its sovereign power, should be assessed for local purposes. Most of the essays on taxation touch more or less on the subject, and in many cases before the Courts very acute discussions have taken place with reference to the right principles of rating in such cases. One instance if I remember aright was the Newport Docks case. In every such case it appears there has always been much to be said on both sides. And the interests of the city and the citizens of Bombay are so closely interlocked with the interests of the presidency and the whole empire that it is impossible to say when on the one side the interests cease and the other comes in. It is like the analysis of the various shades which overlap and blend to form white. It is essential therefore that we should arrive at some compromise and endeavour to fix upon a basis and method of taxation as satisfactory as in the present state of human information we possibly can. It is obvious there are several considerations attaching to Government buildings which do not attach to ordinary buildings occupied for purposes of profit, which we are bound to consider and provide for. Take for instance this hall where we are now assembled—it would be very valuable for the chief room of a bank and would sell for a considerable sum on account of its situation. But if it were rated at all it would, supposing it were let to a bank or mercantile firm, be rated for a profitable, a beneficial occupation, which does not now exist. Government keeps some of its buildings for a quasi-beneficial purpose, as for instance, the Paper Currency Office, but generally speaking, as in the case of the police office and buildings of that description they are occupied in the interest of the public at large. In the case of other buildings the citizens and the whole community share the gain where by their occupancy some considerable benefit is derived. The community therefore ought to pay something. They should not pay the full rate paid by owners of buildings by which they derive large profits, but it is right they should pay something. Public

The Honourable Mr. WEST:—I have no objection to that. Then otherwise the section may stand. Does the Honourable the Advocate General agree to that?

The Honourable the ADVOCATE GENERAL:—You would leave out the words “either permanently or”? I think it would be better to specify six months.

The Honourable Mr. RICHEY:—It seems to me after reading the letter of the Corporation that if they had had the advantage of hearing the arguments on both sides they would not have sent the letter in its present form.

The proposal to omit the words “either permanently or” was put to the vote.

The Council divided:—

Ayes.

The Honourable the Advocate General.
The Honourable Kashinath Trimback
Telang.
The Honourable F. Forbes Adam.
The Honourable Ráo Bahádur M. W.
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Noes.

Lieut.-General H. R. II. the Duke of
Connaught.
The Honourable J. B. Richey.
The Honourable R. West.
The Honourable J. R. Naylor.

So the proposal to omit the words was carried.

It was further agreed that the Committee of Inspection should consist of the President of the Corporation, the Chairman of the Standing Committee and one member elected by the Corporation. On this understanding the amendment was accepted, so that the section stood as follows:—

“(3) Provided that if, on such a requisition as aforesaid being made, the commissioner shall declare that immediate compliance therewith would be prejudicial to the interests of the corporation or of the public, it shall be lawful for him to defer such compliance until a time not later than the second ordinary meeting of the corporation after he shall have declared as aforesaid. If at such meeting, or any meeting subsequent thereto, the corporation shall repeat the requisition and it shall then still appear to the commissioner inexpedient to comply therewith, he shall make a declaration to that effect, whereon it shall be lawful for the corporation to elect one councillor who with the president of the corporation and the chairman of the standing committee (or if the president of the corporation is also chairman of the standing committee, with the said president and one member of their own body elected by the standing committee) shall form a committee, who shall engage to keep secret, save as hereinafter provided, the existence and purport of such documents and matters as may be disclosed to them; and to the said committee the commissioner shall be bound to make known and to disclose all writings and matters within his knowledge, under his control, or available to him, and embraced within the requisition, and the said committee having taken cognizance of the information, writings and matters so laid before them shall determine by a majority, in case of difference, whether or not the whole or any part and which part, if any, of such matters ought to be disclosed to the corporation or kept secret for a defined time, which decision shall be conclusive and shall be reported to the corporation at the next ordinary meeting thereof, where also the commissioner shall be prepared to produce documents and to make any report or statement requisite to give effect to the decision of the committee when called on to do so by the corporation.”

At this stage of the proceedings the Honourable Mr. Naylor proposed the acceptance of the following section instead of section 65 (3) (c):—

“(c) On the occurrence or the threatened occurrence of any sudden accident or unforeseen event, involving or likely to involve extensive damage to any property of the corporation or danger to human life, take such immediate action as the emergency shall appear to him to justify or to require, reporting forthwith to the standing committee and to the corporation, when he has done so, the action he has taken and his reasons for taking the same and the amount of costs, if any, incurred or likely to be incurred, in consequence of such action, which is not covered by a current budget grant within the meaning of the expression as defined in section 130.”

The proposal was accepted and the Honourable Mr. Mehta's amendment to sections 65 (3) (c), 115, 116 and 117 were dropped.

The Honourable the ADVOCATE GENERAL :—I would suggest that we deal with section 30 now ; there is a slight flaw in it.

The Honourable Mr. NAYLOR :—Yes, but there are also some other clerical errors, and I propose to take them all together afterwards.

The Honourable Mr. WEST proposed that the following section be substituted for s. 143, viz. :—

Payment to be made to the council, in lieu of the general tax, by the Secretary of State for India in Council.

“143. (1) The Secretary of State for India in Council shall pay to the council annually, in lieu of the general tax from which buildings and lands vesting in him are exempted by cl. (b) of s. 142, a sum ascertained in the manner provided in sub-ss. (2) and (3).

“(2) The rateable value of the buildings and lands in the city vesting in the Secretary of State for India in Council and beneficially occupied in respect of which, but for the said exemption, general tax would be leviable from the Secretary of State for India in Council, shall be fixed by a person from time to time appointed in this behalf by the Governor in Council, with the concurrence of the council. The said value shall be fixed by the said person, with the general regard to the provisions hereinafter contained concerning the valuation of property assessable to property-taxes at such amount as he shall deem to be fair and reasonable. The decision of the person so appointed shall hold good for a term of five years, subject only to proportionate variation, if in the meantime the number or extent of the buildings and lands vesting in the Secretary of State for India in Council in the city materially increases or decreases.

“(3) The sum to be paid annually to the council by the Secretary of State for India in Council shall be eight-tenths of the amount which would be payable by an ordinary owner of buildings or lands in the city, on account of the general tax, on a rateable value of the same amount as that fixed under sub-s. (2).”

The Honourable gentleman said :—Your Excellency,—The object of this proposal is to define more closely, and as I hope, better, the relation between Government and the Municipality in respect of the taxation of buildings and the lands connected therewith in the occupancy of Government. It is a hopeless task to arrive at a perfectly satisfactory determination as to the method in which buildings and lands, the property of Government and used by Government in the exercise of its sovereign power, should be assessed for local purposes. Most of the essays on taxation touch more or less on the subject, and in many cases before the Courts very acute discussions have taken place with reference to the right principles of rating in such cases. One instance if I remember aright was the Newport Docks case. In every such case it appears there has always been much to be said on both sides. And the interests of the city and the citizens of Bombay are so closely interlocked with the interests of the presidency and the whole empire that it is impossible to say when on the one side the interests cease and the other comes in. It is like the analysis of the various shades which overlap and blend to form white. It is essential therefore that we should arrive at some compromise and endeavour to fix upon a basis and method of taxation as satisfactory as in the present state of human information we possibly can. It is obvious there are several considerations attaching to Government buildings which do not attach to ordinary buildings occupied for purposes of profit, which we are bound to consider and provide for. Take for instance this hall where we are now assembled—it would be very valuable for the chief room of a bank and would sell for a considerable sum on account of its situation. But if it were rated at all it would, supposing it were let to a bank or mercantile firm, be rated for a profitable, a beneficial occupation, which does not now exist. Government keeps some of its buildings for a quasi-beneficial purpose, as for instance, the Paper Currency Office, but generally speaking, as in the case of the police office and buildings of that description they are occupied in the interest of the public at large. In the case of other buildings the citizens and the whole community share the gain where by their occupancy some considerable benefit is derived. The community therefore ought to pay something. They should not pay the full rate paid by owners of buildings by which they derive large profits, but it is right they should pay something. Public

buildings are not always built on purely economical considerations. This place might have been run up as a chawl, but it would not be an ornament to the city and pleasing to every citizen who walks by, who undoubtedly gets a degree of pride as well as of profit out of it, and regards it with a certain degree of self-gratulation. If he says, "make my city handsome and attractive that I may look upon it with pleasure and be proud of it," he should contribute towards the cost of doing so. Government here own very large spaces of unoccupied land and that land is at present given up in a great measure to the healthful recreation of the people. Now if Government were subject to be charged on that land at its mercantile value, it might say: "If we are to be charged with that we shall retaliate and charge 4 annas entrance," and so most of the healthful recreation ground in the city would be heavily charged and the health of the city would necessarily suffer. No doubt Government would be very hard pressed before it would retaliate in that manner. But there is hence a strong claim to considerations in dealing with public buildings, and they ought not to be placed entirely and without qualification on the same footing as if they were banks, mercantile buildings or offices of railway companies. Another standard too should be applied to public buildings which are so handsome and built on so fine a scale in Bombay. It has appeared to Government as being fair that a deduction of 20 per cent. from the mercantile value should be made in assessing the value of public buildings in Bombay for the purposes of rating for the municipal funds. The mode in which the assessment is to be made is somewhat a matter of detail. What is proposed is that a competent person should be appointed once in five years, who shall make his estimate, and he is to be a person approved by the Corporation. I suppose there can be no possible objection to that. No one could reasonably raise any objection. If in the course of five years Government raise other spacious and extensive buildings that will be an extension of their property on which there shall be additional revenue. It may be asked why have a period of five years. It would be undesirable to have the matter gone into year by year. It is better to fix a reasonably long time, and five years seem to me to be reasonable. I trust this clause will be accepted.

The Honourable Mr. FORBES ADAM:—Your Excellency,—After listening to the remarks of the Honourable Mr. West in support of this amendment, I feel there is no doubt in my mind that the principle involved is a sound one—that Government should regard these properties as occupying a special place, which should be recognised in Municipal taxation. But it is almost impossible for me to recognise, or as a representative of the Port Trust to accept this without bringing to notice section 144 affecting the property of the Trustees of the port. The Trust occupies a very peculiar and special position, and although I have not had time to go thoroughly into the whole matter as I would wish, yet I am prepared to submit to the consideration of the Council what in my view and my hope may possibly lead them, so far as my amendment is concerned, to a satisfactory resolution, that is, to a modification of its provisions. At present I only wish to say that I recognise the principle that Government should treat in a special way property which is only partially held for beneficial purposes.

The Honourable Mr. TELANG:—The question which has been now brought before the Council by the Honourable Mr. West is a question which has been a source of considerable trouble to this Council in times past. Many years ago, when the Municipal Act of 1872 was under consideration, the question was raised whether it was at all within the power of the Council to assess for municipal purposes buildings held by the Secretary of State. That question is not now before the Council, and I will not therefore say anything in reference to it. I have heard what the Honourable Mr. West has said with regard to the matter under consideration, and there are, it seems to me, one or two points which are not quite satisfactorily settled by the honourable member's observations. In the first place I do not quite gather from the remarks of the honourable member why in fixing the rateable value as distinguished from the deductions to be allowed for, he proposes that in respect to Government buildings there should be a special person appointed to assess the value upon which taxation shall be levied. The original fixing of the assessable value on Government buildings and all other buildings in the city should, it seems to me, be made on such a basis that equal justice may be meted out to the poor ratepayer and the wealthy Central Government, and this can best be secured if the assessment is made by one and the same officer. I do not quite understand why Government is in this respect to stand on a different footing from the ordinary householder. With regard to the

proposed reduction of eight-tenths on Government property I conceive there is a great deal in the arguments adduced by the Honourable Mr. West, but something must also be taken into account against it. It is to be remembered that it is not only Government which builds on other than purely economical principles. Private householders also build sometimes on other than economic principles. But no deduction is made on account of the æsthetic appearance of their buildings which may be equally pleasing to the eye with those large Government buildings to which the Honourable Mr. West refers. Yet, surely, these houses in which æsthetics receive as much attention as accommodation or economy should meet with similar consideration. Another aspect of the question which has to be considered is this. The Central Government is the Government of the whole presidency, and if that Government parts with some of its power in certain areas in favour of Local Boards, the question is how much it should part with, at the same time, out of the general revenues derived from the whole presidency. Looking on the subject from this point of view I cannot see how this deduction is to be justified. It is a question which in my mind is not easy to solve. I speak subject to correction, but I understand that the direction in which the practice in England has in recent years tended in the matter of local rating of property belonging to the Central Government—and that is the way the matter should be looked at—is towards an assimilation of Government and private property on principle. I should prefer the amendment to the section as it stands. But I throw out these suggestions merely in order that the Honourable Mr. West and the other honourable members may see how far there is anything sound and practical in them.

The Honourable the ADVOCATE GENERAL:—I entirely accept the principle contained in the Honourable Mr. West's amendment, and I agree with him on the point regarding the nomination of a special person to assess Government buildings. The general way in which property taxes are fixed here is on the rent at which the property lets, with certain deductions; and if this system is to be applied to Government buildings Government would be an immense gainer. If you assess this building at the rent at which it would be likely to let the amount would be very small indeed. As to rating in the English counties it is well known that great houses are assessed at the rent for which they would let. In some great houses in my own part of England the amount is something ridiculous. A ducal residence, the outlay on which would represent a capital yielding an interest of many thousands a year, is not rated at more than four or five hundred per year. It is said by the assessor that no person would dream of paying more than that amount. When you come to these immense buildings it will probably be found that the amount at which they are rated would not be arrived at in the same manner as that in which the rateable values of the ordinary houses of the town are fixed. Take the Secretariat. If we were to value it at what a private owner or a bank would give for it, the amount would be very small, indeed, compared with what is paid for it now. And I maintain therefore that a special officer does seem to be necessary. It is impossible, as the Honourable Mr. West has said, to state positively what the deduction ought to be, but I think the present deduction allowed of two-tenths, and not eight-tenths as the Honourable Mr. Telang observed, is by no means a liberal one. One verbal amendment I should like to suggest is that the word "taxes" should be expunged and "rates" substituted. "Taxation" is customarily applied to Imperial taxes, whilst "rating" is used to designate local taxes. Then as to the words "property tax." There may be a property tax in India some day, and it would not be desirable to make use of the term to describe any portion of the local rates. I would describe these taxes as rates throughout the whole clause.

The Honourable Mr. WEST:—I have gone on the principle of adhering so far as possible to the phraseology in the sections as they are drawn, and I therefore use the word "taxation" here because it is used throughout the Act. If you refer to section 139 you will find the word is used. If "rates" were the word used throughout, then I should have no objection whatever.

The Honourable Mr. PHEROZESHAH MEHTA:—I think the Honourable the Advocate General has shown that the amendment will rather cut at both ends as regards the income of the Corporation. So far as the property of Government is concerned he points out the necessity for appointing a special officer, because he is of opinion that Government buildings should be assessed in a special manner, and the special officer would take care to assess them at lower rates than those required by their full valuation.

The Honourable the ADVOCATE GENERAL:—My idea is that if assessed by the Municipal Assessor the assessment would be unfavourable to the Municipality.

The Honourable Mr. PHEROZESHAH MEHTA :—Then I do not see why we should not be allowed to assess them through the Municipal Assessor and put the full rental on them.

The Honourable the ADVOCATE GENERAL :—That would be much less than the amount which Government is already paying.

The Honourable Mr. PHEROZESHAH MEHTA :—The assessment by a special officer would cut at one end, and the deduction of 20 per cent. now proposed cuts at the other. What I wish to point out is whether this percentage of deduction is not too large. I am quite prepared to admit that in the case of a large owner like Government an allowance should be made for the saving in the cost of collection and even of incidental litigation also. Now the cost of collection is, I believe, about three per cent. and it would be a liberal allowance to deduct five per cent. for the reasons I have mentioned. Another five per cent. might be allowed for the special character of the property and buildings owned by Government. A deduction of 20 per cent. strikes me as too large.

The Honourable Mr. WEST :—I am pleased to find, your Excellency, that the speeches to which we have listened afford a very fair illustration of the difficulty of arriving at an entirely satisfactory basis of taxation for public buildings. Your Excellency's Government considered this matter with a desire to be perfectly fair towards the tax-payer in the whole presidency and the tax-payer in Bombay. Although Government is from time to time personified, it is only after all an artificial person, and it has no really personal interest in the matter. I think it desirable that a special valuation should be made by an officer appointed with the concurrence of the Corporation by Government. It would be extremely undesirable that the regular assessor or assessors, employed by the Corporation, should value Government buildings. If that plan were followed Government would receive its notices on countless dirty pieces of paper, and if an appeal were carried into the Courts on matters of assessment we should have Government engaged in a wrangling with the Corporation, and the result would be very undignified. I think the Council must have been struck with the Honourable the Advocate General's remarks as to the advisability of having a special assessor appointed. If the Corporation concurred with Government in appointing him, there seems to be no reason whatever for any one objecting to him. As to the æsthetic considerations on which the Honourable Mr. Telang dwelt with that love of æsthetics which is known to be a characteristic of that gentleman, such considerations in the individual are a purely selfish consideration or very closely connected with a selfish consideration; but Government, in raising handsome buildings, is not actuated by any selfish considerations at all—the only selfishness is in its desire to please its children in Bombay and raising the general credit of the empire by putting such handsome structures before the eyes of the people. If Government were rated on full value the assessment would obviously be too high, much money having been expended for the delectation of visitors to Bombay and the people of Bombay. Then the Honourable Mr. Telang points out that Government parts with one of its functions in committing Bombay to a Municipality, and it is a question how much of its own property should be exempted from taxation. This is one of the indeterminable problems to which it is not possible to arrive at a satisfactory solution. But the Honourable Mr. Telang, with his usual candour, has admitted that there is force in the arguments that the valuation should not be on the same basis as private property, and if Government chose to build these public buildings in some remote and obscure places they would be worth a quarter or one-tenth the value they are now. If they were built at Bāūdra, or at Thāna, Government business—*qua* Government business—could be carried on just as well and the buildings would not be rated at anything like what they are in Bombay. Therefore, it appears to me quite reasonable that Government buildings placed in the centre of Bombay for public convenience ought to be allowed a very considerable reduction on account of their contribution to the general comfort and welfare of the city. We must go on the principle of compromises, but I do say that the Government of His Excellency has considered the matter in a very fair spirit and this amount of deduction can fairly be claimed. Similar remarks to those of the Honourable Mr. Telang were made by the Honourable the Advocate General, and I doubt not that the Honourable Mr. Mehta, having regard to the interlacing of the interests of different portions of the community, will admit that they are so closely entwined that we cannot do more than arrive at a generally satisfactory conclusion. The careful consideration Government has given to this question has brought us to the proportion here provided for—twenty per cent. of deduction, and in the absence of any mathematical evidence, I think this is a proper amount.

His Excellency the PRESIDENT :—I would only add one remark. Let us suppose Bombay had not been made the Capital of the Presidency and the question were still open, would not other towns be very pleased to give us a reduction far beyond two-tenths ?

The Honourable the ADVOCATE GENERAL :—Would your Excellency allow me to ask the honourable mover if he will consider the question of a change of words—rates for taxes. The word rates is more suitable for local levies and taxes for Imperial.

The Honourable Mr. WEST :—I will consult with the Honourable Mr. Naylor upon the subject.

The amendment was then adopted.

The Honourable Mr. Mehta then proposed that to section 36 of the Bombay Port Trust Act, 1879, as it is proposed to amend it by section 144 of the Bill, the words "as the approximate amount properly payable by the Board on account of such general tax" be added. And the Honourable Mr. West proposed that in section 36 of the Bombay Port Trust Act, 1879, as it is proposed to amend it by section 144 of the Bill, lines 16 to 18, the words "a sum ascertained in the manner provided in sub-sections (2) and (3)" be substituted for the words "such lump sum as the Governor in Council shall from time to time determine;" and that the following sub-sections be added to the said section, viz. :—

"(2) The rateable value of the buildings and lands in the city vesting in the Board in respect of which the said tax would be leviable from the Board shall be fixed from time to time by the Governor in Council. The said value shall be fixed with a general regard to the provisions contained in the City of Bombay Municipal Act, 1888, concerning the valuation of property assessable to property-taxes at such amount as the Governor in Council shall deem to be fair and reasonable. Every such decision of the Governor in Council shall hold good for a term of five years subject only to proportionate variation, if in the meantime the number or extent of the buildings and lands vesting in the Board materially increases or decreases.

"(3) The sum to be paid annually to the Council by the Board shall be nine-tenths of the amount which would be payable by an ordinary owner of buildings or lands in the city, on account of the general tax, on a rateable value of the same amount as that fixed under sub-section (2)."

The honourable gentleman said :—Your Excellency,—The object of this amendment, like that just adopted by the Council, is to fix a principle on which the rateable value of the property of the Port Trust is to be determined. Government has given an equal amount of consideration to this proposal as to its predecessor, and it appears to them that a somewhat higher basis of assessment may reasonably be adopted on the property now in question than on buildings solely occupied for public utility. The Port Trust property is property on which very large sums are realised. It is true that the Port Trustees are not interested in the matter except as intermediaries between the merchants, shippers and ship-owners and the Municipality, which furnishes great comforts and conveniences. Though the Port Trust realises very great sums they have only *quasi*-beneficial occupation. Yet even in a representative character the Port Trust may properly be taxed for the advantages it enjoys. It may clearly be called upon to contribute to the general fund of the Municipality, not so much as the private property-owner, but something more than Government. A medium line has been drawn for it between Government and private property-owners in this respect—Government paying on 80, the Port Trust 90, and the private owner 100 per cent. A careful perusal of this section, as I have read it, does not leave the assessment to the Municipal Assessor, who might be partial to the Municipality as against the Port Trust, but gives Government the power to fix the amount, and I think the reduction I have specified is a very fair basis.

The Honourable Mr. FORBES ADAM :—Your Excellency,—I have had great difficulty in dealing with this question and in making up my mind what position to take. Of course, the object we have in view now is to arrive at what is fair to the Port Trust and the Municipality, and although I have had great pleasure in supporting the amendments proposed by my honourable colleagues, I cannot expect to receive the same support from them. There were no doubts in the one case. There are doubts in the other. I confess there has always been and is still a grave doubt in my own mind as to how the Port

Trustees should be treated on the subject of taxation. The Honourable Mr. West has referred to the profits realised by the Trust. But there is really no profit. All we have to do is to raise the revenue necessary to pay the interest on our loans, and if our revenue increases *pro rata* to reduce our charges on the trade of Bombay, and thus add to the commerce of the city and consequent prosperity of the Municipality. I may remind the Council that not very long ago a long correspondence took place between the Municipal Commissioner and the Port Trust, in the time of Mr. Ollivant, as to the assessment of the property of the Trust. This morning I had occasion to look into the figures contained in that correspondence, and I find that taking the basis which Mr. Ollivant thought was fair in an ordinary way and treating us as private owners, there was a vast difference indeed. As private owners we should have been assessed at Rs. 2,15,000. Government after full consideration allowed Rs. 1,61,000. I use the figures roughly. Deducting 20 per cent. from the former sum you get Rs. 1,72,000, and putting this against what we are paying Rs. 1,38,000, the difference is Rs. 34,000. In our present position Mr. West's amendment if carried will cause the Port Trust to pay more by Rs. 68,000 than at present, and if the Trust was treated as Government in the last amendment, that is rated twenty per cent. reduction, the difference would still be Rs. 34,000 against the Trust. I would like to submit to the Council whether the Port Trustees should not be treated differently from private individuals. The revenue of the Port Trust is largely enhanced because bandars which Government in former years allowed the public to use free of charge are now merged in the Trust property. The revenue of the Town Customs Bandar for the first year after the fees were imposed was Rs. 1,96,513, and then there was the Free Musjid Bandar, where an enormous native trade was done. The same wharfage fees are charged at them as are charged at bandars which were formerly private property. Wharfage fees are a direct tax upon trade, and the rates are fixed, not according to the measure of convenience afforded, but according to the financial requirements of the Trust. The Trust has to pay $4\frac{1}{2}$ per cent. interest on the cost of properties purchased for it by Government. This interest is not earned by the land and the deficiency has to be made up from wharfage. Under the Municipal Act not only is the actual revenue of the Port Trust including wharfage fees proposed to be taxed, but also the value of vacant lands which the Trustees cannot let. The Trust is thus taxed twice over—once by reason of their having to make up from the wharfage fees $4\frac{1}{2}$ per cent. interest on the cost of the vacant land, and the second time on the cost of the vacant land itself, at the rate at which it "may be reasonably expected to let." In the last settlement of Port Trust assessment Government allowed deductions from revenue claimed by the Trustees on account of working expenses and considered them "reasonable," which the Honourable Mr. West's amendment would deprive them of. For example, under the Amendment Bill, the Trustees could not claim deduction of the equivalent of the old Police and lighting rates, namely 4 per cent. from the assessment value of their property. The Select Committee in paragraph 49 of their report, admit the logical correctness of such a claim, and in the case of the Trust there would be no difficulty in allowing it, as the Trustees' rates are paid for the year in one sum, and there are no other like instances as explained in the assessment correspondence. The Trust has conferred great benefit upon the town at its expense. The unwholesome foreshore, along the eastern shore of the island, has been reclaimed. On Elphiustone and Mody Bay Estates alone it has already made ten miles of public roads and ten miles of drain, while the roads and drains of the city have been made at the expense of the Municipality.

I do not wish to be considered as the special pleader for the Port Trust here. If I professed to be this, doubtless the Port Trustees would repudiate me. But I merely wish to place before the Council the claims of the Trust on their merits to a substantial reduction on the full value of their property for rating purposes. I may remind the Council that the Port Trust are going to make provision in the way of public conveniences—latrines and water-supply—for the frequenters of their docks and wharves; not merely for their own employes but for the general public who resort there. Such considerations ought to weigh. If section 144, as recommended by the Select Committee, be passed, it will be possible fairly to consider the claims of the Trust. But if the Honourable Mr. West's amendment be accepted it would not be possible to pay much heed to them. I trust my statement will weigh with the Council, and I hope that the Honourable Mr. Mehta will also take into consideration the reasons why the Port Trust should be treated differently from private owners, and that the clause will be left as it stands.

The Honourable Mr. PHEROZESHAH MEHTA :—Your Excellency,—I do not think that if this amendment be passed, the Port Trust will be quite in the position apprehended by the Honourable Mr. Forbes Adam. When the question of the assessment of the Port Trust property was under discussion in 1884-85, Mr. Ollivant, on behalf of the Municipality, claimed the sum of Rs. 2,15,525 as the amount ascertained on principles of assessment accepted elsewhere as the right principles to be applied in assessing the class of property owned by the Port Trust. If the principles applied are not correct, the Port Trust could always claim to have the mistake remedied. What Government did on the occasion mentioned was that they found that Rs. 1,79,100, and not Rs. 2,15,525, was the sum payable according to the correct principles. They then allowed a deduction of 10 per cent., because they said that Port Trust property ought not to be rated according to the same strict principles which govern the rating of private property. In saying this it seems to me that Government forget that the principles which had been applied were the same as those applied in England to property of a similar character, used for public purposes. I confess it seems to me to be an utter fallacy to contend that property which is beneficially occupied and used should be exempted from strict principles of assessment, because the bodies to which they belong discharge public useful purposes. The only argument that I find urged for exempting Port Trust property from strict principles of assessment is that the Port Trust helps the trade of Bombay, and thus promotes the general prosperity of the city. But the same thing may be said of the mill-industry, an industry which has done not a little for the growth and prosperity of Bombay. But nobody contends that it should be treated in any exceptional manner and should not be called upon to pay for the services which the Municipality renders to it. It seems to me that the only sound principle to apply in all such cases is that all property, whatever be its use or purpose, should pay the ordinary rates and cesses for municipal services rendered. If the Port Trust benefits the trade of Bombay, so does the Municipality by making the city a safe, healthy and commodious place to carry it on. I therefore strongly hold that there is no case made out for not assessing the property of the Port Trust in the same way as if it belonged to private owners. At the same time I am willing to admit that, as I have said before in the case of Government, a certain percentage might be fairly allowed for the saving in the cost of collection, incidental litigation, and occasional loss. I have before pointed out that the cost of collection comes to about three per cent. and two per cent. might be allowed for the litigation and the loss. Instead of the deduction of 10 per cent. proposed by the amendment; it thus seems to me that five per cent. would be a fair and sufficient allowance. I will also call the attention of the Council to the period of five years for which the assessment is to remain fixed. That period, in the case of Government, is not open to much objection, as the property of Government is not liable to much variation. In the case of the Port Trust, however, their property is in a state of development, and it will continue to be so for some time to come. The large increases in the amounts payable for the last three years shows this. Under these circumstances I will ask the honourable mover of the amendment to consider if the period of five years is not much too long. For a long time it will simply mean that a not inconsiderable portion of Port Trust property will escape assessment altogether.

The Honourable Mr. WEST :—Your Excellency,—I think the two speeches we have heard, each of them representing the points of view of the Port Trust and the Municipality, fairly balance one another. The Honourable Mr. Forbes Adam says the rating value should be brought down very considerably, which Mr. Mehta thinks should be put up very considerably, whilst an equitable Government steps in between the two and endeavours to establish a fair basis. The Honourable Mr. Forbes Adam said that the object of the Port Trust is to benefit the trade of Bombay. No doubt that is so. The Honourable Mr. Mehta partly answers by saying so also does the mill-owning interests, which as a *tu quoque* seems to be fair. But that is not a sufficient answer to the claim. There is a stronger point which might be made by the Honourable Mr. Forbes Adam besides that he has made in reference to police and lighting, which is that the Port Trustees have to pay interest on loans—and a pretty high rate of interest—but then further reflexion shows that these are *quasi-private* property. They are potential property and should be liable to rates. No direct reduction is made for working expenses, but as there is still a deduction in this sense—you value property at what it produces, what it will realise per annum. And Government in making its valuation will not say “here is a gross sum received per annum,” but will deal with the gross profits, thus, as will be seen, making the deduction

for working expenses indirectly. As to the maintenance of drains and the supply of water; these if we assimilate the Port Trust with private property, are not property subject to exemption. If the Port Trust spends money in this way it does not do so without increasing the value of its property and as to the provision of latrines and water I am glad to hear that the Port Trust is preparing to do this without any further controversy. The public do not frequent their property for the purpose of availing themselves of these conveniences. As to the drains and roads whatever charges are imposed upon the Port Trust in this respect are disbursed by the Port Trust through charges levied in the form of dues on the ships and the trade of Bombay. So that effectually the tax is transferred to the trade of Bombay, which benefits from the Municipality on the one side and by this somewhat involved process bears the burden of taxation on the other. This seems perfectly equitable. The property, however, can only be regarded as *quasi* public property standing on the edge between private and public property. That is the view taken by His Excellency's Government, and the line is struck exactly between the rating value of the two. This is the fairest basis Government has been able to fix upon.

The Honourable Mr. FORBES ADAM:—I would just point out that it is the interest of the city and every one in it that the Port Trust should be enabled to cheapen and encourage the trade of Bombay. The whole city would benefit by this, and I would ask the Council to consider what I have urged against the amendment.

The Honourable Mr. Forbes Adam asking His Excellency the President to be excused for voting,

The Council divided:—

Ayes.

Lieut.-General H. R. H. the Duke of
Connaught.
The Honourable J. B. Richey.
The Honourable R. West.
The Honourable J. R. Naylor.
The Honourable the Advocate General.
The Honourable Kashinath Trimbak
Telang.
The Honourable Pherozechah Mervanji
Mehta.

Nos.

The Honourable Ráo Bahádur Mahadeo
Wasudeo Barvé.

So the amendment was carried.

The Honourable Mr. Mehta's amendment was withdrawn.

The Honourable Mr. TELANG moved that sub-s. (2) of s. 149 be omitted.

The honourable gentleman remarked that he saw no reason why the Commissioner should require to see the instrument of transfer.

The Honourable Mr. NAYLOR:—The honourable member has mentioned this difficulty to me privately and I to some extent concur in his view. I propose to get over the difficulty by moving that for the clause he refers to, s. 149 (2), the following be substituted:—

“(2) On receipt of any such notice, the Commissioner may, if he thinks it necessary, require the production of the instrument of transfer, if any, or of a copy thereof obtained under s. 57 of the Indian Registration Act, 1877.”

Act, 1877.”

The Honourable Mr. TELANG:—I withdraw my amendment in favour of that.

The Honourable Mr. TELANG's amendment was accordingly withdrawn and that of the Honourable Mr. Naylor accepted.

On Section 219 being reached the Honourable Mr. Pherozechah Mehta moved that in ss. 219, 223, 244, 259, 267, sub-s. (2), 289, 293 and 403, &c., the word “council” be substituted for the word “commissioner”, and the words “when authorized by the council either generally or specially in this behalf” be omitted; and that in ss. 222, 250, 260, 264, 287, sub-s. (2), and 294, the word “council” be substituted for the word “commissioner.”

The honourable gentleman confined his remarks to section 219, but observed that the result of this would govern the others which were to a similar effect. In speaking to the amendment proposed to section 219, the honourable gentleman said:—Your Excellency,—The object of my amendment is not to change the purport of the section, but to convey in simpler language what the section as framed at present endeavours to do in a round-about way. I propose that the word 'Corporation' should be substituted for the words "the Commissioner when authorized by the Corporation either generally or specially in this behalf." The scheme of the Bill, as now amended, I take to be this. By section 65 as amended the municipal government of the city is vested in the Corporation while the executive functions for carrying out what the Corporation may require to be done is vested in the Commissioner.

Now sections 62, 63, and 64 describe generally and collectively the duties cast by the Bill on 'the Corporation'; and the different clauses of these sections may be said to contain the short heads of these different duties. It will be observed that these duties are laid on the governing body—the Corporation only. When we come to chapter nine, we find that that and succeeding chapters are devoted to detailed provisions in reference to the general heads collected in the sections I have named, in their different clauses. For example, chapter nine, which relates to drains and drainage works, is a detailed expansion of clause (a) of section 62—"the construction, maintenance and cleansing of drains and drainage works, &c." Chapter ten which relates to the 'water-supply' is an expansion of clause (b)—"the construction and maintenance of works and means for providing a supply of water, &c., &c." And each of these chapters, so expanded in detail, contains, so to say, an introductory section enunciating the duty cast upon the Corporation. Section 219 is one of such sections; its words are almost the same as those of clause a of section 62. Under these circumstances it seems to me that as a matter of drafting, the proper word to describe the body on whom the duty is cast should be the word 'Corporation'; the words 'the Commissioner, when authorized by the Corporation, either generally or specially in this behalf' are a useless circumlocution to effect the same object. The use of the word 'Corporation' will not give executive functions to that body. Whenever the question is raised with regard to any section in the Act, on whom the duty lies of performing a special function, section 65, which is a general controlling section, will step in, and assign the executive functions relating to the performance of any act or duty to the Commissioner, all the others to the Corporation. It will be a cumbrous mode of doing things again to embody in some sections what is meant generally to be effected by section 65. I trust honourable members will observe that I do not propose this amendment with regard to sections which deal with purely executive matters.

The Honourable Mr. NAYLOR:—Your Excellency,—We have now arrived at the executive chapters of the Bill, and we are met on the threshold by a series of amendments, the object of which is to enact that the executive provisions of these several chapters shall be carried out under the direction and orders, not of the Commissioner, but of the Corporation. The effect of this series of proposals, if carried, would be that the name of the Commissioner would almost entirely disappear from these chapters of the Bill, and the Corporation would be solely vested with the powers which in the Bill as it now stands are, as I think, wisely distributed between the Corporation and the Commissioner. The Council must at a glance see that the point which is involved in these proposals of the Honourable Mr. Mehta and the Honourable Mr. Telang affect a very vital principle of the Bill,—the principle, namely, that in the exercise of his executive power the Commissioner, within such limits as the Bill expressly prescribes, shall be independent. In his speech on the second reading the Honourable Mr. Mehta took occasion to observe that the Bill which we have now before us was, as originally introduced, a retrograde measure, in that it fell back upon the policy of the Municipal Bill of 1865. He maintained that that policy was designedly abandoned by this Council in 1872, when the present Municipal Act was passed, and that in the Bill now submitted to this Council that policy is again revived, and in support of this proposition he quoted some remarks made at the third reading of the Bill of 1872 by the Honourable Mr. Rogers, in which that gentleman said "A great deal of mistrust as to the power of the Municipal Commissioner has, I think, arisen from the wording of section 42, but the words 'entire executive power and responsibility for the purposes of this Act shall be vested in the Commissioner' do not mean to imply that he can do as he likes. He is simply the executive officer of the Corporation, with the

power to carry out all that he is ordered to do by the Corporation, who must provide him with the necessary funds." Now, I do not question that that remark was made by the Honourable Mr. Rogers, but I submit that to quote a single extract from the whole of the proceedings which led to the passing of the Act of 1872 in order to illustrate the views which guided the Council in passing that Act was certainly not a fair way of arguing the case. The Honourable Mr. Mehta is not the only gentleman who has perused the proceedings of this Council in respect of the passing of former municipal Acts. I have had frequent occasion to do so myself and it struck me when the Honourable Mr. Mehta was quoting from those proceedings that the impression which he had derived from them was very different from what I myself had received.

The object of the Bill of 1872 was not to diminish the executive power of the Commissioner, as it had existed under the Act of 1865, but to strengthen the control over the expenditure of the Commissioner. The Honourable Mr. Tucker, when introducing the Bill of 1872, made the following remarks:—"In the matter of sanitary improvement I think there can be no doubt that great progress has been made and much good effected, but it was shown last year that the financial defects that marked the whole system of municipal administration still continued in the new, notwithstanding the control that was attempted to be exercised by the Bench of Justices and the Government." "When the Act of 1865 was introduced there was a deficit, as Mr. Cassells supposed, of 14 lakhs of rupees, but really, as has since been proved, of a considerably larger amount, and similar large deficits have recurred periodically; and the Municipality has been obliged, on two occasions, to raise large loans of 15 lakhs to meet its current expenditure. It was obvious that such a state of affairs could not be allowed to continue, and at the request of the Bench of Justices last year a committee was appointed to enquire into the financial condition of the Municipality, and the result of the report of that committee, which showed that the municipal expenditure had largely exceeded its income, led to our reconsidering again the whole system of self-government." Then further on he said:—"It was intended that in financial matters there should be control, and a special officer was appointed for that purpose. If that controller really had controlled, it is possible we might have been spared a great deal of what has happened; but unfortunately for the city and the Government, and for all concerned in this matter, the controller did not control, but became subordinate when he should have been superior." "Latterly no doubt the Bench of Justices have made a strong effort to control the Municipal Commissioner, but for a long time either from want of experience or want of persistence in their efforts or from certain inherent defects in the constitution of the Corporation they were unable to effect this object. But there were also some defects in the law itself which prevented or impeded that efficient action on the part of the Justices which might have been anticipated. One defect was the undefined and uncertain number of members of which the Corporation consisted. There were between 300 and 400 Justices and at any meeting it was quite uncertain what number might be brought forward on one side or the other. It was, therefore, impossible that there should be any recognized system of opposition or any of that systematic organisation by which assemblies at home maintain regular and consistent action. And this was certainly a defect in the scheme as it emanated from the Council of 1865." In order to remedy these defects, the Bill of 1872 provided for converting the Bench of Justices into an electoral college, and for constituting the assembly, with which we are so well acquainted, the Municipal Corporation of sixty-four members—part elected by the ratepayers, part by Government, and part by the electoral college, and also an inner chamber or Town Council, whose special work was to control the financial administration of the municipality. There was no intention whatever, when the Honourable Mr. Tucker introduced the Bill of 1872, of in any way detracting from the authority for executive purposes which the Commissioner had enjoyed since 1865. In corroboration of this statement I will quote a few other passages from the speech of the Honourable Mr. Tucker, when introducing the Bill. He said:—"The chief object of the Act of 1865 was to establish a strong and efficient administration for the purpose of carrying out sanitary improvements, and for reducing the death-rate of the city, which was shown at that time to have advanced to a very unsatisfactory figure." Again he said: "As I said before, the object of Mr. Cassells in 1865 and of the gentlemen who supported him in this Council was to create a strong executive Commissioner, who would be able to provide promptly for the needs of the city and would not be trammelled either by colleagues or any other authoritative interference,

except to a limited extent." And with regard to his own view he said: "The Municipal Commissioner, the executive officer, will be left with complete executive power within the limits assigned by the Budget and such other limitations as are within this Act. The only manner in which he will be controlled is that he will not be able to spend money on any scheme unless it has previously been approved and sanctioned, and unless a vote for it has been assigned by the Budget." These are the views which were expressed by the Honourable Mr. Tucker in introducing the Bill of 1872, which subsequently became the present Act III of 1872, the existing municipal law. Undoubtedly, that Bill was much altered after its introduction both by the Select Committee and in this Council. But no material alteration was made in respect of the executive authority vested in the Commissioner. During the very lengthy debate which took place in this Council on that Bill the Honourable Mr. Forbes, who held in this Council the position which the Honourable Mr. Forbes Adam occupies at the present time, proposed an amendment that in the exercise of his executive power the Commissioner be subject to the control of the Town Council. His views and the views of the Honourable Mr. Bythell, who concurred with him, may be summed up in a few words extracted from the Honourable Mr. Forbes' speech. He said: "The Honourable Mr. Tucker says that the Town Council will have the power of the purse, but as the Municipal Commissioner is to be the person invested with complete executive authority, I believe there will be a deadlock ere long. The Town Council will not allow him to do as he thinks proper, because by long experience of municipal affairs this has been found to be a mistake, what a Commissioner does, not having always turned out to be most advantageous for the city. Those persons who will compose the Town Council will probably be men who have had the experience of the working of the municipal constitution for the last seven years, whereas it is very probable that the Municipal Commissioner will be a man who has not had that experience in Bombay, and the result will tend to bring about the deadlock I have referred to. For my own part I am far more disposed to put confidence in the Town Council than place it in any single officer as to whose antecedents as regards business and experience we, of course, cannot form an opinion." The amendment, proposed by the Honourable Mr. Forbes, and supported by the Honourable Mr. Bythell, was considerably discussed and eventually lost by a majority of seven against two.

The remarks made during the discussion of that amendment by Mr. Tucker so fully explain the necessity for the Commissioner being an independent executive authority that I shall quote once more from his speeches. He said:—"The honourable mover of this amendment has complained that the Bill, as it stands, will be unworkable in practice, and he proposes to remove the main spring which will keep the machinery in motion. Undoubtedly, affairs will come to a deadlock, if the chief executive officer is to be fettered in the manner suggested by the honourable gentleman. In England vestries and other local boards have always shown a tendency to inaction, and it is to avoid the errors of a system which experience has pointed out that we have, following the principle upon which Act II of 1865 was based, given to the Municipal Commissioner, within well defined limits in executive matters, the power to act on his own discretion alone. This is a cardinal principle of the Bill. Surely the Town Council will have sufficient influence over the Commissioner, as it is left to them, and to the Corporation, to prescribe the works he is to do, and to vote the supplies; and it may be properly left to his judgment to choose the best means of doing these works. I have no doubt that it is better to trust executive details to the will of one man than to the will of many, and I consider that a body constituted as this Town Council will be, if entrusted with the direct superintendence of all executive matters, a certain failure." And in another place he said:—"This section contains a distinct indication of the opinion of the Legislature that the Commissioner shall not be interfered with by the Town Council in his executive work, because he is to be the person who is responsible for the work being properly done. This distinct division of labour will enable the public and Government to know who may be to blame when anything goes wrong."

And once more he said:—"With reference to the observation of the honourable member who has just spoken, I may remark with reference to the existing Act to which he alluded, that it was never our intention to carry out a radical change of system. We have throughout recognised the principle adopted by the Legislature in 1865, but when experience has shown there were weak parts in the Act passed in that year we have endeavoured to amend and strengthen them. One great fault of the present municipal constitution is that there is no board of direction or head to the Corporation. We have

endeavoured to supply this omission, and have given to the Corporation an efficient board of management in the Town Council, and I believe the effect of this addition will be that the Corporation will henceforth be able to control the Commissioner in all points in which control is desirable. We never intended to subvert entirely the existing system of municipal administration, nor has any good reason been shown for such a course. Our design has been merely to make the former Act more perfect, and to remedy its defects so far as they had been demonstrated. This is the whole scope of the Bill, and it must be remembered that we are working now upon actual experience and not on speculative theories."

On the third reading of the Bill, the Honourable Mr. Rogers made the remark which was quoted by the Honourable Mr. Mehta the other day, and which I have since read to the Council. Now the Honourable Mr. Rogers was not in charge of the Bill, and any remark which may have fallen from him cannot be accepted as any indication of the intention of the Legislature. The intention of the Legislature is most clearly shown in the extracts from the discussion I have read, and that the Honourable Mr. Rogers did not mean the remarks made by him at the third reading of the Bill precisely in the sense in which the Honourable Mr. Mehta has taken them, is evident from an observation which the Honourable Mr. Rogers made during the discussion of the Honourable Mr. Forbes' amendment to which I have referred. That observation was as follows:—"By the introduction of the words proposed by the Honourable Mr. Forbes, the Municipal Commissioner will be made less independent and his executive power impaired." Once more I submit to honourable members of this Council that the real intention of the Legislature must be gathered, not from casual remarks made by one member of this Council, and that one not in charge of the Bill, but from the general course of the debate, and from the declared intentions of the gentleman who had charge of the Bill. At the third reading and in the last speech made on the subject in the Council, by the Honourable Mr. Rogers, he said as follows:—"The honourable gentleman is of opinion that we have been wholly wrong in allowing any independence of action to the Municipal Commissioner. In this we have followed the example set us in Act II of 1865 and for the same reasons which granted the powers of that Act. The mischief done under that law was not in consequence of the Commissioner possessing undivided executive authority and responsibility in carrying out the orders of the Bench of Justices, but because he managed to evade control in his expenditure and became reckless and improvident. We have now taken care to make the control of the Town Council over the Commissioner in financial matters thoroughly effective, and there would appear to be no good ground for depriving him of freedom of action in maintaining the sanitary condition of the city, and in the construction of works that have been duly sanctioned. In matters of this description latitude is necessary, and the public will benefit by an arrangement which leaves acts of this nature to a single man instead of to a Board."

That, your Excellency, is the real state of the case as regards the object of the Act of 1872 which is the existing law of the Municipality. In spite of prophecies to the contrary by those whom the Honourable Mr. West has called independent members of Council the system of administration provided by that Act has worked extremely well. Undivided executive power placed in the hands of the Commissioner has proved in experience to answer not merely all requirements, but to answer to the entire satisfaction of the citizens of Bombay and of the Government, which watches as anxiously over the interests of the city, as of the whole presidency. In support of this statement, I would point out that in 1877, when the Honourable Mr. Gibbs introduced the Bill which afterwards became Act IV of 1878 (the second of the two Acts under which the municipal government of Bombay is at present carried on), he said that the Act of 1872 "according to the consensus of opinion in Bombay had worked remarkably well." I have looked carefully through the discussions which took place in this Council in 1878, and I have failed to discover that this statement made by Mr. Gibbs at the very outset of the discussion on the Bill I speak of, was in any way challenged. Nor is this all. The Act of 1872 was passed as a temporary Act which was to be in operation for three years only, but power was given to the Governor in Council to extend its operation from time to time. It was extended by the Governor in Council on one occasion if not more frequently, and in 1878, when the Honourable Mr. Gibbs introduced the Bill to which I have referred, one of his objects was to declare the Act of 1872 to be permanent. That proposal was accepted, and the Act of 1872 was made perpetually the Act of 1878.

But your Excellency, since the Act of 1878 was passed, we have witnessed throughout India a growing desire for the introduction of what has been conveniently called local self-government; and the Corporation of this city, taking up the general feeling throughout the country, resolved to appoint a committee. I believe, in fact, that two committees were appointed. The first did not do very much, but the second reported on the subject. The purpose of these committees was that they should suggest for the approval of the Corporation such amendments in the Acts of 1872 and 1878 as would bring the municipal government of Bombay into general conformity with the new aspirations of the people for local self-government. The committee's report is contained in "Government Selection" No. 178, a compilation for the printing of which I obtained the sanction of Government with a view to assisting the discussion of the present Bill. It contains everything which has been written in the shape of a proposal for the amendment of the existing municipal Acts, and if honourable members will refer to it they will find that the committee I speak of was presided over by a well-known and very able citizen of Bombay, Mr. Grattan Geary, and that he was assisted by several gentlemen, both European and Indian, of large experience in the municipal government. The recommendations that committee made are, as I stated at the first reading of this Bill, to the effect that (1) the number of members of the Corporation should be increased from 64 to 72; (2) that the respective functions of check and control vested in the Corporation and Town Council be in no way lessened; (3) that the Chairman of the Town Council be elected by that Council; (4) that the position and duties of the Commissioner should remain unaltered; and (5) that his appointment continue to be made by Government. The report they made said: "A proposal has been made to the committee which if acted upon would entirely change the form of the executive authority. It was suggested that the Municipal Commissioner should be the Chairman of the Town Council and that the Town Council should be the executive authority, each of the members sharing with the Commissioner the responsibility for all acts of executive authority. The committee disapproved of this proposal, considering that, unless there was an entire change of organisation, the general body of the Council could not of itself actually carry on the administrative work of the city which requires constant attention, great energy and special aptitude. At best, the Council would only meet once or twice a week to discuss and sanction the Commissioner's actions, and in all cases where urgency was pleaded they would be obliged to agree to the action taken by him and to share in the full responsibility for the same, although they might disapprove of what had been done. Practically he must still have sole executive authority; the Council's power would only be nominal." The Corporation adopted their committee's report and forwarded it with a letter dated 10th October 1884 and signed by the Honourable Mr. Mehta as their Chairman, to Government. Again, in their letter of 8th March 1886, on the subject of the first Bill drawn by Mr. Ollivant and myself, the Honourable Mr. Mehta wrote, on behalf of the Corporation, as follows:—"The Corporation recommend that the Town Council should retain their present powers intact and that the Commissioner should not be an *ex-officio* member of that body. He should continue to be the executive officer of the Corporation, and this being so the proposed Standing Committee and sub-committees thereof are undesirable. The provision for their appointment should be omitted from the Bill."

Now, your Excellency, I ask the Council whether in the Bill, as it now stands before us and as it was introduced, each one of the above recommendations of the Corporation has not completely been given effect to? The Corporation distinctly desired that the position of the Commissioner and his duties should remain unaltered. The adoption of this able report of the committee of 1884 shows that in that year the Corporation was eminently satisfied with the condition of things existing since 1872, and desired no important change. The few changes that they have desired have been embodied in the Bill now before us.

But there was appended to that report of 1884 a document of very great importance. It bears the signature of a well-known member of the Corporation who takes a large and wide interest in municipal affairs, and a very intelligent interest also. I allude to Mr. Javerilal Umiashankar Yajnik, and the proposal which stands over the name of that gentleman in a minute appended to that report is explained by him in the following terms:—"Hitherto the committees of the Town Council, like the Town Council itself, have been purely consultative bodies. They dispose of questions referred to them for their opinion. I suggest that the time has come when for the purpose of not only 'securing

the due administration of the Municipal Fund' but of giving the members of the Municipal Corporation a larger share in the practical administration of municipal affairs, there should be working committees, each consisting of three or more members of the Town Council, or of the Corporation, as seems best, who should be entrusted with the duty of seeing that the administration of the department, with which the committee is concerned, is being carried on, as it should be, in conformity with Municipal Acts in force for the time being and with existing rules for the conduct of administration. The control which such bodies would be able to exercise would be more by way of help to the Municipal Commissioner, and in no way in conflict with, or antagonistic to, his authority as the chief executive officer of the Municipality. I notice that the formation of such committees is enjoined under section 23 of the present Municipal Act and under section 31 of Mr. Ollivant's draft. But both these sections are not to my thinking sufficiently comprehensive, and what is more, they do not provide for the remuneration of such Standing Committees. I should propose four committees—(1) a works committee which should concern itself with watching the work of the engineering department of the Municipality and deal with questions relating to all municipal works present and prospective; (2) a sanitary committee having the supervision of the health department and the consideration of all sanitary questions; (3) a finance committee which should embrace the departments of accounts, revenue, and finance, and (4) a law committee charged with the consideration of all questions of law and cases of litigation which now and then arise in course of administration. Each of these committees will not only have the supervision of the work done in the department, with which it is specially concerned, but will act as a consulting body to the Municipal Commissioner, the Town Council, and the Corporation in respect of all matters affecting its department. The Municipal Commissioner is to be an *ex-officio* member of all such committees, while the secretary to the Town Council should act as their secretary." That proposal was also concurred in by another member of the Corporation, Dr. Peterson.

This, your Excellency, was the state of things in 1885, when the duty of drafting a new Municipal Bill was deputed to Mr. Ollivant and myself. The Honourable Mr. Mehta has remarked that whatever may be the intention of the Act of 1872, the history of the last 10 or 15 years is that the Corporation have, whether rightly or wrongly, taken upon themselves the municipal administration of the city in some detail.

The Honourable Mr. MEHTA :—No, no.

The Honourable Mr. NAYLOR :—These are not quite the honourable gentleman's words. What he said was :—"The constitutional lines on which our municipal administration has been carried on since the present Act was passed have been these :—That the Corporation, with the help of the Town Council, was the supreme administrative body, with the Commissioner as its sole executive officer invested with full executive power and responsibility; that the Corporation had the fullest control over the Budget, which it exercised, not simply generally, but by constant criticism and supervision, and in a way to bring home to the Commissioner that he was constantly responsible to the Corporation for the due discharge of his duties." I am not prepared to say that that is not a correct statement of the case; to a certain extent I agree with what has fallen from the honourable member. But that state of things has been found to be possible under the Act of 1872. Instead of that Act proving unworkable and leading to a deadlock, the Commissioner and the Corporation have worked harmoniously together. The Corporation by its general good sense and growing capacity for local government, and the increasing interest shown by its members in municipal administration, has contributed a very large share, indeed, to the success of the municipal administration of Bombay under the Act of 1872. To this fact I have never, so far as I am aware, taken any exception, nor have I indicated any opinion to the contrary. But what I maintain and what I have always endeavoured to maintain is that the successful administration of the Act, largely as it is due to the Corporation, is also very largely due—certainly as largely due—to the fact that it vested the Commissioner, within limits specially assigned, with full executive power, and that the Commissioner has accordingly, in all executive matters, exercised full, complete, and independent power. But when Mr. Ollivant and I came to draft a new Bill, the question arose whether the same system which we found in existence should be continued, or whether some different machinery should be devised. Mr. Ollivant took up the idea suggested by Mr. Javerilal and Dr. Peterson in the minute I have quoted from, and we eventu-

ally decided to give shape and form to it in our first draft Bill, so that the members of the Corporation, to whom the Bill was to be submitted by the Governor in Council, might have a full opportunity of judging whether such a scheme as that suggested by those two gentlemen would be palatable to the citizens of Bombay and would be likely to operate beneficially. The result of that reference to the Corporation is known to the Council. The proposal was rejected *in toto*, and I may say without any reason being assigned. Not only was it rejected, but the idea on which our proposals were based was not even seriously entertained. Nor was any suggestion made by the Corporation in pursuance of which any other modified form of executive could be fixed upon, and the general supervision of the details of the municipal administration taken out of the hands of the Commissioner and placed in the hands of Working Committees. Our proposal that the Commissioner should be chairman of the Working Committees was not, I have now come to understand, altogether palatable to the members of the Corporation. But that was not an essential provision of our Bill. It was merely an incidental one and it was quite open to the Corporation to propose some modification of it, for this Council would, no doubt, entertain any reasonable proposal. But the absolute refusal of the Corporation to entertain the idea of Working Committees left no alternative to Mr. Ollivant and myself, but to do, as was done in 1872, viz., to recast our Bill so as to continue the same municipal constitution which was in existence and merely endeavour by improvements in detail to deprive the law as it then stood, and now stands, of all those inconsistencies and obscurities which have given the Honourable the Advocate General and the members of the legal profession and, also I may add, the Municipal Commissioner and his subordinates, so much trouble.

That is the history of the Bill up to the time of its introduction into this Council. Since its introduction it has been very generally disapproved on the score of its being a retrograde measure. The Honourable Mr. Mehta has very frankly admitted that the grounds on which he calls it retrograde are that, instead of continuing the policy of 1872, it went back and revived the policy of 1865. But I think I have established to the satisfaction of the Council that this is entirely a misapprehension on the part of the Honourable Mr. Mehta. What the Bill does is to continue in force the constitution created by this Council in 1865, continued by them in 1872, approved by them in 1878, and also approved by the Corporation themselves in 1884. I can well understand that to gentlemen outside of this Council who have had no special training to enable them to understand the bearings of a new project of law when it is placed before them, a measure of the complexity of this one may have given rise to many misgivings. Such a person may, perhaps, have thought on looking at the Bill as it came before this Council in the first instance, with its logical and systematic arrangement and distribution of powers, that some serious changes had been made to the detriment of the Corporation and Town Council, and to the advancement of the importance of the Municipal Commissioner. An idea of this kind was fostered by the opinion of eminent counsel and by the opinions of two firms of solicitors of this city which were published in the newspapers. I am not aware whether in the case of the eminent counsel, his opinion was procured in the manner which the Honourable the Advocate General has told us is not uncommon, viz., by indicating rather strongly in the case stated to the counsel the direction which it is hoped his opinion will take. But this, I may safely say, was certainly the case as to the two firms of solicitors; because it is a curious coincidence that the Corporation consulted their own solicitors regarding the Bill, and the opinion of the municipal solicitors with regard to it was very different indeed from that of the two other firms who were consulted. I will just read to the Council a passage which contains the pith of the letter of the municipal solicitors. They say: "But practically it seems to us that * * * * the controlling and sanctioning power of the Corporation in regard to these matters would be as effectually secured by the Bill as it is by the present Acts; the Commissioner obviously cannot undertake works without funds from which to pay for them, and (having regard to section 115), money cannot possibly be available to him for the purpose unless covered by a current budget grant. It will thus be in effect impossible for the Commissioner to undertake the construction of a sewer or aqueduct, or the making of a street, unless the Corporation have previously sanctioned a budget grant for the purpose. The Corporation, under section 129, will have a discretion as to whether any particular work proposed to be undertaken is necessary or desirable, and will have the power to reject, if they do not approve, it; or, if they deem the information and materials before them

insufficient to enable them to come to a decision, they will be able to refer back the budget estimate or withhold their sanction, unless and until such information as they may deem necessary has been furnished and they have been satisfied."

I have a few more remarks to make on the subject of the Honourable Mr. Mehta's amendment—they will occupy about a quarter of an hour, but as it is getting dark, if your Excellency now desires to adjourn the Council, I will conclude my observations at the next meeting.

His Excellency the PRESIDENT then adjourned the Council.

J. J. HEATON,

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

Bombay, 14th March 1888.

PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

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

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

The Council met at Bombay on Saturday the 17th day of March 1888.

PRESENT:

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

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

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

The Honourable R. WEST.

The Honourable the ADVOCATE GENERAL.

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

The Honourable F. FORBES ADAM, C.I.E.

The Honourable J. R. NAYLOR.

The Honourable RAO Bahádúr MAHADEV WASUDEV BARVE, C.I.E.

The Honourable PHEROZSHAH MERVANJI MEHTA, M.A.

The Honourable RAO Bahádúr BEHECHARDAS VEHARIDAS.

The City of Bombay Municipal Bill.

The Honourable Mr. NAYLOR (concluding his speech of the previous day on the Honourable Mr. Mehta's amendment to sections 219, &c.,) said:—
 Consideration of the City of Bombay Municipal Bill in detail.
 Your Excellency,—When the Council rose on last Wednesday evening I was replying to the motion of the Honourable Mr. Mehta, by which he proposed to substitute in several sections of this Bill the word *Corporation* for the word *Commissioner*. I took the opportunity of going into the whole question as to the relative positions in the municipal administration of the Corporation and the Commissioner, and I showed, or at least I brought forward extracts from the proceedings of this Council in 1872 with the object of showing, and I think I succeeded in establishing, that the Honourable Mr. Mehta had entirely misconceived the object of the passing of the Act of 1872. That Act did not, so far as regards the relative position of the Corporation and the Commissioner, reverse the policy of the Act of 1865, as the Honourable Mr. Mehta presumed, but, on the contrary, continued the same relations between those two authorities which had previously existed. I further went on to show that in 1878, when the second of the two principal existing Municipal Acts was passed, the Act of 1872 was declared to have worked remarkably well, and was by this Council continued permanently in force. I also explained to the Council that in 1884 the Corporation appointed a committee to determine what alterations were desirable in the Municipal Acts in order to import into the constitution a stronger element of self-government, and that that committee's report, which was adopted by the Corporation and forwarded to Government as an expression of their own opinion, recommended, among other things, that the Commissioner's position in the municipal constitution should remain unaltered. Further, I was able to point out to the Council, that on that occasion two members of the Corporation's committee appended their signatures to a minute in which a strong recommendation was made that the executive work of the Corporation should in future be conducted through the means of working committees, of which the Municipal Commissioner should be a member. And I explained that when Mr. Ollivant and myself prepared the first draft of the present Bill, we took up the idea started by those two gentlemen, and endeavoured to put it into a shape in which members of the Corporation would be able finally to judge whether such a scheme as that foreshadowed by those gentlemen was one

which would be suitable for the proper working of the municipal institution and agreeable to the members of the Corporation. I also showed that the Corporation, in reply, declined, in the briefest possible terms, to entertain the idea of working committees, and made no modified proposal whatever regarding the constitution of such committees. It appeared to be their opinion that the municipal constitution should be continued as it was. I wish here to correct an inaccuracy into which I fell, in saying that the Corporation gave no reasons on this occasion for declining to accept the working committees. What they did was to state, in the briefest possible terms, their unwillingness to have working committees and then, at the end of their letter, to refer to their previous letter with which the committee's report of 1884 was forwarded to Government. The committee's report of 1884 did deal with the subject of working committees, and gave reasons why the committee were unwilling to accept any such change in the constitution. Therefore by implication it may be said that the Corporation in 1886 did give their reasons for not wishing to have working committees. But what I particularly wish to bring clearly before the Council is that the Corporation showed a distinct and decided preference for retaining the existing form of constitution; that they were unwilling to adopt any system of working committees, and your Excellency has observed in the course of the debate upon this Bill that the dislike or distrust, if I may say so—for I think it amounts to distrust—of working committees is the real reason which is at the bottom of the wish of the Corporation and of the gentlemen who are their representatives in this Council, not to adopt any system of employing such committees for executive purposes. I also explained that this being the state of things in 1885, Mr. Ollivant and I, having no other course open to us, adopted the plan of drafting another Bill in which the present constitution was continued without any material alteration and with few changes, in fact, of any importance, except such as were necessary to clear the system of inconsistencies and contradictions which have impeded its proper working and were likely to give rise to friction. Then I also remarked on the fact that this second Bill, subsequently introduced into the Council, has been frequently called by gentlemen outside this Council and by some gentlemen within it a retrograde measure; but I think I succeeded in establishing that the reason why the Honourable Mr. Mehta called it retrograde, namely, that it fell back on the constitution of 1865 instead of continuing the constitution of 1872, is entirely erroneous. I also showed that if the Corporation had listened to the calm, well-considered advice of their own experienced solicitors they would have had reason to see that there was nothing at all revolutionary in the measure.

The Bill, as introduced, was not, in fact, intended to make any material change in the existing municipal system, but it included such alterations and additions as appeared to Mr. Ollivant and myself to be desirable. Neither he nor I absolutely approved of everything in the Bill, because when two persons are set to perform such a task as was committed to us, it is impossible that on all points they should agree. Therefore several provisions which were inserted in the Bill were the result of a compromise of opinion between Mr. Ollivant and myself, some were not approved by me, while others were not approved by Mr. Ollivant. But the Bill, as it was introduced, was an elaborate and very carefully prepared foundation, upon which we thought that this Council might reasonably be invited to base a revised municipal law to take the place in the local Statute Book, of the several scattered, inconsistent, and often unintelligible enactments which now encumber it. When moving the first reading, I specially mentioned that neither I myself nor the Government were irrevocably bound by anything in the Bill. I said: "The Bill has been drawn with the full knowledge that it will be very widely discussed by the public and by the Corporation, and that many changes and improvements will be suggested before it is finally passed. I am not instructed that it is the desire of Government to adhere to any particular provision of the Bill, if it can be shown that some other would be more suitable or workable. The object of the Bill is, I repeat, the promotion of the best interests of the city of Bombay, and not the enforcement of any fixed unalterable views." And as regards myself I said: "I am not prepared to say that I myself concur in all the allotments of authority in the Bill as it stands, and it is very likely that, after an interchange of views with the honourable members who will form the Select Committee, my opinion will change, even in respect of some of the instances in which I at present think the Bill is right."

In Select Committee, the Bill was subjected to a very searching scrutiny and the large number of amendments made in it bear evidence that my honourable colleagues

and myself discharged the duty placed upon us with every desire to obtain a law which should not only be sound and practical and capable of working without friction, but also one which should be equitable and just to the citizens of this great city. The only really important question of principle, on which there was for a considerable length of time any difference of opinion, was as to the general description of the functions of the several municipal authorities in section 65. I am willing to admit, as I admitted in Select Committee, that the exclusive residuary jurisdiction which sub-section (2) of that section, as it originally stood, would have vested in the Commissioner, would have introduced a feature into the municipal constitution which does not now exist. The words employed, in fact, imported more than I had myself intended. Therefore, after much discussion and consideration it was finally agreed to recast the section in its present form, in which the rightful and proper position of the Corporation, as the governing body, subject only to such express exceptions as are contained in the Bill, is clearly recognised, and the same words which have always hitherto been used to describe the position and authority of the Municipal Commissioner are again employed, *viz.* that "the entire executive power" is to vest in him, but "subject, whenever it is in this Act expressly so directed, to the approval or sanction of the Corporation or of the Standing Committee, and subject also to all other restrictions and limitations imposed by this Act." With the Bill as it left the Select Committee, the Honourable Mr. Mehta has already informed the Council, he, with certain exceptions, is perfectly satisfied. He says: "The Bill as it comes back amended in Select Committee is framed on sound principles. I can go further and say that the amended Bill has fully and clearly embodied the principles which were perhaps only timidly and tentatively indicated in the Act of 1872. In my opinion, my Lord, the constitutional part of the Bill is now placed upon a satisfactory footing." Therefore, with the principle of the Bill as it now is stated in the various provisions of the measure, the Honourable Mr. Mehta has expressed his entire approval; not only so, but I am happy to say that the Bill, as it stands, has passed the second reading in this Council,—a step which, according to the rules of this Council, indicates that the Council have affirmed the principle of the Bill. We have now also passed, in our detailed consideration of the Bill, all the chapters which relate to the municipal constitution and to the duties and powers of the municipal authorities, and no material alteration has been suggested in them.

Now, your Excellency, I will ask the Council to consider what is the principle of the Bill which has been thus approved and accepted. As regards the position and power of the Municipal Commissioner, I have affirmed that it leaves him in precisely the same position which he occupied under the Act of 1865 and which up to this moment he still occupies under the Acts of 1872 and 1878. If the Council turn to section 4 of the Bill, they will find that at the very outset it is laid down that the municipal authorities charged with the carrying out of the provisions of this Act are, first, the Corporation, secondly, the Standing Committee, and, thirdly, the Municipal Commissioner. The second chapter of the Bill, which treats exhaustively of the municipal constitution, takes up, in their turn, the provisions relating to the nomination, &c., of each of these three municipal authorities and deals with them separately and fully. Then in chapter 3 the Bill goes on to describe the duties and powers of the several municipal authorities, and here again the duties and powers dealt with are those of the same three authorities I have already named. When we come to chapter 4 we find that we leave behind us provisions dealing with the municipal authorities and come to municipal officers and that the Municipal Commissioner is not treated as one of those officers. Thus it must be clear to any one who studies the Bill with some little closeness that it purposes to establish three municipal authorities with distinct functions. No one of these three is the servant of the other, nor is any one the master of the other, in the ordinary acceptation of the term. The three authorities are to co-exist; their mutual relations and their respective powers in detail being very carefully and accurately described in the several chapters of the Bill dealing with the several subjects of municipal administration. The Honourable Mr. Mehta has told us that in the last few years the Corporation have initiated several useful reforms under the existing municipal system. That is a statement I do not question, but what I say is, that the Corporation will also be able under the present Bill to exercise the same power for good. There is nothing in the Bill, to the best of my knowledge, that will prevent the Corporation from exercising precisely the same functions and the same powers as it does at the present moment. Our desire and hope is that each authority will continue, within its respective sphere and subject to the limits assigned by the Bill,

to act for the general good of the city, and that the result of the Bill will be greatly to facilitate the harmonious working of the municipal administration, and to prevent all friction. But for these purposes it is clear that the definition of the respective powers of the several authorities is all-essential.

Reverting to section 65, sub-section (2) thereof says that :—"except as in this Act otherwise expressly provided, the municipal government of the city vests in the Corporation." That is the general declaration of the position and authority of the Corporation. It is governed by the first words "except as in this Act otherwise expressly provided," so that it is necessary that the Act should distinctly provide what the exceptions are to be. The exceptions are of two kinds. In the first place, there are the powers of the Standing Committee, which are expressly provided for in various portions of the Bill, and, in the second place, there are the powers of the Commissioner. These latter powers are generally defined in sub-section (3) of the same section, namely, as the "entire executive power for the purpose of carrying out the provisions of this Act." But if we wish to know what those powers precisely are, we must turn, as in the case of the Standing Committee, to the other parts of the Bill. Thus in the early portions of the Bill, which the Council have already passed, the Commissioner is vested with certain powers respecting the conduct of elections and the assessment and levy of municipal taxation. And when he comes to the chapters dealing with the details of the executive administration, any one who reads the Bill will naturally expect to find what powers the Municipal Commissioner really has in these matters. He will find, as, I say, he would naturally expect to find, that the Commissioner is authorised to maintain and repair municipal works, to construct, maintain and improve all roads, buildings, bridges and the like, belonging to or required by the Corporation, to take all necessary measures for watering, cleansing and lighting the public thoroughfares, and, in short, to do everything which is in its nature executive. But the reader will also find that generally in all large matters and matters largely affecting private interests, the Commissioner is prevented from acting, except with the previous approval or sanction of the Corporation or Standing Committee. Now it is a curious circumstance to which I ask the attention of the Council, that the Honourable Mr. Mehta and those who think with him, did not propose to substitute the word Corporation for the word Commissioner in those executive parts of the Bill relating to the conduct of elections and the assessment and levying of municipal taxation which the Council have already passed. Why, then, I ask is it sought to make these changes in the chapters now before us? What is the intention? Is it not to obscure the purpose of the Bill that, except to such extent as is otherwise expressly provided, the Commissioner is to be independent of the other two municipal authorities and is to be free to exercise his own judgment? or if that is not the intention, will that not be the effect of the proposal? I ask the Council to consider why there should be any objection at all to the name of the Commissioner appearing instead of the Corporation in these executive chapters of the Bill. There is here no new departure in drafting. The present Acts are worded in precisely the same way. With regard to bye-laws, the sections concerning which we shall come to later on, I may at once say that I am persuaded that the power, the *quasi* legislative power which these sections confer, is one which should vest, as it is really vested by the present law, in the Corporation, and when those sections are reached, I shall be prepared to concur in the suggestion that the word Corporation be inserted instead of the word Commissioner, and shall only ask the Council to consider another additional section I have drafted for the purpose of securing that it shall be the duty of the Commissioner to lay before the Corporation from time to time such draft bye-laws as he considers necessary for the proper conduct of his executive functions and for the purposes of the Act generally. But, with that exception, I am not prepared to accept the motion of the honourable gentleman and the other similar motions which are to follow, that the word "Commissioner" be omitted and the word "Corporation" substituted for it. If these motions be adopted by the Council, the result will be that the Legislature will entrust the Corporation with such duties as the maintaining and repairing of drains, the providing and maintaining of public necessaries, the managing and maintaining of water-works, the making of provision for the daily surface-cleansing of the streets, and such like. Such legislation will imply that in every executive detail in which they think fit, the Corporation shall be competent to issue orders which shall be carried out by the Commissioner. It will imply, in fact, that the Commissioner is the servant of the Corporation, with

no independent authority or discretion, and whose only duty is to give effect to the directions of the Corporation. I ask this Council, whether the Corporation, a body of seventy-two gentlemen, who entirely decline to sub-divide themselves into working committees, is such a body as can be safely, conveniently or properly entrusted with such duties as these? The Honourable Mr. Mehta will no doubt tell us that this is not his intention, and I must apologise to him for having on the previous occasion misunderstood the gist of his speech by thinking it was his intention that the Corporation should control executive work in detail. I saw when I read his words that they do not bear this meaning. But there is a not inconsiderable party in this city and, I think I may say, there are some representatives of the party in this Council, who think that the Commissioner should be merely the servant of the Corporation; that he should act in every matter under their immediate direction. Who can say what view might be taken, under legal advice, of the Commissioner's position, if we accepted the Honourable Mr. Mehta's motion and the other motions like it, and merely preserved section 65, sub-section (3), which says that the entire executive power vests in the Commissioner? Might it not be said, "Yes, but looking at the express provisions of the executive chapters, the exercise of that power is subject at all points to the directions of the Corporation"? Is it not the duty of this Council to prevent any such possibility—is it not one of the chief objects of our Bill to free the law from any doubt or ambiguity, and should we not secure that object as completely as we can? On these grounds, I ask the Council to reject the motion of the Honourable Mr. Mehta for substituting "Corporation" for "Commissioner" in these several sections.

A reference has been made by the honourable gentleman to section 62, in which, as he very truly says, it is made the duty of the Corporation to construct roads and to maintain buildings and works and to provide for the other matters to which I have referred. But section 62 must not be read apart from its context. Sections 62, 63 and 64 must be read together, and the sub-heading of the chapter immediately above section 62 indicates at once what the object of these sections really is, namely, to define what duties of the Corporation are obligatory and what discretionary. Sections 62 and 63 describe the obligatory duties of the Corporation; section 64 sets forth their discretionary duties. Section 62 merely enacts that the Corporation must do all in their power to effect the purposes which it mentions. It has nothing to do with the machinery by which those purposes are to be carried into execution. For that the Bill makes other provisions, which I have already alluded to at considerable length.

To the second part of the Honourable Mr. Mehta's motion I take no objection,—that is, to the omission of the words in italics. These words "when authorised by the Corporation either generally or specially in this behalf," I may say, I regard as mere surplusage. They were agreed to by the Standing Committee in the hope of satisfying the minority, by "making assurance doubly sure" against the Commissioner's executing works, without their having been previously approved by the Corporation. But if honourable members will turn to section 66, they will find it distinctly laid down as a general principle which governs everything in this Bill, that the exercise by any municipal authority of any power conferred by the Act which would involve expenditure, shall, with one or two exceptions, be subject to the following provisoes, namely,—“(a) that such expenditure, so far as it is to be incurred in the official year in which such power is exercised, shall be provided for under a current budget grant, within the meaning of that expression as defined in section 130; and (b) that if the exercise of such power involves, or is likely to involve, expenditure for any period or at any time after the close of the said official year, liability for such expenditure shall not be incurred without the sanction of the Corporation.” Now, your Excellency, that section was inserted for the express purpose of making it perfectly clear that the Commissioner should be tied, in the exercise of his executive power, by the orders, resolutions, and decisions of the Corporation upon their budget and by any supplementary resolution concerning finance which they might pass during the year. In the budget chapter also every possible precaution has been taken to give the Corporation a complete control over the expenditure of the municipal income. With the power to call for returns, plans and estimates, and the power to decline to permit any expenditure whatever, it must be obvious to the Council that it is entirely in the hands of the Corporation to sanction or not to sanction any specific class of expenditure, whether it be for the construction of any buildings or the execution of

any work which the Commissioner desires or suggests should be undertaken or for any other purpose. Moreover, the final framing of the budget being in the Corporation's own hands it is perfectly open to them to initiate schemes and to insert provisions in the budget for carrying out such schemes. Therefore, your Excellency, I say, this section 66 not only binds down the Commissioner not to exceed the limits assigned by the Corporation, but it also disenables him from carrying out any work which has not been approved by the Corporation. In the Select Committee, however, this matter occupied a very considerable amount of our attention and I intimated to my honourable colleagues that I was quite prepared, if any doubt should still remain in their minds as to its being necessary for the Commissioner to go to the Corporation before proceeding with any such important work as the building of a new bridge or the starting of a new drainage system, to add words which would make it still more clear that the Commissioner was not to be able to do anything of this kind, without the special consent of the Corporation. That is the history of the introduction of these words. But to my mind they are simply surplusage, and I shall be very glad, from a draftsman's point of view, to see them omitted; but if the honourable member still prefers that they should remain, I have no objection.

The Honourable Mr. PHEROZESHAH MEHTA :—I will ask your Excellency's permission to say a few words before this discussion proceeds further, as I think it will tend to remove a considerable amount of misapprehension, and disencumber the debate on my amendment of a considerable amount of irrelevant matter. My Lord, I must express my extreme surprise at the turn which my honourable friend, Mr. Naylor, has chosen to give to this debate, and the complexion he has put upon an amendment which I regarded substantially to be of a somewhat formal character. The Council will remember that, in proposing it, I pointed out that it was directed to substituting a simpler and more appropriate word for the very same object which the section had in view, in place of the circuitous phraseology which was adopted in the section to carry out that object. But to my utter astonishment, my honourable friend says that it is intended and calculated to transfer executive powers and functions from the Commissioner to the Corporation. I am at a loss to conceive how the Honourable Mr. Naylor could have possibly imagined that such could be the object of the amendment, in view of what took place in the Select Committee about this very matter. He knows that nobody has been more staunch and unwavering than myself in his allegiance to the constitutional principle of vesting the whole executive power and responsibility in a single officer, call him the Commissioner or what you like. In fact, I have been astonished, and if I could say such a thing in a grave deliberative assembly like this, I have been amused at the charge brought against me by him of seeking to destroy the integrity of that principle. If anybody has been throughout consistent and constant, with regard to it, it is I, as I shall presently show; while it is my honourable friend, as he has himself confessed, who has been guilty of inconstancy. He admits that he was led away for a while to transfer his affections to a fairer rival; he was tempted, and he fell; the seductive charms of what he at one time thought a more attractive candidate for his regard, betrayed him into abandoning the Commissioner with his sole executive power and responsibility, in favour of executive sub-committees with the Commissioner as chairman. I have never wavered in my allegiance, and I repeat that I was never more surprised than when my honourable friend charged me with seeking, by my amendment, to transfer executive functions from the Commissioner to the Corporation, especially after what took place in the Select Committee about this very proposal. My honourable friend will remember, that when, after a protracted discussion, it was decided to alter section 65, as it now stands, and to accept the constitutional scheme embodied in it, I proposed that the word Corporation should be substituted for the word Commissioner in section 219 and several others, and the acting Advocate-General, Mr. Macpherson, who was then on the committee, immediately acknowledged that, with the constitutional alteration in section 65, it was right and proper that the word should be so substituted. He will also remember that thereupon the proposal was accepted, and a note made of the different sections in which the word should be substituted. He will further remember that it was on the next day that he proposed to substitute the present words "the Commissioner, when authorized generally and specially on this behalf" as expressing with more certainty, that the Corporation were to have the administrative, and the Commissioner the executive, functions in carrying out the different matters mentioned in the different sections. Though I contended that my proposal was the simpler method of doing the thing, the more circuitous phraseology was adopted. But

all throughout that discussion, it was acknowledged that there was no question involved in either proposal of transferring purely executive functions to the Corporation. Therefore it is that I am now surprised at the Honourable Mr. Naylor's now contending that the intention and effect of my amendment is to do any such thing. Before, however, I point out that he is entirely mistaken in so thinking, I will refer, as briefly as I can, to the contention he has elaborately placed before the Council, to show that the charge against the Bill as originally framed and introduced, of being a retrograde measure, is unfounded. So far from being unfounded, this retrograde character was not so fully exposed by me when I spoke on the second reading as I might have. The honourable member says that the Bill was not retrograde, since it followed the Acts of 1865 and 1872 in vesting the full executive powers in the Commissioner. But that was not why I called it retrograde. I denounced it as retrograde, because it deprived the Corporation of the powers of initiation, criticism, and supervision, which it possessed and exercised under the Acts of 1872 and 1878. Under the Act of 1865, the Bench possessed no such powers, and the Honourable Mr. Cassels, in his speech in introducing the Bill—I quoted the whole extract in my speech on the second reading—said distinctly that the Bench were to have no power of initiation, and that beyond the power of the purse, the Bench could in no way control or question the Commissioner except by dismissing him by a vote of censure. Now let us see what was done in this respect by the legislation of 1872. In my speech I ventured to describe the constitutional lines on which the municipal administration was carried on since the passing of that Act. The Honourable Mr. Naylor, when I asked him to read the passage itself, was obliged to admit that he could find no fault with my statement of them. The Council will remember that I took care to say that those lines were perhaps only timidly and tentatively indicated in the Act. I also said that it was doubtful whether they were “fully or clearly expressed.” What I did emphatically say, however, was, that such was the way in which the Act was understood and interpreted in practice for the last fifteen years, and that the Corporation had ever since been exercising the fullest powers of initiation, criticism, and supervision, which powers the Bench did not possess under the Act of 1865. My honourable friend has not ventured to dispute this proposition. In fact he has been obliged to admit it fully. If this interpretation and understanding of the Act of 1872 was wrong, the Act of 1878, which was passed to render it permanent, would have surely tried to remedy the misapprehension. That it attempted to do nothing of the sort cannot but be regarded as a ratification of that interpretation and understanding by the legislature. The Honourable Mr. Naylor cited a number of passages from the speeches of the honourable Mr. Tucker on the first and second reading of the Bill of 1872, to show that the full executive power remained as before in the Commissioner, and that the constitutional lines were not altered. I was fully aware of those passages. They only confirm what I had said, that, at that time, Government, very nervous about dangers, as they thought, of the doubtful experiment they were launching for trial, spoke with a very uncertain and hesitating voice. They explained things at one time in one way, and at another in another. In fact, they were indicating the new departure in a timid and tentative manner, so much so that on the third reading, the Honourable Mr. Bythell, a most able and accomplished member of the European mercantile community at that time, drew forcibly their attention to it in the following passage:—“I have, however, heard it argued that we, who object to the Commissioner being placed in a position that must bring him into antagonism with the Town Council, are led away by a figure of speech, that sec. 42, which says that the sole power and responsibility shall be vested in one Commissioner, must not be read literally, that the other portions of the Act so bind him down that he virtually cannot move hand or foot without the sanction of the Corporation. Well, then, I answer if he really will, and *is intended to be* the servant of the Corporation, why annoy the public by deluding them into the belief that Government are so distrustful of the Corporation that is to be, that they take care to render the body to a great extent powerless by placing all the real power in the hands of their own nominee?” It was in answer to this challenge that the Honourable Mr. Rogers made the declaration I quoted from his speech on the third reading. I think I have now shown that I was strictly accurate in my account of the legislation of 1872, and its practical outcome. The Act of 1872 was thus clearly in advance of that of 1865 in so far as it permitted the Corporation to claim and exercise the powers of initiation, and of criticism and supervision over the Commissioner. Now let us turn to this Bill as originally introduced, and I will beg the special attention of the Council to section 65, the constitutional section, as it originally stood:—“Respective Functions of the several Municipal

authorities :—65 (1) The respective functions of the Corporation, of the Town Council and of any committee appointed under section 41 shall be such as are specifically prescribed in or under this Act: (2) Except in so far as authority is expressly vested by or under this Act in the Corporation, or in the Town Council, or in any such committee as aforesaid, and subject, whenever it is in this Act expressly so directed, to the approval or sanction of any of the bodies aforesaid, *the duty of carrying out the provisions of this Act vests exclusively in the Commissioner.*” Now the authority expressly vested in the Corporation by the Bill was the power of sanctioning the budget. But beyond that, all other powers, legislative, administrative, executive, or of any other sort whatsoever were thus exclusively vested in the Commissioner. Indeed, the honourable framer of the Bill, after giving the power of the purse, no doubt, to the Corporation, made a present of the whole residuary authority and jurisdiction of every sort to the Commissioner. And it will be observed that for the first time since 1865, the section about vesting the executive power in the Commissioner disappears. The omission is fraught with the most significant results. In the Act of 1872, the inclusion of such a clause left matters open to the implication, that all others, except the executive powers vested in the Commissioner, remained with the carefully constituted and elective body called into existence by the Act. All that was completely swept away by the new provision. It was freely admitted in the Select Committee by the honourable member in charge of the Bill, that the constitutional provisions were intended to take away from the Corporation all powers of initiation, criticism and supervision. Now I ask honourable members of the Council, if a Bill, with such provisions, did not deprive the Corporation of the powers which it had exercised for fifteen years, by the quiet, but effective, device of professing to give useful definitions, if it did not go back to the principles of the legislation of 1865 which denied those powers to the Bench, and that in fact if it was not emphatically and distinctly a retrograde measure, worse even than the Act of 1865, in so far as the deprivation of the powers was more express, pronounced, and definite. It seems to me that the bill, as originally framed, cannot escape from being deservedly characterized as retrograde. Then, my Lord, I have said that it is not my honourable friend, Mr. Naylor, who is entitled to call himself the consistent champion of the integrity of the constitutional principle vesting full executive powers in a sole officer. My Lord, speaking for myself and the Corporation, it is we who can claim to be so. In my speech on the second reading, I alluded very briefly to a paper read by me in 1871 on the great municipal reform question of the day. If I were not afraid of taking up the time of the Council, I could show that in that paper I strongly advocated that principle, not on account of any special distrust with regard to the capacity or powers of the citizens of Bombay, or of the members of the Corporation, but on general principles, applicable to Bombay in common with all other cities, as pointed out by such liberal thinkers as John Stuart Mill, Herbert Spencer and others, who strongly lay down that executive functions are best performed by a single officer, and that there are grave dangers in entrusting them to boards or sub-committees, as experience has over and over again proved. The same principle was steadfastly asserted by the committee of the Corporation appointed in 1883. True, that there was a minute to the report of that committee by my friend, Mr. Javerilal, concurred in by my friend, Dr. Peterson, suggesting executive sub-committees. That proposal was considered and discussed in the full Corporation, and it was almost unanimously rejected. It met with the same fate when Government sent the draft Bill, as first drawn, to the Corporation. The Honourable Mr. Naylor says that it was not an essential feature of the scheme of executive sub-committees proposed in it, that the Commissioner should be chairman. I think I can venture to say that it was. I can say with some degree of confidence that, as regards Mr. Ollivant's idea of it, it was the most important feature of the scheme. The Honourable Mr. Naylor says the Corporation rejected it without assigning any reason. But he is mistaken. In the last paragraph of the letter I addressed to Government on behalf of the Corporation, it is to this scheme they refer when they say :—“That they find the new Municipal Bill is drawn on lines widely divergent from those recommended by the Corporation in their letter No. 1013 of 10th October, 1884. The Corporation still consider that the principles on which they proceeded in making the recommendations contained therein were *sound in theory and cautiously founded on the results of their working* ever since the formation of the present municipal constitution.” In their letters to Government on this Bill, the Corporation have steadfastly adhered to their mature and well-considered opinion on this point. So that I repeat that it was with the most unqualified surprise that I heard my honourable friend,

Mr. Naylor, enter into an elaborate argument, to show that my amendment, which I considered to be of a most harmless and innocent character, was really intended to transfer executive functions and powers from the Commissioner to the Corporation. I have shown that the acting Advocate-General, Mr. Macpherson, and even Mr. Naylor for a short time, considered it only as a question of different ways of doing the same thing. And that, I again say, it really is. It is true that we have now come to those portions of the Bill, which deal largely with executive functions. But the various parts are prefaced by sections which, so to say, are headings taken from the different parts of section 62, which lays down what functions it is incumbent upon the Corporation to perform. Now look at section 219 as it stands. He (the Commissioner) shall "construct such new drains as he shall from time to time deem necessary."

The Honourable Mr. NAYLOR:—You are overlooking the amendment made by the Standing Committee.

The Honourable Mr. PHEROZESHAH MEHTA:—How?

The Honourable Mr. NAYLOR:—"He" has been struck out, and "be" has been substituted for "deem."

The Honourable Mr. PHEROZESHAH MEHTA:—I am glad you have pointed that out. But to revert to my argument, clause (a) of section 62 refers to the "*construction, maintenance, and cleansing of drains and drainage works and of public latrines, urinal and similar conveniences.*" If the use of the words "construction, maintenance, and cleansing" in this clause do not signify that they are executive functions, why should the same words do so in section 219? I say they would not equally in the one case as in the other. Section 219 would have to be interpreted in the light of section 65; and with the word Corporation in it, equally in section 62, would mean that the administrative part of the function would be with the Corporation, the executive with the Commissioner. It would thus be in harmony with the constitutional scheme now accepted by the Council. The Honourable Mr. Naylor seeks to effect the same object by a circuitous phraseology:—"The Commissioner when generally or specially authorized by the Corporation in such behalf." I believe the simpler way of drafting the section is the one suggested by me, and it is this point, and no other, which I have brought before the Council for discussion by my amendment.

The Honourable the ADVOCATE-GENERAL:—I think, your Excellency, we have wandered rather far away from the amendment before us; with the result that the honourable mover of the Bill has delivered a second reading speech upon the Bill, thereby compelling the Honourable Mr. MEHTA to deliver a reply. We have, whether we like it or not, accepted the principle of the Bill on its second reading; and it is not now open to any of us to do more than to try and carry out that principle. That is the object, I understand, of the Honourable Mr. Mehta's amendment; though on this particular amendment I differ from the Honourable Mr. Mehta. I cannot see how the Honourable Mr. Naylor can suggest that some of these amendments are a departure from the principles adopted on the second reading. I submit there is not a single amendment on the paper before us which does not express the desire of the mover to carry out the principle of the second reading. On the application of that principle there may be some differences amongst us. For my own part I differ on this section from the Honourable Mr. Mehta; but I do not say that is the case with regard to all the sections on this long file, for one section struck me at once—section 294—and if the word "Commissioner" is retained there, without some explanation, it may lead to a conflict with other sections. But with regard to this section I should say there are two sides to the shield as usual. I take it that under section 62 there can be no doubt that what I may call constitutional maintenance is vested in the Corporation; but on the other hand it is quite clear that under section 65 executive maintenance is vested in the Commissioner. In all this part of the Bill we are dealing with what I may term executive maintenance, and therefore to my mind the "Commissioner" and not the "Corporation" is the right term to use. However, I do not think it a very important matter; for if we read "Corporation" we must interpret it as exercising administrative functions, if we read "Commissioner" we must interpret it as exercising executive functions. I would like to say that I shall ask to propose one

short amendment if this amendment of the Honourable Mr. Mehta is rejected. As to these words in italics, I look, as every lawyer will do, with horror at the expression "generally or specially authorized." Every authority under this section is special, and I shall ask that "generally or specially" shall be omitted. Perhaps I may be allowed to say one word more now, because we have arrived at the discussion of the executive details; and to suggest to the Honourable Mr. Naylor, who is in charge of the Bill, that before the third reading he should cut down the Bill by omitting some details in it. They are a disastrous legacy from previous Bills. For the one I refer to he is not responsible. Section 331 deals with the manner in which to lay gas-pipes; it lays down what shall be the distance between a gas-pipe and a water-pipe, the length of the pipes, and even the material of which the filling shall be made. No doubt that represented the opinions of engineers in 1865, but as to whether it is the best way at the present time the framers of the Bill should not decide. It may safely be left to the executive officers' discretion. Nothing can be more dangerous than for individual members to move amendments interfering with the executive details, and I do not propose to do so. But I would suggest, for the honourable member's own convenience, that he should remove some of those sections which as I have pointed out are excrescences.

The Honourable Mr. WEST:—Your Excellency, —I do not desire to enter into the discussion which this subject has occasioned, though I think nothing can better illustrate the wisdom of the judges at home in refusing to admit the speeches of members of Parliament as to the meaning of the various enactments. It is better to see what the details are, and how they fit in with the general scheme of the Act as developed in other sections, rather by reference to general principles. Here I think we should be involved in a difficulty if we adopted the amendment of the Honourable Mr. Mehta. Section 65, defining the duties of the Commissioner, says he shall carry out all the provisions of this subject, except wherever it is otherwise expressly so directed, to the approval or sanction of the Council or Standing Committee. He has for the purpose of carrying out the provisions of this Act certain powers. But if we alter section 219 according to the amendment, the Act would require that not the Commissioner but the Corporation should maintain and keep in repair the Municipal drains. That would be no longer the function of the Commissioner but of the Corporation, for it would specially provide that the Corporation should carry out this work, and the Corporation would thus be undertaking executive work which is clearly no part of their function. The maintenance of the drains would properly vest in the Commissioner, whereas the initiation and resolution that the drains be constructed is clearly the function of the deliberative body. It is like keeping a pair of boots in good order or is merely cleaning them—that is the executive function which the Commissioner must perform for the Corporation who owns them. To order the boots to be cleaned is the owner's work. Look at this section as you will, it is clearly executive, strictly executive, if it is anything at all. Maintenance of the drains is what is involved, not their suspension or any proposal to stop them up. That would come within the functions of the Corporation, but their maintenance is merely carrying out the policy of the Corporation. I agree with what has fallen from the Honourable the Advocate-General as to the "special or general authority." But the matter lies so much in a nut-shell that it is needless to expend more words upon it.

The Honourable Mr. NAYLOR:—I would like to say, your Excellency, with regard to what fell from the Honourable Mr. Mehta, that I was never prepared to substitute, and never had any intention, in my mind, of substituting in these chapters the word Corporation for the word Commissioner. The Honourable Mr. Macpherson, no doubt, was at one time inclined to the Honourable Mr. Mehta's view, but my recollection is that he did not finally make up his mind on the point until the Select Committee's report was prepared, and, as he then expressed his concurrence in the report and in all the proposed amendments, I am justified in concluding that his ultimate opinion coincided with mine.

The Honourable Mr. PHEROZSHAH MEHTA:—The substitution of "Corporation" for "Commissioner" was suggested by the Honourable Mr. Macpherson. It was so far accepted on the first day that a note was made of all the sections in which the word was to be substituted. I have got here the note I made at the time in my copy of the Bill.

The amendment was then put to the vote.

The Council divided.

Ayes.

The Honourable Kashináth Trimbak Telang.
 The Honourable F. Forbes Adam.
 The Honourable Pherozshah Mervanji Mehta.
 The Honourable Ráo Bahádúr Behechar-das Veharidas.

Noes.

Lieutenant-General H. R. H. the Duke of Connaught.
 The Honourable J. B. Richey.
 The Honourable R. West.
 The Honourable the Advocate-Generál.
 The Honourable J. R. Naylor.
 The Honourable Ráo Bahádúr Mahadeo Wásudev Burve.

So the amendment was lost.

The Honourable the ADVOCATE-GENERAL then moved that the words "generally or specially" be omitted from section 219. The honourable gentleman merely observed: I have given my reasons for this already. I think it very undesirable to leave the section as it stands in that respect.

The Honourable Mr. NAYLOR:—My only fear is that, if you omit these words, special authorisation may be considered necessary for each separate work. A great deal of trouble will be caused if a large number of small matters cannot be brought up for sanction under one general head.

The Honourable Mr. TELANG:—I quite agree with the Honourable the Advocate-General as to the desirability of the amendment.

The Honourable Mr. WEST:—I have the same fear as the Honourable Mr. Naylor; otherwise I am quite willing to accept the amendment.

The amendment was accordingly agreed upon.

The Honourable the ADVOCATE-GENERAL:—I do not propose to move the omission of these words wherever they occur. I presume they will be dealt with as consequential verbal amendments.

The Honourable Mr. TELANG moved:—That in section 220, line 10, the words "uncovered by any building intended to be used as a dwelling" be substituted for the words "whatsoever."

The honourable gentleman remarked:—The object of this amendment is obvious on the face of it. I think the section as it stands most objectionable. No public drain should be allowed to pass under any building used or intended to be used as a dwelling. By a subsequent section, no one is allowed to build over a municipal drain, and that is enough reason why the Municipality should not be allowed to run a drain under a building already existing. The preservation of health would be rendered impossible.

The Honourable Mr. NAYLOR:—Will the honourable gentleman also move his amendment to section 228 at once in order to save time?

The Honourable Mr. TELANG:—Yes; I move that in section 228, line 10, the words "uncovered by any building intended to be used as a dwelling" be inserted after the word "land."

The Honourable Mr. NAYLOR:—The power given by these sections, honourable members will understand, is a very necessary power, and the sections are purposely expressed in general terms. It is impossible to say where a drain may have to run, it may be necessary to take it anywhere. Engineering difficulties in this respect in Bombay are very great, and I understand it is sometimes inevitable to carry a drain under existing buildings. Of course, there would be the alternative of purchasing the building and then using the land as desired; but this would be extremely expensive. Sub-section (3) of section 220 provides that the owner shall receive compensation, and if, by reason of a drain being carried under any building, a nuisance would be likely to be created, I have no doubt the owner would receive considerable compensation. I may observe, too, that the words of the proposed amendment are so very wide that they will cover any building—a little bit of a wall, or the corner of a verandah, and their introduction would very much impede the operations of the municipal officers. The section is taken from the English Public Health Act: so there is a good precedent for it. The principle is recognised in England, that a public drain may be carried under any land whatsoever, and it seems to me it must be recognised by this Council. It will always be an expensive matter

to take a drain under an existing building and it is not likely to be done when it can be avoided; but when there is no other means of completing a drainage system, such a course is imperative.

The Council divided.

Ayes.

The Honourable the Advocate-General.
The Honourable Kashinath Trimbak
Telang.
The Honourable Ráo Bahádúr Mahadeo
Wasudev Burve.
The Honourable Pherozeshah Mervanji
Mehta.
The Honourable Ráo Bahádúr Behechar-
das Veharidas.

Noes.

Lieutenant-General H. R. H. the Duke of
Connaught.
The Honourable J. B. Richey.
The Honourable R. West.
The Honourable F. Forbes Adam.
The Honourable J. R. Naylor.

The amendment was lost by the casting vote of His Excellency the President.

The Honourable F. FORBES ADAM moved:—That there shall be added a proviso at foot of section 225—“Provided that no owner of a private street shall for the purpose of branching the drain thereof into a municipal drain be required to construct a drain for a greater length than 100 feet beyond the limit of such private street.” He said:—Your Excellency, under the present Port Trust Act the Municipality are bound to take over drains and roads so soon as they are constructed, and at present there are many almost completed. Under this section the Municipality will have to connect them with municipal drains if they wish to take them over. On the Port Trust's Mázgaon property the drains would have to be carried half a mile to meet a municipal drain. If the drains are not connected with the municipal drain I take it the Municipality will not take over the roads or drains on this property, and the Port Trust would have to maintain and repair both roads and drains long after they were completed or used for adoption by the Municipality. In moving this amendment I merely ask that the Port Trust shall be treated as private owners are treated.

The Honourable Mr. NAYLOR:—The Honourable Mr. Forbes Adam has himself in his last few words pointed out what appears to me to be the refutation of the grounds upon which he bases his claim. The words of the section are not imperative in any sense. They are merely entitling, and the right they confer is subject to the conditions which are specified in the clauses (a), (b) and (c). The section cannot apply unless first of all the owner, for some reason or other, wishes to connect the drain of his street with a municipal drain. In this respect the Port Trust property is in the same position as private property, and if the Port Trustees do not wish to have the advantage of connecting their drains with the municipal drains, they are at perfect liberty to make their own arrangements. Under sections 229 and 230 there is power given, as the Honourable Mr. Forbes Adam has said, to the Commissioner to compel an owner of property to connect his drains with those of the Municipality when any part of his premises is within a hundred feet of a municipal drain. If the premises are beyond that distance, the Commissioner has power only to compel the owner to connect his drains with a cesspool. If the Port Trust property is further than a hundred feet from a municipal drain, the Trustees are at perfect liberty to make other convenient arrangements for the discharge of the contents of their drains. The report of the Select Committee upon this matter says:—“With reference to section 225, we have considered the question raised by the Trustees of the Port as to whether Government, in determining, under section 38 of the Port Trust Act, disputes between the Municipality and themselves regarding the sewerage of roads which they propose to hand over to the Municipality, should not be authorized to exempt them from the requirement of clause (b) regarding the branching of the drain under a road which is to be handed over into the municipal drain. Our opinion is that it would be invidious to place the Port Trust in a better position in this matter than other owners of private streets, and we have, therefore, not thought it proper to insert any special provision in the Port Trust's favour.”

The Honourable Mr. FORBES ADAM:—I am glad to hear the word “entitling” used. It struck me that if the section were compulsory it would prove a very great hardship

indeed on the Port Trust, who would in some cases have to construct a drain on land which the Municipality would inevitably have to drain sooner or later.

The Honourable Mr. WEST :—The matter is left open to the Port Trust, but perhaps it would make that point clearer if the wording were slightly altered—say : “desiring to connect shall be entitled to do so.” It is not intended to impose a duty upon the owner of private property, but an advantage conferred upon him.

The Honourable Mr. FORBES ADAM :—I do not press the amendment.

It was accordingly withdrawn.

The Honourable Mr. TELANG had given notice of the following amendment :—That in section 225 (a), line 11—12, the words “licensed” and “in token of its having been made by him” be omitted, but remarked : I do not know whether it would be convenient to take this amendment after that of the Honourable Mr. West on section 354.

His Excellency the PRESIDENT :—It will be quite convenient, and we will take it after the adjournment.

The Honourable Mr. WEST :—I shall not oppose the Honourable Mr. Telang’s amendment, but I think my amendment will meet his difficulties.

The Honourable Mr. TELANG :—I think it will with a slight modification of the words.

The Honourable Mr. WEST :—Yes ; I dare say I can accommodate you in that way. However I am sure that the Council will accept my amendment.

The Honourable Mr. WEST moved. :—That in section 354, the following sub-section be inserted after sub-section (1), *viz.* :—

“(1A) If any applicant for a license to act as a surveyor is a licentiate of civil engineering or a person who has passed some test of professional qualification equivalent to that for a licentiate of civil engineering, his application shall not be refused by the Commissioner, except with the approval of the Standing Committee and upon the ground that the applicant is unfit, through incompetency, misconduct or other grave reason, to hold such license.”

The honourable gentlemen remarked :—I think I understood the Honourable Mr. Mehta to say he considered this amendment satisfactory, and would not press his amendment in face of this.

The Honourable Mr. PHEROZESHAH MEHTA :—That is so.

The Honourable Mr. WEST :—Then your Excellency I have only to move that the sub-section I have submitted be inserted after sub-section (1). The section as it stands seems to put a rather arbitrary power into the hands of the Commissioner, which would be strongly resented by persons who thought they were competent, and might impose an undue burden on people who obtained their diplomas in the University of Bombay—a higher test of efficiency than the Commissioner could apply. No reports could be better than those furnished by the University in its degree. But, of course, there may be cases in which the recipient of such a diploma may have fallen into dissolute habits, or his natural negligence may have brought him into disgrace. Such a man might under certain circumstances pass plans of such an undesirable character that, if carried out, they might affect the neighbourhood with disease. These are considerations which I had in view when I framed this amendment. A license is required for the prevention of mischief; but any one who has obtained a University degree in engineering will be granted a license, unless, as I say, there be some reason why it should be withheld. Professional ability will be thus ensured, and the public saved from mere pretenders. In section 225 a few words are required, which I propose to add to line 12 : “In token of its having been made by him or under his own supervision.” The Honourable Mr. Naylor suggests that in sections 337 and 341 small amendments are desirable : “In token of its having been prepared by such surveyor or under his supervision”. I trust that will meet the approval of the Council.

The amendment to section 354 was adopted without comment, and the verbal amendments to sections 225, 337 and 341 were also accepted by the Council.

The Honourable Mr. Mehta then withdrew his amendments to section 337 and others, *viz.* that “sections 337, 341, sub-section (2) and so much of sections 354, 355 and 356 as relates to the licensing of surveyors be omitted.”

The Honourable Mr. FORBES ADAM moved that the words "dock, wharf or other place of public resort", in lines 6 and 7 of section 247, be omitted; also the words "or as workmen or labourers" in lines 9 and 10.

In so doing the honourable gentleman remarked:—Your Excellency, this is another amendment which I have to move on behalf of the Port Trust, and I hope the Honourable Mr. Naylor will not raise any objection to this. Under section 37 of the Port Trust Act the Trustees are bound to admit free to the whole of their property such of the public as may think fit to come. I think Government will admit that the position of the Port Trust in this respect is different from that of any other of the bodies which can be called public. Large numbers of the public daily pass over the property of the Trust without conferring any benefit whatever upon the Trust. It is different with a railway station. The company, to which the station belongs, benefits directly or indirectly from every person who enters their station. A railway company works for a profit for individuals. The Port Trustees administer their estate solely for the public benefit. The subject of drains has always been a point of contention between the Municipality and the Port Trust. The Port Trustees are subject to great hardships in this respect, and I maintain that seeing the Port Trust derive no advantage, direct or indirect, from the resort to their property of the general public, that it should be the duty of the Municipality to provide the necessary accommodation for them. This is a function which properly belongs to the Municipality. The omission of the words, as I propose, in this section will have the desired effect.

The Honourable Mr. NAYLOR:—Your Excellency, as the Honourable Mr. Forbes Adam has observed, this question has been a point of contention between the Port Trust and the Municipality for some considerable period, and it has also had to be considered by Government. The principle which underlies the section is that all those who attract people to their premises, whether for the purposes of trade, or manufacture, or business, or for amusement, or for traffic, shall provide the people so attracted with the accommodation which is necessary for them. The Port Trustees have argued, as the Honourable Mr. Forbes Adam now does, that their case is different from that of other large proprietors in the city of Bombay, but to me it seems that, whether it be a railway-station, a market, or a mill, the same arguments apply with equal force. The Port Trust attract people to their docks and wharves, and business is carried on there; they are, therefore, bound to provide the necessary accommodation. That is the view which has always been taken by Government and that is the view which guided the Select Committee when they refused to make any amendment to the section in favour of the Port Trust, who in paragraph 54 of their report said: "The Trustees also object, with reference to section 247, to their being held liable to provide latrines, &c., for the accommodation of the public who resort to the wharves and docks on their property. They admit their liability to provide such accommodation for their own employés, but they argue that latrines, &c., for public use on their wharves and docks should be provided at the expense of the Municipality. We are of opinion that the section, which will impose this liability on the Trustees, should stand as it is. The principle that those to whose premises the public are attracted for purposes of trade or traffic should provide for the public accommodation appears to us to be a fair one; and we think that the Trustees have failed to establish a case for special treatment, as they do not differ from other proprietors, except in the large extent of their property."

The Honourable Mr. FORBES ADAM:—The Honourable Mr. Naylor has not satisfied me that the Port Trust should not be placed in a different position from other public bodies in Bombay. I would ask your Excellency to take a vote.

The Council divided:—

Ayes.

Lieutenant-General His Royal Highness the Duke of Connaught.
The Honourable Kashinath Trimbak Telang.
The Honourable F. Forbes Adam.

Noes.

The Honourable J. B. Richey.
The Honourable R. West.
The Honourable the Advocate-General.
The Honourable J. R. Naylor.
The Honourable Ráo Bahádúr Mahadev Wasudev Burve.
The Honourable Ráo Bahádúr Behchardas Veharidas.

So the amendment was lost.

The Honourable Mr. TELANG moved, without a comment, the following amendment: That in section 258, line 1—2, for the words “if he thinks fit” the words “with the sanction of the Standing Committee” be substituted.

The Honourable Mr. NAYLOR:—Your Excellency,—I must oppose this motion of the honourable gentleman, on the ground that the matter which it affects is purely an executive one. Cases may arise requiring prompt action. In giving orders under the section, the Commissioner would have generally to depend on the opinion of his executive engineer or other qualified engineer officers, and the matter is one in which I see no necessity for the Standing Committee being consulted. The Commissioner would act upon regular principles, well-understood in the profession. On the other hand, if owners knew that the issue of orders was in the hands of the Standing Committee, they would be inclined to make an appeal to the compassion of the members of the Committee individually, and private considerations, rather than the actual merits of the case, would guide the decision. Mr. Charles informs me that it is imperative that such work as the section contemplates should be done by trained workmen, particularly where, as sometimes happens, the drain concerned may have to cross water mains. Very careful supervision is necessary, as careless work may seriously affect the value of the property concerned. The proper person to decide in such matters is, I take it, the Commissioner guided by his subordinates.

The Honourable the ADVOCATE-GENERAL:—I do not know whether the Honourable Mr. Naylor has noticed it or not, but there is a repetition here. In section 492 the same power as is conferred by this section is given over again. Would it not be best to leave out this section altogether? Section 492 provides more elaborately for the same thing, and includes most other sections.

The Honourable Mr. NAYLOR:—I think the Honourable the Advocate-General is under a misapprehension. Section 492 refers to cases where the owner is called upon to do certain work, and refuses to do it.

The Honourable Mr. WEST:—This section, as I understand it, has reference to work not likely to be done in a proper way and consistent with the public health or welfare. By it the Commissioner is enabled to take such work out of the owner's hands and do it by skilled workmen and subordinates whom he will always have at his disposal. It appears to me a necessary provision; for if work were roughly done, we might have water escaping into gas, or drains into water. I am not sure that any great evil would arise by a reference to the Standing Committee, but there would be a fear of feelings of kindness influencing members, and the result might be badly done work.

The Honourable the ADVOCATE-GENERAL:—The Honourable Mr. Telang's amendment is quite justified. As a question of convenience it seems very important here.

The Honourable Mr. TELANG:—To my mind, the arguments seem to point in favour of the Commissioner always doing the work, and never leaving the private owners any opportunity of doing it themselves.

The Honourable Mr. WEST:—Where there is no danger of public inconvenience the owner might be left to do the work. How will it do to introduce the words: “may when it shall appear necessary”? Perhaps that will meet your susceptibility. It implies mere option. Perhaps Mr. Naylor will accept the change.

The Honourable Mr. PHEROZESHAH MEHTA:—I think the Commissioner should have the power to do some of these works himself. But there should be some guarantee that he would not afterwards present a very extravagant bill. I should not object to his doing the work, as it is very important that the work should be properly done. Indeed, I would be in favour of making the clause compulsory if it could be provided that the charges made upon the private owners were not extravagant.

The Honourable Mr. FORBES ADAM:—There is a great deal of danger of what Mr. Mehta speaks of—an extravagant bill. The Port Trust has had some experience of that. We have found ourselves able to get work done much more cheaply than it is by the Municipality.

The Honourable the ADVOCATE-GENERAL:—That is always the case with anything done by public bodies.

The Honourable Mr. NAYLOR :—The Honourable Mr. Forbes Adam's statement is, I believe, not admitted by the Municipal Commissioner, and it should not be accepted without inquiry.

The Honourable Mr. WEST :—Would you refer it to the Standing Committee, in case of difference of opinion, as to what the charges should be? It would be easy to introduce a clause to provide for this.

The Honourable Mr. RICHEY :—The Municipality may come in for an action if the private owner can make out a good case. Under section 505 the power of appeal is given before the Chief Judge of the Small Causes Court.

The Honourable the ADVOCATE-GENERAL :—Yes; that may be done, but still the clause does not contemplate that all the work shall be done.

The Honourable Mr. TELANG :—I withdraw the amendment.

The Honourable Mr. TELANG then moved that in section 267, line 26, the word "corporation" be substituted for the words "standing committee." The amendment was accepted.

The Honourable Mr. FORBES ADAM moved :—That there be added to section 269, clause 2—

"Provided that this section shall not apply to any public wharf, dock or pier of the Bombay Port Trust."

The honourable gentleman said :—Your Excellency,—The argument used by me in my last amendment is the same I have to use here. I can only press now, as I did before, the fact, which is clear to my mind, that there is a difference between the Port Trust and other public bodies. An immense number of people pass over the Port Trust land as passengers after having passed through the long dusty roads of Bombay, and we have to supply them with drinking water when they get to us. The Municipality should provide them with water when they are on our property, as they do to other people on their streets and highways.

The Honourable the ADVOCATE-GENERAL :—I felt in the last case there was great hardship. In this case I think the Municipality should make some arrangement in proportion to the number of passengers as apart from the number of people the Port Trustees employ. That would be a remedy, I think.

The Honourable Mr. PHEROZESHAH MEHTA :—As the Commissioner still sits on the Port Trust, the Board will always be able to get at him on the subject.

The Honourable Mr. FORBES ADAM :—I am afraid the Municipal Commissioner will hardly help us.

The Honourable Mr. WEST :—The section only requires the provision of water for the people employed; you need not provide for other persons. If you will not extend your charity to others, you will have to put watchers over the supply, and give tickets to your employes—those who have tickets to have access to the convenience; while those who have not, shall not. But I suppose the trouble and expense of this would be greater than the expense you will now be put to.

The Honourable Mr. FORBES ADAM :—Would it not be possible to leave out the word "occupying" and leave it "employed"?

The Honourable Mr. WEST :—That would meet the particular case of the Port Trust, but it would cut off the operation of the clause as regards other large interests. The Port Trust is undoubtedly a very important institution in Bombay; but it is not the whole of Bombay. There are many other cases in which the retention of the word would be very important.

The Honourable the ADVOCATE-GENERAL :—The Municipality in some way should make a contribution.

The Honourable Mr. WEST :—The furnishing of water by the Port Trust to the people who resort to its property is a piece of charity on their part of which we have heard a good deal.

The Honourable Mr. FORBES ADAM :—We by no means wish to deprive the Municipality of the privilege, or to deprive them of the pleasure they would derive from that charitableness.

The motion was withdrawn.

The Honourable Mr. TELANG moved :—That in section 277, line 1, after “ may ” add the words “ with the sanction of the Standing Committee.”

The honourable gentleman, after reading the section as he proposed to amend it, said :—Your Excellency,—It has been said that if certain matters were left to the Standing Committee there would be canvassing of an objectionable character, but in respect to the matter now before us, at all events, I do not see how that could be. On the contrary I think it undesirable that the Commissioner should exercise such powers as he is here empowered to exercise, without first obtaining the sanction of the Standing Committee.

The Honourable Mr. NAYLOR :—Your Excellency,—This is a matter which appears to me to be entirely one of executive detail, and when cases occur, in which it is desirable to cut off the water-supply, it is necessary that it should be done promptly. The question of cutting off the supply arises principally (1) when default is made in the payment of water tax, (2) on failure to repair connections with water mains, and (3) in the event of water being wasted, or of some other abuse of the right of supply. These are matters with which the inspecting officers become acquainted and by them the Municipal Commissioner is informed, and it is his duty, as the executive authority, to deal with them. It may sometimes be necessary, in order to bring a defaulter to his bearings, to cut off the supply of water at once, and it would be extremely inexpedient that the question of cutting it off should be a matter of contention for a month in the Standing Committee. The object of the executive is to show a good revenue, and as the water-supply is one means of increasing that revenue, it is not at all likely that the power contained in this section would be used, without real necessity.

The Honourable the ADVOCATE-GENERAL :—Although it is in the interest of the suppliers of water to encourage the consumption, yet it has been found in London that the water companies use their power extremely frequently and under such circumstances that at times the magistrates have come down rather sharply on the companies. It is an extreme remedy to deprive a whole building of water merely because the owner refuses to pay. There might be many persons, besides the one it was intended to punish, who would be affected very seriously; and I think it would be wiser if the sanction of the Standing Committee were made necessary.

The Honourable Mr. NAYLOR :—If that is the general sense of the Council, I am quite willing to agree.

The amendment was accordingly accepted.

The Honourable the ADVOCATE-GENERAL moved :—That in section 287 (2), line 16, the words “ widen, extend or otherwise improve any such street or ” be omitted.

That in section 289, clause (b) be restored.

He remarked :—The question raised by my amendments, your Excellency, is the border line between the duties which the Commissioner shall exercise on his own behalf and those which he shall exercise only with the authorisation of the Corporation. The clause which I propose to alter deals with the former class; the second which I propose to restore, with the latter class of duties. I think that, with respect to the widening of streets, the subject should rest for final decision with the Standing Committee or the Corporation, for if so happens that the widening or the extension of a street may often be a greater matter than the construction of a new street. The extension of New Oxford Street was a greater job than the making of many new streets in London. I propose, therefore, to amend section 287 by omitting the words mentioned, and to let section 289 (b) remain as it was.

The Honourable Mr. NAYLOR :—Your Excellency, I quite agree that the Honourable the Advocate-General is right in saying that the widening or extension of a street is frequently equivalent to an extensive new work. But the simple answer to that objection is that no such work as he describes can be undertaken or executed by the Commissioner, unless the Corporation first of all grants the money. Therefore, unless the Corporation have already had the scheme under consideration, with the plans and estimates, and have satisfied themselves that the work ought to be done, the Commissioner cannot, under the constitutional sections—No. 66 especially—undertake the work at all. But although it is true that the section now before us may sometimes cover a very large work, yet, on the other hand, it will most usually apply to a number of small works—the taking of a corner here and a corner there—an operation which goes on from year to year in a

city like this to a very large extent indeed. In order that the Commissioner may have power to deal with such cases as they occur from week to week, it is necessary that the section be left in its present form, otherwise the Commissioner would be seriously hampered and delayed in the important duty of effecting from time to time, as opportunity offers, small improvements in streets, by his having on each occasion to wait until he could, after much discussion, obtain the sanction of the Corporation. It is a matter which affects the convenience of the administration, and I hope the Council will allow the clauses to remain as they now are.

The Honourable Mr. PHEROZESHAH MEHTA :—This discussion brings out more clearly one of the reasons for which I proposed the substitution of the word “Corporation” in this and other sections. The Corporation has the fullest powers of initiation under this Bill. Now see how the sections in question might possibly be interpreted. The Corporation may consider that a particular road should be made or widened, and may sanction a sum of money for that purpose only. If the Commissioner be of a different opinion as to the usefulness of the road, though he cannot make the road which he may prefer, still he may, as the sections are worded, feel himself justified in refusing to carry out the wishes of the Corporation. He may imagine that the initiative is in himself under these sections and the Corporation could only give sanction to what he should propose.

The Honourable Mr. WEST :—The work is put in the Budget and accepted by the Corporation, and that throws upon the Commissioner the necessity of carrying out the work. If he tries to over-ride the Corporation, he has over-stepped his duty, and the Corporation would immediately pass a vote dismissing him. But if the Council will look at section 66 they will see that, if the Commissioner proposes to carry out any extensive work, it must have been provided for in the current budget grant. To pass such an amendment as this would be to throw a great deal of detail work upon the Corporation. The way to look at the matter is from a practical point of view. The Commissioner should have power to carry out his duties, for he would be censured if he betrayed the trust imposed upon him.

The Honourable the ADVOCATE-GENERAL :—Widening and extending were considered of such importance under the old Act that sanction was required for both, and I have never heard of any complaint having been raised of this provision having worked unsatisfactorily. When you come to widen and enlarge it may mean a very large undertaking indeed. I would greatly prefer, then, that we take out the words “widen or extend” and leave “otherwise improve.”

The Honourable Mr. WEST :—“Improve” may involve a very large expenditure. The best thing to do would be to leave in all the words, and add “in such a manner as shall not involve an expenditure beyond” a certain amount. The question will be what amount shall be fixed—something between two and five thousand rupees.

The Honourable Mr. PHEROZESHAH MEHTA :—There might be practical difficulties in working such a provision. At present, the Corporation allots in the budget about Rs. 40,000 for acquiring set-backs while special provision is made for new roads.

The Honourable Mr. WEST :—Had we not better specify this? The words which will meet the Honourable Mr. Naylor’s views are these : “Within the limits of the budget grant for the purpose and so as not on any one work to spend more than Rs. 2,000, unless a larger expenditure has been approved of by the Corporation.”

His Excellency the PRESIDENT :—The Honourable Mr. Naylor requires time to draw up a new clause. Do you consent to that?

No honourable member offered any objection. So the further consideration of the matter was postponed.

The Honourable the ADVOCATE-GENERAL then moved :—That in section 294 after the word *may*, in line 2, the words “with the sanction of the Standing Committee” be inserted.

The honourable gentleman remarked that the consent of the Standing Committee ought to be required under this clause, and I should like to invite the attention of the honourable mover to it, for it seems to me that we have two clauses on this subject which may come into conflict. The provisions are the same as in sections 90, 91, and 92. And then as to the words “the Commissioner may acquire”—*acquire* is the wrong word to use—the Commissioner does not acquire, but the Corporation. It is only a matter of drafting which I trust the Honourable Mr. Naylor will amend.

The Honourable Mr. NAYLOR :—The meaning of this section will be best illustrated by my attempting to explain how it will work. Let us suppose that the Corporation have sanctioned the making of a new road through the heart of the city; plans and estimates have been placed before the Corporation; and they have sanctioned the expenditure of money for acquiring the land and for constructing the road. This is done by means of a budget grant. It then becomes the duty of the Commissioner to carry out the work, and the first thing he has to do is to acquire the land. He does not acquire it on his own authority at all, but simply because the undertaking has been sanctioned by the Corporation. The undertaking cannot be carried out unless the land is first of all acquired. Now, this section is a general one which empowers the Commissioner to take the necessary steps for acquiring land for the purposes of such a road. Land may be acquired by the Corporation not merely for roads but for drains, buildings, or other purposes; this section applies merely to land required for roads. Its object is to show what extent of land may be taken up and for what purposes. Its clause (a) provides that land and the buildings, if any, standing thereon may be taken up for the purpose of either making a new street or of improving an existing one. Then clause (b) further provides that, if it seems expedient, land outside of the intended regular line of the street may also be taken up. But, as I said before, there are other cases in which land may be required by the Corporation, and there are two sections—sections 90 and 91—which apply not only to land taken up under this section 294, but to land taken up for any purpose whatever. Section 294 is to meet a particular case; section 90 applies to land acquired for any purpose whatever. To revert to the case of the street—the Commissioner having got the work sanctioned by the Corporation, proceeds to take up the land necessary for the street and, also, some and which will be outside the regular line of the street. He goes to the neighbourhood and tries to make terms with the owners of the land, but section 90 provides that when he does this, he shall be limited by such maximum rates and prices as the Standing Committee may from time to time deem fit to lay down. At present almost every agenda paper of the Town Council contains several references from the Commissioner in which he asks for their sanction to his acquiring a piece of land here and a piece there at such and such a price. These sanctions are usually given by the Town Council as a mere matter of form, as there is an understanding between the Town Council and the Commissioner that in certain localities land is worth a certain price and he may rely upon getting the Town Council's sanction if he obtains land within that price. The object of section 90 is to prevent the necessity of the Commissioner's bringing each of these small items before the Standing Committee separately and to enable the Standing Committee to say to him, "In a certain portion of the city you may agree to pay up to such and such a rate for land." This will be a very convenient way of working, and will save a great deal of unnecessary trouble. At the same time the Commissioner will, as regards the price he pays for land, be under the supervision of the Standing Committee. In case he wishes to exceed the maximum rate allowed by the Standing Committee, he must take their special sanction; or, if he finds it impossible to come to terms with the owner, he must go to the Standing Committee before asking Government to put in force the Land Acquisition Act for the compulsory acquisition of the land. With regard to the acquisition of land by agreement, there is one other important safeguard, which has been inserted by the Select Committee, on the motion of the Honourable Mr. Mehta. Sub-section (3) of section 90 provides that no agreement for the acquisition of land shall be valid, if the price to be paid exceeds one thousand rupees, unless and until such agreement has been approved by the Corporation.

The Honourable the ADVOCATE-GENERAL :—After hearing the Honourable Mr. Naylor's explanation I would ask leave of your Excellency to withdraw my amendment. I would still urge that as a safeguard it would be better to add the words "under the provisions of sections 90, 91 and 92." I think it would be much better to have that reference; to introduce a saving clause which may prevent a great deal of litigation.

The Honourable Mr. NAYLOR :—If we do that in one case we ought to do it in all.

The Honourable the ADVOCATE-GENERAL :—As a matter of fact you ought. Whenever I have found it, I have made a note of it. I think honourable members will agree with me as to the expediency of making an addition to the effect that this section is guided by sections 90, 91, and 92.

The Honourable Mr. NAYLOR :—I must say that I should prefer to leave it as it is.

The amendment was withdrawn; but the suggestion of the Honourable the Advocate-General was adopted.

The Honourable Mr. TELANG moved:—That in section 295, line 1, the word “shall” be substituted for the word “may”.

The amendment was adopted without discussion.

The next amendment moved by the Honourable the ADVOCATE-GENERAL:—That in section 299, line 8, “the word “or” be omitted and that after the word “damage” the words “or expense be inserted” was also adopted.

The Honourable the ADVOCATE-GENERAL moved:—That to section 301, clause (1), the words “with the approval of the Standing Committee” be added.

The honourable gentleman remarked:—This section refers to a matter essentially dealing with private rights. The Commissioner in fixing the levels of roads, their direction, and their means of drainage, interferes with the rights of every owner of land. The question is whether the Commissioner ought to do that, and whether it would not be preferable that he should have the sanction of the Committee.

The Honourable Mr. NAYLOR:—Your Excellency,—This matter was considerably discussed by the Select Committee, but it was thought that, as the matter was purely a professional one, the Standing Committee, as a whole, would not really be competent to deal with it.

The Honourable Mr. TELANG:—I do not see why the Standing Committee should not be consulted. The matter is not essentially a professional one, and the Commissioner is not necessarily a better authority on professional matters than the Committee.

The Honourable Mr. NAYLOR:—The Standing Committee is likely to be canvassed, and if influenced by private feelings in such a matter, as apart from professional advice, very grave mistakes might be committed by them.

The Honourable Mr. FORBES ADAM:—I think the Honourable the Advocate-General's amendment should be accepted. The possibility of canvassing the Standing Committee is not a matter to which we can attach importance. In my opinion, it would be better to have this safeguard.

The Honourable Mr. PHEROZSHAH MEHTA:—The Commissioner has to depute all these matters to subordinates, and it is thus in their power to exercise a good deal of oppression; very great hardships are likely to be caused if there be no such safeguard as proposed.

The Honourable Mr. NAYLOR:—Your Excellency, as the general opinion of the Council appears to be against me I will not press my views.

The amendment was accordingly accepted.

The Honourable Mr. TELANG moved:—That in section 303, line 5, add “with the sanction of the Standing Committee” after “may”.

The honourable gentleman remarked:—This, your Excellency, is one of the suggestions of the Corporation, and they desire the sanction of the Committee should be necessary.

The Honourable Mr. NAYLOR:—The considerations are here precisely the same as those with respect to section 301, and I am willing to follow what has been decided upon that section.

The amendment was adopted.

The Honourable the ADVOCATE-GENERAL moved:—That in section 309A after the word “thing” in line 8, the words “so as to form an obstruction thereto or encroachment thereon” be added. The amendment was accepted.

The Honourable Mr. TELANG moved that sub-section (2) of section 314 be omitted.

He said:—Your Excellency,—This sub-section is capable of being worked in practice in a very oppressive manner and the people who are likely to suffer are those who can hardly even hope to obtain any redress, or indeed even to demand it, and I should prefer to strike out the whole sub-clause.

The Honourable Mr. NAYLOR:—Your Excellency, the latter part of this sub-section was struck out in Select Committee on the ground that it appeared to put into the hands of municipal officers the means of inflicting hardship on hawkers. But the former part of it was left standing, in order that those officers might have the power of removing any

person who acts in contravention of the section, *i.e.* who, by hawking goods for sale in the streets or by squatting on the streets and exposing goods for sale, causes obstruction. The honourable gentleman contends that this would be a hardship to the persons concerned; but I am unable to concur with him. It is in open places round about a municipal market that the provision will most frequently apply. Hawkers and squatters come together in large numbers about the markets, and they will become a great nuisance to people who wish to go into the markets and do their business there, if there is no power of removing them. Under sub-section (1) of the section, there is, of course, the power of arresting persons who so offend and taking them before a Magistrate, and having them fined. In fact, that power is already possessed by the police under the Bombay Police Act of 1860. But it is a very much greater hardship to such persons to arrest them and take them before the Magistrate and have them fined than it is merely to require them to "move on." The loss of time involved in their prosecution is an increase of punishment. Besides this, a great deal of trouble is given to the Magistrates and police and to all concerned in prosecuting such offenders, and, after all, the end of such a prosecution most often is that the man being a very poor man is fined two annas and dismissed with a caution, and he at once returns and repeats the offence. The object of the section is to enable municipal officers to put down the nuisance. I do not see that any hardship can accrue from giving them the necessary power to prevent it.

The Honourable the ADVOCATE-GENERAL :—How is the Commissioner to exercise this power?

The Honourable Mr. NAYLOR :—By delegating it to his subordinates.

The Honourable the ADVOCATE-GENERAL :—But he has no staff of municipal police.

The Honourable Mr. NAYLOR :—There are the market officers.

The Honourable the ADVOCATE-GENERAL :—But this is not one of the sections under which you have a penalty.

The Honourable Mr. NAYLOR :—Resisting a public officer is an offence punishable under the Penal Code.

The Honourable Mr. PHEROZESHAH MEHTA :—I opposed this section very strongly in Select Committee. As the Honourable Mr. Naylor puts it, it seems that it is in the interest of the poor hawker that the section is devised. It will work, however, only in the interest of the lucky officer appointed to hunt the hawkers. If a few pice or annas are paid, the hawker becomes harmless and will be allowed to remain; those who do not, will be marched off.

The Honourable Mr. NAYLOR :—And then go back and do it again.

The Honourable Mr. PHEROZESHAH MEHTA :—Not if he does not pay. It is not to his interest to go back again otherwise.

The Honourable Mr. FORBES ADAM :—People should be prevented from obstructing the street; otherwise persons going along the road are in danger of being run over.

The Honourable Mr. TELANG :—It must be remembered that the operation of the section is not in terms confined to the vicinity of municipal markets, but extends to the whole city. The useful part of the section is covered by other enactments and it is almost better to remove the whole section.

The Council divided :—

Ayes.

The Honourable the Advocate-General.
The Honourable Kashinath Trimbak
Telang.
The Honourable F. Forbes Adam.
The Honourable Pherozeshah Mervan-
ji Mehta.
The Honourable Ráo Bahádur Behechar-
das Vehiridas.

Noes.

The Honourable J. R. Naylor.

So the amendment was carried.

The Honourable Mr. NAYLOR :—Then I propose, as a consequent amendment, that the first sub-section be omitted, so that section 314 be removed altogether.

The Honourable the ADVOCATE-GENERAL :—Yes ; leave the whole thing to the police.

The proposal was adopted.

The Honourable Mr. TELANG moved :—That in section 318, line 15, the word "special" be inserted before the word "damage."

The Honourable Mr. NAYLOR :—I am willing to accept this amendment.

The amendment was accordingly accepted.

The Honourable Mr. PHEROZESHAH MEHTA moved that sub-section (2) of section 325 be omitted.

The honourable gentleman remarked :—Your Excellency,—I think this is one of those matters which it is easier to be looked after by the corporate body, and the expense borne in common. I do not think the private house-owner should be bound under a penalty to see that the number put on is kept in good order and not meddled with. Such provisions are practically nugatory.

The Honourable Mr. NAYLOR :—Your Excellency,—The amendment moved by the Honourable Mr. Mehta is to remove a sub-section the provisions of which have been the law in Bombay for some years past. Nor is this law confined to Bombay alone. It is the law in every Municipality throughout this presidency and the law in the metropolis of London, and it is probably also the law throughout the whole civilised world. In London, not only is the occupier bound to keep the number painted, but to put it up originally. Here, when it has been put up by the Municipality, he is merely bound to keep it in repair. I do not think it very much matters who puts up and maintains these numbers or at whose expense it is done, but I see no reason for departing from what is the law elsewhere. It entails very little expense to the occupier, and although it may not throw much expense on the Corporation, if they are left to do it, still the cost to individual occupiers is so trifling, that it seems better to let the responsibility rest upon them.

The Honourable the ADVOCATE-GENERAL :—Your Excellency,—I had the same amendment as this on the paper. It is not an important matter, but rather tells against some of us here. I am sorry to own that I am an offender in this respect. I am afraid I have never taken any steps towards keeping my number properly painted and in good order. It would be much less trouble to have a man go round with a ladder and a pot of paint and put all the numbers right, just as the lamp-lighter goes round to light the lamps.

The Honourable Mr. RICHEY :—The question is, whether people would not take greater care of their own property than they would of other people's. At present the owner would be careful of his number ; but if the expense is not his own, he will be careless, and it would be rather hard to get a conviction against him.

The Honourable Mr. NAYLOR :—As the general feeling appears to be in favour of it, I will accept the amendment.

The amendment was accordingly accepted.

The Honourable Mr. TELANG moved that the following proviso be added to clause (b) of section 346, viz. :

" provided that any person whose building is so disapproved, may by written notice to the Commissioner, require that the position and direction of the future streets in the vicinity of his intended building be forthwith laid down and determined, and if such requisition be not complied with within three months from the date thereof, may, subject to all other provisions of this Act applicable thereto, proceed with the erection of his building."

The honourable gentleman said :—Your Excellency,—Under the section as it stands there is no limit to the time during which the Commissioner may leave the position and direction of the street undetermined, and this is hard on the individual owner. It seems to me the proviso I have here drawn up would meet the case.

The Honourable Mr. NAYLOR :—Your Excellency,—The clause on to which the Honourable Mr. Telang proposes to fasten this amendment is one for which there is considerable necessity, because Bombay is a growing city, and neighbourhoods which are at present unoccupied by houses or have only a few houses scattered here and there over them, may within a very short time have numbers of houses springing up. Sometimes houses spring up so suddenly that they are built and finished before the municipal officers are well aware of their existence, or, at least, before those officers can take measures to

secure their being erected with a due regard to the future requirements of the neighbourhood, whether as to sanitation or as to the direction and width, &c., of the streets which should be laid out therein. The matter is one which it is difficult to provide for satisfactorily, and I have myself foreseen the hardship which the Honourable Mr. Telang refers to. The difficulty is how best to provide against it. On the one hand it is necessary that the Commissioner should be able to step in and to prescribe how new houses shall be constructed with reference to the probable future requirements, and, on the other hand, it is expedient that he should not be able to interfere, without sufficient reason. On these grounds, after consulting the Commissioner, I have come to the conclusion to accept the proposed proviso; but I must ask the Council to extend the period which the Honourable Mr. Telang proposes. It would be too short a time for the Commissioner to do what is necessary, and for the questions involved to be finally settled. It might be found necessary at times to have a special survey, and the consideration of this and its results could not be satisfactorily dealt with in the time. Moreover, one or two months would be required to get the sanction of the Corporation for a special survey. If the honourable gentleman will substitute for three months one year, I shall be glad to accept his amendment.

The Honourable Mr. PHEROZESHAH MEHTA :—I was prepared to suggest six months; twelve months is much too long a time. A special survey need not take very long.

The Honourable Mr. NAYLOR :—It would take the ordinary officers a longer time than it would take special officers, as they would have their other duties to attend to simultaneously.

The Honourable Mr. PHEROZESHAH MEHTA :—Not more than a month. It seems reasonable that some time should be given, but to prevent a man from building upon his land for a year is unreasonable. Six months are ample.

The Honourable Mr. FORBES ADAM :—Six months is long enough in any part of Bombay.

The Honourable Mr. NAYLOR :—Then I agree to six months.

The amendment was agreed to, with the substitution of six months for three.

The Honourable Mr. TELANG moved :—That in section 350, lines 2 to 4, the words “there shall be reasonable ground for suspecting that” be substituted for the words “in the opinion of the commissioner it shall be necessary to ascertain whether”; and that the following sub-section be added to the section, *viz.* :

“(2) If it shall thereupon be found that in the erection of such building or the execution of such work, nothing has been done contrary to any provision of this Act or of any by-law made under this Act at the time in force and that nothing required by any such provision or by-law to be done has been omitted to be done, compensation shall be paid by the commissioner to the person aforesaid for the damage and loss incurred by cutting into, laying open, or pulling down the building or work.”

The Honourable Mr. NAYLOR :—I have no objection whatever. A similar provision, reproduced from the present Municipal Acts, is to be found in section 253 of the Bill.

The Honourable the ADVOCATE-GENERAL :—This just brings it into harmony with the corresponding sections.

The amendment was accepted.

The Honourable Mr. TELANG moved :—That in section 351, lines 5 to 7, the words “or any time within six months after the completion thereof” be omitted.

The honourable gentleman said :—Your Excellency, the provision by which the Commissioner is authorised at any time within six months after the completion of a building to have it opened for the purpose of inspecting it, and ascertaining whether or not any provision of this Act has been contravened, seems to give too long a time. There is enough time to inspect it while it is in course of erection, and it seems likely to occasion much inconvenience, not only to the owner but also to the occupier, if the Commissioner chooses to open it up six months after completion.

The Honourable Mr. NAYLOR :—Your Excellency,—The objection taken to this section is not, I understand, to the inspection of the building, but to the time allowed after the completion of a building within which inspection may be had. The annual number of houses

built in Bombay is about a thousand, and they are often run up so rapidly, that there is not time to make a proper examination of them whilst they are under construction. They are sometimes completed within four months from their commencement. These facts will show the Council that a very large staff of inspectors indeed would be required, if it were necessary for the inspection to be limited to the time during which a building is being erected. The Local Government Board in England has promulgated a model by-law, in which power of inspection is given "at any reasonable time during the progress or after the completion of a building." Under this by-law there would be no definite limit to the time within which municipal officers might claim to inspect a building after its completion. But in adapting this by-law to Bombay, we have been more considerate and have thought it fair to fix a definite limit. In the Bill, as introduced, the limit was one year. The Select Committee have cut the period down to six months. That is quite a reasonable time and I think it should stand.

The Honourable the ADVOCATE-GENERAL:—I quite agree that it is essential to have a building open for inspection some time after its completion. It is quite right that sufficient time should be given, and it seems to me that three months will be sufficient.

The Honourable Mr. MEHTA:—The Ward Inspectors constantly watch and inspect buildings while they are in course of construction; and departures from the plans passed are easily detected.

The Honourable Mr. RICHEY:—Every man makes a mistake, but surely it is competent for a builder to ascertain his rights and to keep within them before he completes his building. If he does that, he need not object to it being open for six months.

The Honourable Mr. FORBES ADAM:—Three months is sufficient, your Excellency, and I would ask the Honourable Mr. Naylor to accept the suggestion.

The Honourable Mr. NAYLOR:—Very well.

The amendment was then withdrawn and "three" was substituted for "six" in line 6 of the section.

The Honourable Mr. NAYLOR:—Might I suggest that after the word "work" in line 15 of section 351 we add the words "or his successor in interest."

The Honourable the ADVOCATE-GENERAL:—You want "successor in occupation" rather than "successor in interest".

The Honourable Mr. NAYLOR:—It is the owner of the building we want to get at.

The Honourable the ADVOCATE-GENERAL:—Then say "or holder of the building," it might be his executor; it is just a question of words.

On the suggestion of the Honourable Mr. Naylor, the point was left over, in order that he might consider what words would be most suitable for adoption.

The Honourable Mr. PHEROZESHAH MEHTA proposed to strike out the words "surveyors and" from lines 5 and 6 of section 356.

The Honourable the ADVOCATE-GENERAL:—I quite agree with Mr. Mehta that the clause ought to be omitted. It would be unfair to pay every man the same, and might drive good men out of the profession.

The Honourable Mr. NAYLOR:—This is quite a new proposal to me, and I should wish to have time to consider it. Let it be adjourned till Monday next.

This was agreed to.

The Honourable Mr. TELANG moved:—That in section 358 (2), line 18, the words "an honorary" be substituted for the word "a,"—saying:—Your Excellency, this is one of the amendments suggested by the Corporation. There seems to be some reason in it, for, if the men of the fire-brigade held other offices, they might not be available when wanted.

The Honourable Mr. NAYLOR:—Your Excellency,—The history of the fire-brigade is that up to recently it was a part of the Bombay Police, and the Municipality is considering, or is about to consider, the formation of a fire-brigade of its own. Hitherto police officers have been employed in the brigade; but the present idea appears to be that the police should not be so employed and that the members of the fire-brigade should be full-time men. Sub-section (2) of this section leaves it open for police officers to be members of the fire-brigade without requiring that they should necessarily be appointed thereto.

It is left optional whether or not they should be also members of the fire-brigade. The words of the sub-section will not prevent the carrying out of the proposal that the police should not be entertained in the fire-brigade and they will also admit of the enrolment of honorary members of the brigade.

The Honourable Mr. PHEROZESHAH MEHTA :—I do not see why members of the fire-brigade, who would generally have very little to do, should not be employed on work which would not prevent them from being readily available when wanted.

The Honourable Mr. FORBES ADAM :—I quite agree with the remark of the Honourable Mr. Mehta.

His Excellency the PRESIDENT :—If employed for other purposes it would make it impossible for the police to work as firemen. I do not think it wise to amend the section as honorary firemen would not be of much use.

The amendment was withdrawn.

The Honourable Mr. TELANG moved :—That provision be made for payment by the Commissioner of compensation in respect of premises pulled down by the fire-brigade, unless clause (b) of section 360 in which no fire has occurred.

The Honourable Mr. NAYLOR :—Your Excellency, the provision in clause (b) of section 360 to which the Honourable Mr. Telang refers is not a new one. It exists in the present Municipal Acts and in all Acts, I believe, of a similar nature regulating the duties of fire-brigades. The case is governed, however, by section 362, the effect of which is that if premises in the neighbourhood of a fire are damaged by the operations of the fire-brigade, the owner may recover compensation from the fire insurance office, if he has been prudent enough to insure his property. It is quite necessary that there should be this security for persons who suffer from the operations of the fire-brigade, but if the Corporation undertook the responsibility of compensating such persons, their liability might at times be very great indeed.

The Honourable the ADVOCATE-GENERAL :—I have never heard of a legal decision affecting the point, but I do not know whether the section is valid.

The Honourable Mr. NAYLOR :—I have not a copy of the Metropolitan Fire Brigade Act by me, but my recollection is that the Fire Brigade are not liable for damages, if they pull down a building to save it and other buildings from destruction by fire.

The Honourable Mr. RICHEY :—So long as the fire-brigade keep within their limits, I do not think they could be compelled to compensate owners whose property had been pulled down to save it and adjoining property from destruction by fire.

The Honourable Mr. FORBES ADAM :—Of course it must be remembered that in Bombay fewer properties are insured than is the case at home. In nine cases out of ten at home the houses are insured, but then it is not so here, and I quite think with Mr. Naylor that if the Corporation undertook to pay compensation it would be undertaking a very large responsibility indeed.

The Honourable the ADVOCATE-GENERAL :—I would make it a matter of discretion, so that the Corporation might have power to compensate in case of a mistake on the part of the brigade.

The Honourable Mr. PHEROZESHAH MEHTA :—Cases of hardship might occur. But it seems to me unsafe to impose a burden of so uncertain, and in some case possibly of a very heavy character upon the Municipality. It is a very heavy and an unknown burden.

The Honourable Mr. NAYLOR :—As the law stands, it is an inducement to people to be prudent and insure their property.

The Honourable Mr. TELANG—I withdraw the amendment.

The Honourable Mr. FORBES ADAM moved—That in section 374, in line 14, after the word "purpose" the following words be inserted, *viz.*: "for the temporary deposit thereof."

The honourable gentleman said :—Your Excellency, with reference to this matter the Select Committee in their report said—"The Port Trustees express a fear that under section 374 the Commissioner may require them to convey nightsoil from parts of their property to so great a distance as, say, Kurla, on the ground that the place for the "final disposal"

of such matter provided under clause (b) of section 371 may be there. The wording of sections 371 and 374 does, no doubt, leave the Commissioner a wide discretion, but not more, we think, than is expedient. It is unlikely that the Commissioner would impose any unreasonable requirement, under the sections, either on the Port Trustees or any other occupiers." There undoubtedly is a wide discretion left to the Commissioner, but I hold there is no reason why that should be so. Under section 372 temporary deposit only is provided for, and the same should be done here.

The Honourable Mr. NAYLOR :—The difficulty with regard to this section, so far as concerns compliance with the Honourable Mr. Forbes Adam's proposals, is that, as a matter of fact, no places of temporary deposit are ever provided for nightsoil, and members of this Council will understand that it is extremely undesirable that any such places should be provided. What is wanted is that nightsoil shall be carried away as quickly as possible to its place of final deposit, and that is what is required by this section. It seems to me a very necessary requirement. As regards dry rubbish, it is only required that it shall be conveyed to a place of temporary deposit, but the case of nightsoil is very different. Depôts are provided, in connection with the sewage system, at Carnac Bandar, at Kámáthipura and at Girgaon, and provision has been made in next year's budget for two new depôts of this kind. The section imposes no special responsibility upon the Port Trust. The rule is the same for the Port Trust as for any other owner of property, and it is very necessary in the interests of the community and for the sanitation of the city that discretion should vest in the Commissioner as to the places where nightsoil should be deposited.

The Honourable Mr. FORBES ADAM :—Would you agree to the insertion of the word "nearest" receptacle?

The Honourable Mr. NAYLOR :—Yes. I have no objection.

The Honourable Mr. FORBES ADAM :—Then I withdraw the amendment.

The honourable gentleman's motion was withdrawn and the word "nearest" was inserted before "receptacle" in line 13 of section 374.

The Honourable Mr. FORBES ADAM then moved that at the end of section 381 there be added :—"Provided that, if the unwholesome or filthy condition of such premises or such nuisance, as abovementioned, is caused by the discharge of, or by any defect in, municipal drains or other municipal appliances, it shall be incumbent on the Commissioner to cleanse such premises at the expense of the Municipality."

The honourable gentleman said :—Your Excellency, in support of this amendment I would like to point out that the municipal drains running into basins cause a very serious nuisance. Here is what Dr Hewlett in a letter says of one of them :—"The hideous nuisance of the Colába nightsoil is as rank as ever. No change has taken place, and three-fourths of the nightsoil of Colába still discharges into the sea here well above high-water-mark. The tank which receives the nightsoil was, as on my former visit, uncovered and disgusting. The preventive officer on duty stated that, on occasions when the mail boat has anchored off Pilot Bandar owing to lowness of tide, he has observed passengers passing this outlet in steam launches having to make free use of their handkerchiefs to avoid the unsavoury greetings of this offshoot of our local self-government system." That is one. Here is what he says of another :—"The condition of Kassára Basin is, if possible, worse than formerly. No words can exaggerate its offensiveness. This appears to be altogether due to the Mázgaon drain, which discharges far above low-water-mark. Considering the importance of the sanitary state of this basin, its immediate proximity to the large establishment of the P. and O. Dockyard, something should be done, and without delay, to improve it. The measures absolutely needed are the utilizing of some old water-pipes to carry the contents of the drain well below low-water-mark. This would cost so little that it is difficult to understand why it has not been done before. Afterwards the basin should be dredged, but to do so until the drain has been moved more seawards would be useless. One of the employés of the P. and O. Company, who lives at the Dock, stated that on several occasions he became ill from the effects of this drain, and that absolutely when eating his food tasted of his surroundings." These, your Excellency, are strong reasons in favour of my amendment, and they urge, more forcibly than I could do, the necessity of something being done. I would therefore ask the Council to let my amendment stand.

The Honourable Mr. NAYLOR :—Your Excellency, I am thoroughly taken by surprise in this matter. I was unable to gather from the honourable gentleman's notice the precise object of the amendment he was about to propose. I expected it was a proposal in the interest of the Port Trust, but it now seems to be, rather, in the interest of the community at large. I am not acquainted with the details to which the Honourable Mr. Forbes Adam has referred, and I would ask that the subject may stand over until Monday that I may make enquiries.

This was agreed to.

The Honourable Mr. TELANG moved that the following words be added to clause (a) of section 407, viz: "and shall not cancel or suspend any such license without the approval of the standing committee," which was agreed to.

The Honourable Mr. TELANG moved :—That in section 408, lines 1 and 2, the words "or has reason to know" be omitted.

The honourable gentleman remarked :—Your Excellency, I propose that these words be omitted. It seems quite unnecessary, and besides also unreasonable, to punish any person who merely "has reason to know." It is unnecessary because you can punish the chief offender, who must "know" and not merely "have reason to know."

The Honourable Mr. NAYLOR :—Your Excellency, the legal members of this Council will well know the difficulty of proving actual knowledge. The object of the words, to which the honourable member objects, is to give reasonable facility to the prosecution to establish a charge of an offence against the section. I hope the Council will leave the section as it stands.

The Honourable the ADVOCATE-GENERAL :—I have heard judges lay down their views upon points of this kind in the strongest terms. In civil cases it is well to employ such words, but most undesirable in criminal cases, where the criminal gets every benefit. It is contrary to the principles of the law; and the question is, how are you to prove reasonable grounds for knowledge?

The Honourable Mr. NAYLOR :—This form of expression is a common one in our criminal enactments. I did not anticipate that the Honourable the Advocate-General would take exception to it. Had I done so, I would have suggested to your Excellency, as the hour is late, to adjourn the proceedings before we came to this amendment. Perhaps, the best course will now be, if your Excellency approves, to let it stand over till the next sitting.

His Excellency the PRESIDENT then adjourned the Council.

J. J. HEATON,

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

Bombay, 17th March 1888.

PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

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

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

The Council met at Bombay on Monday the 19th of March 1888, at 12 noon.

PRESENT:

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

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

The Honourable R. WEST.

The Honourable the ADVOCATE GENERAL.

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

The Honourable F. FORBES ADAM, C.I.E.

The Honourable J. R. NAYLOR.

The Honourable RAO Bahádúr MAHADEV WASUDEV BARVE, C.I.E.

The Honourable PHEROZESHAH MERVANJI MEHTA, M.A.

The Honourable RAO Bahádúr BEHECHARDAS VEHARIDAS.

The City of Bombay Municipal Bill.

The Honourable the ADVOCATE GENERAL, with reference to his notice of a motion to amend sections 287 and 289, which was discussed at the sitting of the 17th instant, said :—Your Excellency,—the Honourable Mr. West has prepared a form of amendment to section 287 which I will accept.

Consideration of the City of Bombay Municipal Bill in detail.

The Honourable Mr. NAYLOR :—Your Excellency,—With reference to sub-section (2) of section 287, I have endeavoured to meet the views of the Honourable the Advocate General by proposing that the following words be added at the end of that sub-section, *viz* :—“ Provided that no widening, extension, or other improvement of a public street, the aggregate cost of which will exceed five thousand rupees, shall be undertaken by the Commissioner, unless or until such undertaking has been authorised by the Corporation”.

The Honourable Mr. TELANG :—Even up to Rs. 5,000 the work will still be subject to section 66?

The Honourable Mr. WEST :—Yes.

The Honourable Mr. TELANG :—Under the circumstances I am content.

The amendment proposed by the Honourable Mr. Naylor was agreed upon and the Honourable the Advocate General's motion was withdrawn.

The Honourable the ADVOCATE GENERAL's amendment that in section 289, clause (b) be restored, was also withdrawn.

The Honourable the ADVOCATE GENERAL moved that in section 296, clauses (b) and (c) be omitted, and that after the word *or* in line 7 the words “ to take down such building to an extent exceeding one-half thereof, such half to be measured in cubic feet ” be added, and that in sub-section (2) after the word “ down ” in line 36 the words “ to an extent exceeding one-half thereof, such half to be measured in cubic feet ” be inserted.

The honourable gentleman said :—Your Excellency,—The amendment which stands in my name is an amendment which I move in consequence of my experience in the High Court of the way in which the set-back sections have been dealt with; and I very much wish we had on the Council a Judge of the High Court before whom such cases have come. I think the Honourable Mr. West, when one of the Judges of the High

Court, sitting on the Original Side, never had any of these cases. It is not like coming down on a house which is dangerous to health and where stringent measures are justifiable. The section will bear, as the corresponding ones in the present law do, very harshly upon individual owners; and the Judges have commented strongly upon the present section. But the new section will act more stringently than the old ones. As the section stands at present it is utterly unsupported by any English precedent, and as I said is likely to work so harshly that I was asked by an eminent member of the Bar to urge that it be amended. Under the Metropolitan Management Act where a house is being removed you may claim a set-back, but not under such circumstances as are set out in the Bill before us. No doubt the present law gives a power nearly as stringent, and it is because of this that we have cases in the High Court. The gentleman of whom I spoke has now a case in the High Court which illustrates the harshness with which these clauses act; and, I remember one case in which I was engaged—it was before Mr. Ollivant's time, I will not say in whose time it was—in which it was clear the Commissioner knew nothing at all about the circumstances under which the set-back was claimed, and had merely been acting under the advice of his subordinates, and the Municipality had to pay very heavy costs. The section as amended by me will bear less harshly upon the private owner; and I have framed it according to the precedent of the Metropolitan Management Act which no doubt was framed under the advice of some of the most eminent and capable surveyors in London.

The Honourable Mr. NAYLOR:—Your Excellency,—Perhaps no part of this Bill has received more attention from Mr. Ollivant and myself than these two sections, 296 and 298. Our object was, in revising the subject of set-backs, in the first place to render the law as clear and as free from ambiguity as possible, and in the next to render it as little harsh to private owners as, consistently with the wants of the community at large, it could be made. The section as it stands is based, as the Advocate General has admitted, upon the existing law, which has been in force in Bombay certainly since 1865.

The Honourable the ADVOCATE GENERAL:—No, the law was very largely altered in 1878.

The Honourable Mr. NAYLOR:—My recollection is not quite clear upon the point, but I think you will find there has been no alteration since 1872.

The Honourable the ADVOCATE GENERAL:—Yes, since then; and it is those changes coupled with the rebuilding clauses that have occasioned the difficulty.

The Honourable Mr. NAYLOR:—At any rate the section is based on the law of the present time. In a city such as Bombay considerable facility, perhaps considerably more than in a city like London, is necessary, in the interests of the public at large, to secure set-backs, and I gather that the principle which underlies the present law that whenever the owner of a house is undertaking considerable alterations or repairs to his building, it shall be proper for the Municipality to step in and say “we claim a set-back and you must make your arrangements accordingly”. Looking at the great need of widening and improving streets in this city, there seems nothing unreasonable in this provision. Section 296, as it stands, proposes to allow the Commissioner to claim a set-back in three cases. First, when the owner proposes to rebuild; second, when he proposes to make such alterations or repairs as are specifically described in clauses (b) and (c); and third, when he proposes to remove, reconstruct or make any addition to any portion of a building which is within the regular line of the street. To the first and third of the three occasions, I take it, the Honourable the Advocate General has no objection. His objections are against the clauses (b) and (c), which relate to alterations and repairs. Clauses (b) and (c) divide houses for the purposes of this question into two kinds. There are in Bombay these two kinds of houses—frame buildings and those which are not frame buildings. Now, in the case of buildings, not frame buildings, in which the walls are entire and the stability of the house depends upon the walls, we propose that whenever the owner intends to remove more than one-half of any external wall or party wall, or wall which supports the roof, such half being measured in superficial feet, the Municipality shall be entitled to claim a set-back. Where the stability of a house depends upon posts and the spaces between the posts are merely filled in with brick-work or other material, the house is called a frame building. In the case of such a building we propose that whenever more than one-half of the posts in any such wall as I have described are to be removed, such

half being measured in superficial feet, the Municipality shall be entitled to claim a set-back. The question therefore between the Honourable the Advocate General and myself is whether the Municipality shall have power, as at present, to claim a set-back when more than one-half of what is called in the present Acts a main wall, but which we have more clearly defined as a main wall, party wall, or wall which supports the roof, is removed. Looking at the extreme desirability of giving the Municipal Commissioner power to widen and improve public streets in this city in which the streets originally were so narrow, and looking at the very vast improvement which has taken place in this respect in consequence of the policy of the present Acts during the last few years, I trust the Council will think twice before taking from the Commissioner this very valuable power and altogether crippling him in his ability to improve the public streets. There are two points in which, even if the Honourable the Advocate General's principle should be approved of by the Council, I would still strongly urge that modifications similar to those contained in the section before us should be admitted, namely (1) as to whether the measurement shall be in superficial feet or cubic feet, and (2) as to whether the measurement shall be above ground-level only or both above and below ground-level.

The Honourable the ADVOCATE GENERAL:—As to the ground-level I shall not object ; but as to the measurement by cubic feet I am convinced it is the right method, besides it is the practice at home.

The Honourable Mr. NAYLOR:—I was going to say that these two points will entail a very vast amount of litigation and give a great deal of trouble to municipal officers and to all parties concerned, if the Council should accept the Honourable the Advocate General's motion. The practical difficulties in ascertaining cubical measurement are very great, whereas superficial measurement is simple and easy. For instance, if the wall opposite to us were measured in superficial feet the operation would be a very simple one, but if in cubic feet, all the doors and windows, and niches must be allowed for, and all projections, juttings and variations must be separately measured and taken into account. A small mistake in the calculation might lead to a great deal of litigation and much ill-feeling. It was on this account that, after considerable and careful discussion of the question, I agreed with Mr. Ollivant that the measurement should be in superficial, instead of in cubic feet. With regard to sub-section (2) of section 296 I am in the unfortunate position of not having heard what the Honourable the Advocate General said, but I rather think he has misapprehended the precise bearing of that sub-section. It will operate only when any building or any part thereof *within the regular line of a street* falls down or is burnt down, or is taken down.

The Honourable Mr. WEST:—If that part within the line of street falls down the owner need not build it up again, but if he does it may be taken back to the line. If it should fall down at the back, no matter : it will not be interfered with—if at the front and within the line it will be interfered with only on rebuilding.

The Honourable Mr. TELANG :—Your Excellency,—My sympathies are most strongly in favour of the amendment of the Honourable the Advocate General. This is one of the provisions of this Bill the tendency of which, to my mind, is adverse to the interest of the individual citizen, and looking at the question from that point of view I must say I am very much dissatisfied with the proposal which the Honourable Mr. Naylor says has probably received the greatest attention of any part of the Bill. I have given some attention to this section, and I find the Honourable Mr. Naylor and I look at it from very different standpoints. Doubtless the framers of the Bill looked at it from the executive point of view, with, perhaps, a too exclusive regard to the improvement of the city, and sometimes were prepared to ride rough-shod over the rights of private individuals ; whilst I have always maintained that the interests of private individuals should be most fully considered in this desire for the improvement of the city. I am not prepared to concede that in such circumstances as are referred to in section 296 the community at large should have the right to interfere with the interests of the private individual ; and as to what the honourable member says about the difficulty of calculations being made in cubic feet, I do not see that there is any trouble at all comparable for one moment with the trouble the private owners would be put to, and in many cases without any possibility of appeal under the other system. The honourable member points out that the clause as it stands has existed for a considerable number of years, and considerable improvement in the streets has been effected. The Council on the other hand is also

bound to consider that there has been a considerable amount of oppression upon individuals and that there have been complaints which have elicited from the Judges observations not at all favourable to the law as it stands. It is the duty of the Council to provide that the law shall not be so stringent. The tendency of course has been to get as much out of the private owners as possible. But this I think is a mistake. I must say that in this matter my sympathies are with the individual as against the community, except in exceptional circumstances—and these exceptional circumstances are amply covered by the amendment of the Honourable the Advocate General.

The Honourable Mr. PHEROZESHAH MEHTA :—Your Excellency,—I am in entire sympathy with the object which the Honourable Mr. Naylor has in view in this section. I fully go with him in his desire to see the city improved as fast and as much as possible. But I shall vote for the amendment of the Honourable the Advocate General, as his method seems to me to be a more fair and reasonable one than the method proposed in the Bill.

The Honourable Mr. WEST :—Your Excellency,—It must be admitted that this section presents considerable difficulties, and although I do not remember that any cases such as have been alluded to by the Honourable the Advocate General ever came before me in the High Court, I have heard and read of such cases. But here one must look at matters from both points of view. The Municipal Commissioner must be armed with a reasonable discretion for the benefit of the city. He must see that the ventilation and accessibility to certain portions of it are secured and endeavour to enhance the general comfort and welfare, though, in enabling him to do so, we must see that these ends are obtained with a minimum of inconvenience to private individuals. It is no doubt a very difficult thing to lay down any precise rule on such a subject. In London the rule is to calculate the cubical contents. Of course, it does not follow that this would be altogether satisfactory here, where the tendency is to spread the buildings over the greatest possible space, and where if it were made a rule in the case of alterations to insist on a set-back, the owner would make it by increasing the cubical contents as a whole by building over an open space or back-yard or otherwise would enlarge the back part of his house by building it higher. If the amendment, which the Honourable the Advocate General has thrown out, be carried, the owner will be enabled to increase his cubical contents by building up his premises at the back or piling them up higher and avoid the set-back altogether. He will thus have done a deleterious thing in addition to defeating the Commissioner in his desire to improve the line of street. I put it to honourable members whether this will not be a decided obstruction in the way of street improvement. The owner will clearly be tempted to increase the cubical contents by building over back-yards. The object is that where really substantial alterations are being made the municipality may step in and say: "You are making great changes in this house, you must take into consideration the welfare of your neighbours, and if you move an external wall or party wall you should be subject to have your frontage set back for the benefit of the city at large which benefits you." Unless the Commissioner has the power it is proposed he shall have, a man having a substantial wall will throw out a verandah along the edge of which he or his successor erects a wall again. If the section remains as it stands the Commissioner will be able to prevent this. It seems necessary to include walls supporting the roof, though there may certainly be such cases in which the Commissioner ought not to interfere, because without such a provision one wall may be built just inside or outside another and thus it will be open for the owners to throw fresh obstacles in the way. I have not been able to hit upon any expression which will modify these clauses, as from some points of view might be desired and at the same time preserve their efficacy. I would ask the honourable member whether it is not better, seeing there are such difficulties on every side, to leave some discretion, as is proposed in the Bill, in the hands of the Commissioner, subject, if honourable gentlemen should desire it, to a reference to the Standing Committee. Against that the Honourable Mr. Mehta would say there would be the possibility of canvassing the Standing Committee. There may be some difficulty about this, but I think it better than adopting the amendment proposed by the Honourable the Advocate General. Would not a section providing for such a reference answer the purpose? If the Honourable the Advocate General's amendment were carried, I am afraid we should have owners doing their work piecemeal in this way; supposing one wants to alter three quarters of his house, he would do a quarter now and a quarter again and so proceed in fact through the whole house, the obstruction finally being just as great as before, in fact

greater than before, for he has erected a substantial building in the place of a defective one, and the prospect of improvement is thus made more remote than before. I think it would be best to leave the matter in the hands of the Commissioner subject to appeal or reference to the Standing Committee. I must say I feel some difficulty about this, but I think it would be better than adopting the amendment proposed by the Honourable the Advocate General. Building operations here are different from building operations in London, and though the rule suggested by the Advocate General may be good and sound for London, it is not good and sound for Bombay. There is no such thing, or practically no such thing as building out verandahs and then running up a wall on the outer edge in London as there is here. The effect of the amendment would be that five years hence we should stand exactly as we are in the matter of street improvement. With a view to meeting the difficulty I would ask the Honourable the Advocate General if he would not be satisfied by the provision for a reference to the Standing Committee as I have suggested. Compensation is always paid to owners, so that except for the mere susceptibility and personal feeling—sentimental feeling about the roof over your head or “the house in which I was born,” perhaps there is not much in it. I would ask honourable gentlemen opposite to accept my suggestion and if they will do so, I will endeavour to persuade the Honourable Mr. Naylor to add it to the section.

The Honourable Mr. PHEROZESHAH MEHTA :—Your Excellency,—I would like to add one word to what I have already said. If you make this section too strict, the direct result will be that you will defeat your own object of improving the city. Owners will put off repairs as long as possible as is even now the case, and you will have numerous ruinous buildings all over the town. As to the open spaces and back-yards there are very few of them left now in the old parts of the town remaining to build upon.

The Honourable Mr. WEST :—If there are few of these spaces left all the more reason to keep the few we have.

The Honourable the ADVOCATE GENERAL :—The section would be found to work so stringently that houses would be like the famous knife which was just the same though it had a new handle twenty-five times and a new blade twenty-five times. The owner would leave the front of the house as it stood and continue repairing every other part of the premises.

The Honourable Mr. WEST :—That is where we differ as to the means and prospects of improvement. Unless the Commissioner has the power which is here sought for, improvement will be impossible and the streets will remain hideous and impassable besides shutting out light and air.

The Honourable the ADVOCATE GENERAL :—The necessity for light and air in London is far greater than here; and however treacherous the sun may be, he certainly does help us in our back streets in Bombay.

The Honourable Mr. NAYLOR :—This Bill has been before the public for many months, and not a single complaint has been made in any quarter whatever of those enormous hardships which the Honourable Mr. Telang says the public has suffered. And although the Corporation went through the Bill with very great care they made no suggestion regarding section 296, except that walls supporting the roof should not be included, because they might happen to be inner walls.

The Honourable Mr. TELANG :—No, but the question here is as between the Corporation on the one side and the private individual on the other. On this question I should attach much less weight to the views of the Corporation than to their views on the other points we have been dealing with.

The Honourable Mr. WEST :—The Honourable Mr. Naylor says he does not attach much importance to the fact, but throws it in merely as a make-weight. It is evident owners have not suffered very severely.

The Honourable Mr. RICHEY :—It seems from what the Honourable the Advocate General says that people who make complaints and complaints as we hear are increasing, are anything but inarticulate. They are not only able to speak themselves but to pay others to speak for them.

The Honourable Mr. WEST :—Will not the Honourable the Advocate General accept this provision as to a reference to the Standing Committee?

The Honourable the ADVOCATE GENERAL :—No, I cannot do so.

The Honourable Mr. WEST :—The Honourable Mr. Naylor is willing to strike out the words about “inner walls which support the roof”.

The Honourable the Advocate General :—I must press for a vote.

The Council divided :—

Ayes.

The Honourable the Advocate General.

The Honourable Kashinath Trimbak Telang.

The Honourable Ráo Bahádur Mahádev Wasudev Barve.

The Honourable Pherozechah Merwanji Mehta.

The Honourable Ráo Bahádur Behechardás Vcharidas.

Noes.

The Honourable J. B. Richey.

The Honourable R. West.

The Honourable J. R. Naylor.

So the first part of the amendment was carried.

The Honourable the ADVOCATE GENERAL, with reference to the second part, the proposal to insert in section 296 (2), after the word *down* in line 36, the words “to an extent exceeding one-half thereof, such half to be measured in cubic feet,” said :—After the explanation of the Honourable Mr. Naylor; I will not press that amendment, your Excellency.

The Honourable the ADVOCATE GENERAL moved that in section 298, clause (b) be omitted.

The honourable gentleman said :—Your Excellency;—The subject here concerned is not a very important one as the fact of a house being out of alignment does no one harm but the owner himself. In this matter it may be left to the self-interest of the owner whether or not he shall build up to the line of street. I do not think it is necessary to have any such interference in this case as is set forth in the clause.

The Honourable Mr. NAYLOR :—Your Excellency,—The Honourable the Advocate General's argument goes further than his proposal and seems to cover the striking out of the whole section. There are streets and streets. In some it is highly desirable there should be a uniform line, otherwise the recesses formed by the walls of houses not up to the line may be resorted to for purposes which may make the street very insanitary. The cases in which sets-forward would be permitted or required are not such as would involve any hardship and I think it is desirable to leave clause (b) of section 298 as it is. But as the last amendment of the Honourable the Advocate General has been adopted by the Council, and one effect of it is to substitute cubic measurement for superficial, I am quite willing that in this section cubic measurement shall take the place of superficial, so as to bring the two sections into uniformity.

The Honourable the ADVOCATE GENERAL :—These cases are so rare that I do not remember a set-forward case ever coming forward.

The Honourable Mr. WEST :—In my own experience I have many times found these recesses in streets extremely inconvenient. A passenger walking along the street naturally enough continues straight along until he gets to a recess when a cart comes up and he is splashed with the mud or crushed with the wheels of the cart. Into such recesses in London costermongers love to take their trucks and wheelbarrows instead of keeping to the road or the causeway. Then too you travel round a good many angles in going along and the distance is very much increased as a consequence. This would not be the case if the houses were in line or if people would build a wall or railing across where their houses stand back. Here it would not be costermongers with their burrows, but you would have the driving in and out of *reklahs*. If you had *reklahs* drawn by spirited bullocks rushing in at a point where you could least avoid them, the disadvantages of the recesses would become patent. In houses to be built of course the evil can be avoided, but in the case of alterations to existing houses also there can be no hardship. The section, the Honourable Mr. Naylor reminds me, would be satisfied if there were a wall built across so as to secure the straight line, and I think you had better accept the section as it stands.

The Honourable the ADVOCATE GENERAL:—I have no strong feeling in this matter, but there is really no necessity for the section.

The Honourable Mr. NAYLOR:—Do you withdraw the amendment?

The Honourable the ADVOCATE GENERAL:—Yes, I will accept the section as it stands; except that I would ask you to substitute cubic feet for superficial.

The amendment was accordingly withdrawn, but the word "cubic" was substituted for "superficial."

The Honourable the ADVOCATE GENERAL:—With regard to section 304 I find that power is given if any single owner in a new street objects to the placing of lamps and so forth, the Commissioner shall not do so. I think it should be left to the majority.

The Honourable Mr. WEST:—Then what you propose would be met by striking out after the word "or" in line 19, the words "any one of the owners" and substitute the words "or of the greater part thereof."

The Honourable Mr. NAYLOR:—The result will be that the majority in interest will govern the case.

The Honourable the ADVOCATE GENERAL:—In England it is the majority in number; but I think this is an improvement.

The amendment, however, was adopted in the form suggested by the Honourable Mr. West.

The Honourable Mr. TELANG moved that clause (e) of section 346 be omitted:—Your Excellency,—I propose to omit this clause as I think it may operate very harshly and to the injury of the class of people for whom it is intended. A certain limited amount of accommodation only exists in the island, and there is a very limited amount of space on which to build. I see the clause is based upon the Metropolitan Management Act. I do not know much about the matter except from books, but I was reading an article the other day by Miss Octavia Hill in which she said that Londoners could hardly get a view of the sky at all unless they went away from London. We need not fear that the building of high houses here will have that effect—at least for many years to come. What I most fear is that the result will be to decrease the accommodation available for people who require accommodation which is very undesirable in the interests of the whole city. It is on this account I move the amendment.

The Honourable Mr. NAYLOR:—Your Excellency,—In a corresponding section of one of the Metropolitan Acts it is laid down that no building, except a church or chapel, shall be erected on the side of a street, which shall exceed in height the width of the street without the consent in writing of the Metropolitan Board of Works. The regulation in London is, therefore, more severe than the Bill, in which we propose that the limit shall be one and a half times the width of the street. There is not so much necessity in Bombay for building to a great height as there is in London, if the relative value of ground in the two cities is considered. The need to build high buildings in London is greater than in Bombay, if the Honourable Mr. Telang's remark has any force in it, for we may suppose that Londoners wish to get a view of the sky by getting above the fog. But great as are the reasons in London for erecting tall houses, the Legislature has nevertheless prescribed a very moderate limit which may not be exceeded. The reason for such a limit being fixed is not to be found in architectural considerations merely; it has reference more especially to the sanitary necessities of the city. The density of the population in this city is fifty per cent. greater than it is in the worst parts of London. That alone is a sufficient reason why the clause should stand. The limitation is worthy of adoption by the Council and I trust it will be permitted to stand.

The Honourable the ADVOCATE GENERAL:—I have not been able to trace whence the last words of the clause "or three times the width of the building" came from under the Metropolitan Management Act.

The Honourable Mr. NAYLOR:—Those words were, I believe, suggested by the Municipal Engineer. They have reference apparently to a matter affecting the stability of a building.

The Honourable the ADVOCATE GENERAL:—Then I do not think it should be here at all. Though the buildings may be limited to the width of the street in England, you will find the farther south you get the higher the buildings are. There is less necessity for

such limitation. Take Genoa or anywhere else in Southern Europe and you will find the height of the buildings proportionately great. Travelling up through Italy and France to England you find the streets widen in proportion to the buildings in them.

The Honourable Mr. WEST:—Your Excellency,—I would remind the Honourable the Advocate General as a classical that in Rome, old Rome of the *Ædiles*, there was a general limit to the height of buildings and that limit was about 80 feet. This rule has been recognised in almost every capital in Europe—certainly in Paris and Vienna. In Paris a height of I think about 80 feet is even now the limit except on the Boulevards. The proportion of the height of buildings in London is in accordance with the width of the streets. But if the illustration of the south of Europe is to be brought in, I would remind the Honourable the Advocate General of the Neapolitan proverb which says: “where the sun comes in, the doctor is kept out”. It is most essential to the preservation of health that the sun should come in for a certain time daily. If it does not, your street will be unwholesome. The access of light and air is of at least as great importance here as in a northern city on account of the very high temperature which prevails. Eighty degrees is a temperature at which vegetable matter runs into very rapid decay, and that is less than the normal heat of Bombay. Unless you have plenty of light and air to carry off the miasma health suffers. It would be peculiarly detrimental to the health of the inhabitants to build high houses and that is surely sufficient warranty for a provision of this kind. Sanitary science pronounces it to be necessary. Old Rome was certainly more enlightened than mediæval Rome and other mediæval cities in these matters, and the same reason which led to her rules being laid down and the fixing of a general limit should guide us in deciding upon such a limit as the health of the inhabitants demands.

The Honourable Mr. FORBES ADAM:—Your Excellency,—I agree with the Honourable Mr. West and the Honourable Mr. Naylor as to the necessity for preventing over-crowding. My attention was drawn to the matter when the provisions of the Bill were discussed in Select Committee, and I think it absolutely necessary that the Corporation should have power to limit the height, or owners, with a view to increasing their rents, would construct their buildings far higher than is desirable. I do not think the provision at all too severe or I should be inclined to support the amendment.

The Honourable the ADVOCATE GENERAL:—Will you strike out the last part of the clause about “three times the width of the building”?

The Honourable Mr. WEST:—The Honourable Mr. Naylor says he is willing to strike out that.

The Honourable the ADVOCATE GENERAL:—Then so far as I am concerned I will accept it.

His Excellency the PRESIDENT:—I think the matter has been very fairly put by the Honourable Mr. Forbes Adam that owners with a view to increased receipts would be tempted to build higher than is consistent with the requirements of public health. The section is necessary to protect the poorest class of lodgers.

The Honourable Mr. TELANG:—I will withdraw the amendment. I feel the force of what has been said. I had been guided by the fact, which is also one not without weight, of the increasing number of people coming to Bombay and the want of available accommodation.

The amendment was withdrawn, on the understanding that the words “three times the width of the building” were struck out.

The Honourable Mr. PHEROZESHAH MEHTA moved that so much of section 356 as relates to surveyors be omitted, remarking: I have already stated my reasons for moving this amendment.

The Honourable Mr. WEST:—Your Excellency,—Here as in another place it would be improper that surveyors should be subject to the same regulations as in the case of plumbers. I would suggest that “surveyors” be struck out.

The Honourable the ADVOCATE GENERAL:—How can you regulate the wages of plumbers?

The Honourable Mr. WEST :—If found impracticable it will not be attempted, but I think the effect of this clause will be to prevent gross imposition. The necessity for it had become evident.

The Honourable Mr. PHEROZESHAH MEHTA :—I do not object to the regulation as to plumbers, Your Excellency; it is with regard to surveyors that I object.

The amendment was agreed to.

The Honourable Mr. WEST drew the attention of honourable members to the regulations affecting the fire-brigade under section 363 and following sections. The honourable gentleman said :—Your Excellency,—Under section 368 as it stands a man whose house takes fire is to pay a contribution towards the expenses of the fire-brigade. He will be subject to a tax which the Commissioner shall fix from time to time, whereas the neighbour whose house remains standing and who would be in a better position to pay a tax than the other is exempted. This is absurd and must lead to unsatisfactory consequences. Arrangements for the suppression of fires in great cities are of the utmost necessity and the inhabitants ought to be required to pay for the maintenance of such appliances for the extinguishing of fires in proportion to the value of the property they possess in such cities according to their absolute or selling value. The provisions here are plainly anomalous and as under section 139 the duty of levying taxes for specific purposes is thrown upon the municipality I propose that a tax shall be imposed for the purpose of defraying the costs of the fire-brigade and appliances for the repression of fires. What I propose is that beginning at line 11 of section 363 the whole of the clauses included in the following portion of the chapter shall be struck out and that instead we add a rule to section 139, making it the duty of the municipality to levy in conjunction with the general rate or tax on property for the purpose of providing for the expenses of the fire-brigade not less than $\frac{1}{4}$ or more than $\frac{3}{4}$ on the rateable value.

The Honourable Mr. FORBES ADAM :—Your Excellency,—I regard the amendment put forward by the Honourable Mr. West as a very great improvement indeed and shall have much pleasure in supporting it. The special tax will be for the benefit of the whole city and will cover all properties. Heretofore those who were prudent enough to insure their premises had in a certain sense to keep up a fire-brigade for the benefit of those who were not insured.

The Honourable the ADVOCATE GENERAL :—What is the advantage of having a separate tax instead of having it a part of the general property-tax?

The Honourable Mr. WEST :—The proposal is that it shall be in addition to the general tax and that public buildings, port trust property and private property shall be on the same footing, and the most convenient place to provide for it is after clause (c) in section 139. The words to be added will be: *and in addition thereto a tax of not less than $\frac{1}{4}$ nor more than $\frac{3}{4}$ per centum in order to meet the expenses imposed by section so-and-so, the sections herein stated* It is desirable to avoid complications and to secure that the income under this heading shall be devoted to the special purposes for which it is created.

The Honourable Mr. FORBES ADAM :—The Port Trust provides its own fire-engine and the expenses might fall upon them also in the general rate.

The Honourable Mr. WEST :—The Port Trust might throw their fire-brigade into the general service.

The Honourable Mr. FORBES ADAM :—There may be some difficulty about that.

The Honourable Mr. WEST :—Most of the banks in London and Paris have a fire-engine of their own and so also have most of the railway stations at home. If they choose to have these additional means of security there is no harm done.

The Honourable Mr. FORBES ADAM :—As to the Port Trust they are employed in protecting their own property or ships and property by the side of a quay or wharf.

The Honourable Mr. WEST :—The Port Trust can transfer the sums they charge shipping to the Corporation and trust to this extra precaution.

His Excellency the PRESIDENT (to the Honourable Mr. FORBES ADAM) :—Do you insure as well as keep a fire-engine?

The Honourable Mr. FORBES ADAM :—Yes.

His Excellency the PRESIDENT :—Then doubtless the insurance companies will reduce your premium if this proposal is adopted and you will reap the benefit of the reduction in the same way as private insurers.

The Honourable Mr. FORBES ADAM :—There is an immense amount of property very temporarily on Port Trust property in which the Port Trust have no permanent interest.

His Excellency the PRESIDENT :—You are in the same position as the owner of a picture gallery in which pictures are temporarily exhibited. He insures in addition perhaps to keeping a fire engine of his own and recoups himself from the owners of the pictures. The Port Trust will recover its contributions to the general tax from the ship-owners.

The Honourable Mr. FORBES ADAM :—Not quite. The Port Trust engines protect public property as well as the property of the Trustees.

The Honourable Mr. WEST :—In this case the part of the public who bear the burden get the advantage.

The Honourable Mr. FORBES ADAM :—That is the difference. The Port Trust do not get the advantage though they bear the burden.

The Honourable Mr. WEST :—I think the plan I propose will meet the difficulty. All will pay according to the interest to be guarded.

The Honourable Mr. PHEROZESHAH MEHTA :—Your Excellency,—I had given notice to move that section 365 be omitted, but the amendment submitted by the Honourable Mr. West goes to the very root of the matter. At the same time I do not see the necessity of specifying any minimum. Property is usually insured on a quarter per cent. and a very small additional amount will be required for the proposed measures.

The Honourable Mr. WEST :—I mentioned $\frac{1}{4}$ th as a rough estimate. As to what the actual cost would be I suppose it would be something like the present scale.

The Honourable Mr. NAYLOR :—The present contributions by the insurance companies amount to some Rs. 35,000. The actual cost of the brigade is considerably in excess of that sum. In the budget-estimate for the coming year, the amount is put down at nearly a lākh, and there is a great demand for an increase of fire brigade stations, especially by the mill companies. The insurance companies, as I have said, contribute Rs. 35,000; a tax of $\frac{1}{4}$ th per cent. on the property of the city will produce about Rs. 40,000, so that $\frac{1}{4}$ th seems to be the amount at which it is desirable to fix the minimum.

The Honourable Mr. WEST :—It is desirable that the duty should be imposed upon the Corporation of keeping the minimum sufficient for their purposes and to maintain the appliances in a state of efficiency. What I propose is that we add these words : “ *and in addition thereto a tax of not less than $\frac{1}{4}$ th and not more than $\frac{3}{4}$ th per cent. of their rateable value in order to provide for the expense necessary for fulfilling the duties of the Corporation arising under Chapter XIV of this Act,*” and to take out the remaining clauses of that chapter. Will that meet your views, Mr. Mehta ?

The Honourable Mr. PHEROZESHAH MEHTA :—Yes; except as to the necessity of fixing a minimum.

The Honourable Mr. WEST :—It is desirable to bring section 62 (7) within this expression also. Of course the last three lines of section 363 will have to come out.

The Honourable Mr. TELANG :—The Municipal Commissioner in his letter upon this subject says : “ When I say that as far as a general rate for fire preventive purposes is concerned such a rate is already covered by the consolidate rate, I refer only to immoveable property and exclude from consideration machinery, which is not rateable under the Municipal Act. But machinery and various kinds of moveable property equally need protection from fire, and as a matter of fact I understand that of the total property now insured in Bombay about $\frac{3}{4}$ ths belong to this class. If any system can be devised for imposing a special rate on property of this class which is not insured, or on all property of this class, abandoning the present contribution from the Companies, there will be no objection on equitable grounds, but there will be great difficulties in assessing the

rate. As things at present stand, it may be said that while insured immoveable property pays twice over and insured moveable property and machinery pays once, uninsured moveable property and machinery does not pay at all."

The Honourable Mr. WEST :—You may carry refinements as far as you like and discriminate principles as far as you can, but you will find the advantages of a special tax are so great as to render it the best possible means of providing for this purpose.

The Honourable Mr. PHEROZESHAH MEHTA :—The only question is whether there is any need for raising the present 8 per cent. to $8\frac{1}{2}$, thus insisting upon raising funds when the 8 per cent. would suffice for all purposes.

The Honourable the ADVOCATE GENERAL :—Does the honourable member know how far the rate is levied at home.

The Honourable Mr. TELANG :—According to the Municipal Commissioner in many towns in the United Kingdom "the local authorities have the power by statute of requiring payment for the services of the fire brigade from the owners of properties where fires occur, and that in Liverpool and Manchester the Insurance Companies have, for the convenience of their clients, voluntarily entered into a composition with the local authorities by which in consideration of an annual payment no charge is made for the services of the fire brigade to a property which has been insured. Another way of putting both classes of property on an equal footing would be by levying on the uninsured property a special rate equal to the rate which the insured property pays through the companies."

The Honourable Mr. WEST :—These provisions in England have gradually grown up under exceptional circumstances and are not based upon sound principles. The machinery in mills adds to the value of the property which is assessed at a higher value in consequence. The best plan is to make provision for a tax.

The Honourable the ADVOCATE GENERAL :—At home the rate is added to the poor rate.

The Honourable Mr. TELANG :—Perhaps it would be well to specify the maximum.

The Honourable the ADVOCATE GENERAL :—No, I think you must specify the minimum.

The Honourable Mr. WEST :—No, say from $\frac{1}{4}$ th to $\frac{3}{4}$ ths. It is clear the tax will be a variable one.

The Honourable the ADVOCATE GENERAL :—My object is to secure a larger minimum. I would put the minimum where the Honourable Mr. West has put his maximum.

The Honourable Mr. WEST :—I am afraid if we were to do that it would give rise to a good deal of discontent and a degree of alarm at such a serious addition to the ratepayer's burdens.

The Honourable the ADVOCATE GENERAL :—My own idea is that you will have to increase the present fire brigade to render it efficient.

The Honourable Mr. PHEROZESHAH MEHTA :—It seems to me that 8 per cent. may suffice and it is undesirable that the minimum of 8 per cent. should be raised. If there must be a minimum I would ask that it be as low as possible and I would suggest $\frac{1}{4}$ th.

The Honourable Mr. WEST :—I was in hopes the proposal would be accepted unaltered.

The Honourable Mr. PHEROZESHAH MEHTA :—I am not prepared to go beyond 8 per cent. for both purposes as a minimum.

The Honourable Mr. WEST :—The best plan then would be to fix $8\frac{1}{2}$ for both purposes. Rather than delay the Council I will agree to the Honourable Mr. Mehta's suggestion of $\frac{1}{4}$ th as a minimum instead of $\frac{1}{4}$ th.

The words to be added to s. 139, clause (c), were then made to read: "*and in addition thereto a tax of not less than one-eighth and not more than three-quarters per centum of their rateable value in order to provide for the expense necessary for fulfilling the duties of the Corporation arising under section 62, clause (j) and ch. XIV*" and agreed

upon. The amendment included the striking out of the last three lines of section 363 and the whole of Ch. XIV following section 363.

The amendment proposed at last meeting by the Honourable Mr. FORBES ADAM to section 381 was next discussed. The honourable gentleman reminded the Council that he spoke to the amendment on Saturday, but the consideration of it had been postponed.

The Honourable Mr. NAYLOR :—Your Excellency,—I have made enquiries into this subject and find that the matter has been the subject of contention between the Port Trust and the Municipality for some considerable time past. One of the municipal drains, it appears, runs into the Kassara basin and is alleged to be, and not without some cause, a serious nuisance to the neighbourhood. The pipes do not discharge below low water-mark, and no doubt the consequences at certain stages of the tide are very unpleasant for those engaged in business or living in the neighbourhood. But although this is the state of things as regards the drain, there are other causes independently of the drain which help to account for the nuisance. The mud in the basin and on the foreshore is of such a nature that it would be offensive, even if the drain were removed. There is also a complication as to certain latrines belonging to the P. & O. Company. Thus there are charges and countercharges between the Municipality and the Port Trust. It would not be well in this Bill to introduce any clause which would compel the Municipality to cleanse the basin when they are able to show they are only partially responsible for its unwholesome condition. I may also add that, so far as the Municipality is concerned, there is every intention to remedy this state of things, as soon as possible. But their drainage system cannot be completed in a day. The carrying out of so important and extensive a work is a matter of time. What I would suggest is that the subject be left, without any special provision being inserted in the Bill regarding it. Any person feeling himself aggrieved by any nuisance has already his remedy in the Civil Courts.

The Honourable the ADVOCATE GENERAL :—If we strike this out we leave the adjacent owners to make good the defects of the Municipality. The proviso, I take it, is a safeguard.

The Honourable Mr. FORBES ADAM :—The Honourable Mr. Naylor has pointed out there is something else besides the discharge of the municipal drains which accounts for the nuisance—there is mud of a noisome nature on the Port Trustees' foreshore and in the basin and that the moment it is cleansed it would soon be as foul again as before. That is so; but the drains cause it to be so, and I think a proviso should be inserted for the protection of the Port Trust.

The Honourable Mr. PHEROZESHAH MEHTA :—This proviso goes a little too far.

The Honourable Mr. WEST :—I would propose that we adopt the usual method, for it is becoming usual in this debate—accept a compromise. It is here evident there is joint contribution to the nuisance, and it does not seem to be a case in which either one separately should be wholly responsible. The proper course would be to modify this proviso throwing the liability upon each party proportionately in cases where it can be shown that both parties are responsible.

The Honourable the ADVOCATE GENERAL :—The proviso, as the Honourable Mr. Forbes Adam has submitted it, would do if you add the words "in so far as" after "that" in the first line and strike out "if."

The amendment was agreed upon in the following terms :—

"Provided that, in so far as the unwholesome or filthy conditions of such premises or such nuisance as above mentioned is caused by the discharge from, or by any defect in, the municipal drains or appliances connected therewith, it shall be incumbent on the Commissioner to cleanse such premises."

The Honourable Mr. TELANG :—It will now be necessary to amend section 66.

The Honourable Mr. NAYLOR :—I have no objection to s. 66 being amended so as to make it quite clear that it is applicable both in respect of the performance of a duty and of the exercise of a power. This may be done by putting in the words "or the performance of any duty imposed" after the word "conferred" in line 3, the words "or duty performed" after "exercised" in line 12, and the words "or the performance of such duty" after "power" in line 16.

The Honourable Mr. TELANG's amendment "that in section 408, lines 1 and 2, the words 'or has reason to know' be omitted," was then discussed.

The Honourable Mr. NAYLOR :—This matter, Your Excellency, was left over in order that the Honourable the Advocate General might satisfy himself whether it was necessary to prove actual knowledge.

The Honourable the ADVOCATE GENERAL :—I do not think it desirable to go beyond actually proved knowledge.

The Honourable Mr. WEST :— It strikes me, Your Excellency, that the clause is not only unobjectionable but absolutely necessary. The Honourable Mr. Telang "knows or has reason to know" from those studies for which he was famous some time ago, that it is a subjective fact—you cannot generally say that a man knows anything but there are indications that he knows it. A man has reason to know that some one is some one else's wife and in the same way a man living in any particular city has reason to know he is near a market where he sees one. How is it possible to prove that he does know? You cannot absolutely prove it. But you can say he has reason to know it. If we reject the words the honourable gentleman suggests it will lead to a great many frivolous defences. Such an omission will lead to endless contention and litigation, and to avoid this I shall beg the Council to retain the words.

The Honourable the ADVOCATE GENERAL :—They are dangerous to my mind.

The Honourable Mr. WEST :—A person may be sent to gaol if he receives property which he knows or has reason to believe has been stolen; that is severer still. I am sorry I have not at hand notes of cases in which points of the kind here concerned have been decided. A man setting up his stall in the vicinity of a market will doubtless tend to the injury of the statutory market. We have had cases in the High Court within recent years; the Poona case was one of them.

The Honourable Mr. TELANG :—In the Poona case they were competing with a municipal market. But the man to punish in these cases is, I think, the owner of the market, not the poor stall-keeper.

The Honourable the ADVOCATE GENERAL :—One case in London went from Civil Court to Civil Court.

The Honourable Mr. WEST :—Yes, the Lyons case, and the defendant was got off because he was proved to have been selling in his own establishment. But you will find everywhere that if a man had reason to know it will be held that he did know. The Courts would be bound to hold this.

The Honourable the ADVOCATE GENERAL :—I have in a criminal case heard it held that constructive notice was not sufficient proof of a fact having been brought to a man's knowledge.

The Honourable Mr. WEST :—The question is what will you not have argued in Court? If the words are struck out it will only lead to frivolous excuses.

The Council divided :

Ayes.

The Honourable the Advocate General.
The Honourable Káshináth Trimbak Telang.
The Honourable F. Forbes Adam.
The Honourable Ráo Bahádur Mahádev Wásudev Barve.
The Honourable Pherozesháh Mervánji Mehta.
The Honourable Ráo Bahádur Behechárdás Veháridás.

So the amendment was carried

Noes.

The Honourable J. B. Richey.
The Honourable R. West.
The Honourable J. R. Naylor.

The Honourable Mr. TELANG's proposed amendment that in section 433 the words "the Corporation" be substituted for the words "the Commissioner with the sanction of the Corporation," was withdrawn.

The Honourable the ADVOCATE GENERAL had given notice to move that to section 438 the words "who shall pass such order thereon as they may think fit" be added.

The honourable gentleman said:—Your Excellency,—On similar words the Council was against me, and I think I should accept their decision with regard to this section.

The amendment was accordingly withdrawn.

The Honourable Mr. TELANG moved that sub-section (2) of section 461 be omitted.

The honourable gentleman said:—Your Excellency,—I am afraid of the operations of this sub-section and do not like it to remain on the Statute Book. I would prefer that it should be taken off. The punishment provided seems to me too heavy.

The Honourable Mr. WEST:—Can you suggest some other method in which an obstinate or wrong-headed man could be subdued. No man would be so foolish as to refuse to give a little information to secure his liberation from prison.

The Honourable the ADVOCATE GENERAL:—It is not in the present Act.

The Honourable Mr. NAYLOR:—Yes; it is in the present Act.

The Honourable Mr. WEST:—It is no new law. But to meet the views of the honourable gentleman I would suggest that we add, at the end of the sub-section, the words "or the requisite information is otherwise obtained."

The Honourable Mr. TELANG:—I will accept that.

The addition was accordingly made.

The Honourable Mr. TELANG had given notice to move that in section 465, lines 1 and 2, the words "commissioner with the approval of the" be omitted.

The Honourable Mr. NAYLOR:—I have already stated that when this section should be reached, I should be prepared to accept this amendment, the object of which is that the power of framing by-laws shall vest distinctly in the Corporation and not in the Commissioner; but as the Commissioner is in the way of knowing what matters require to be regulated by by-laws, I propose to make it his duty to lay before the Corporation from time to time any by-law he shall think necessary or desirable for the purposes of this Act. I propose that a new section to this effect shall follow section 467, and I understand that the Honourable Mr. Mehta is prepared to accept this proposal.

The Honourable Mr. PHEROZESHAH MEHTA:—That is so.

The Honourable the ADVOCATE GENERAL:—I would just call your attention to the fact that we shall now have to amend the section so as to bring in section 49 (g), for we have allowed by-laws to be made as to the delegation of powers by the Standing Committee to sub-committees: we shall have to insert a clause in section 465 to provide for the reference back to section 49 (g).

The Honourable Mr. NAYLOR:—It occurred to me that that would be unnecessary, having regard to the words of clause (s) of section 465: "carrying out generally the provisions and intentions of this Act."

The Honourable the ADVOCATE GENERAL:—But after specifying so many things it would not be well to leave out this. Better add a clause to the delegation of powers by the Standing Committee to sub-committees.

This was agreed to, and the following new clause was inserted in section 465, after clause (r), viz:—

"(r 1) Regulating the delegation of the powers and duties of the Standing Committee to sub-committees."

(1) The following proposal of the Honourable Mr. NAYLOR was also accepted. In section 466, line 3, substitute "corporation" for "commissioner," and in line 4, omit the words "with the like approval."

(2) After section 467, insert the following new section:—

"467A. It shall be the duty of the commissioner from time to time to lay before the corporation for their consideration a draft of any by-law which he shall think necessary or desirable for the furtherance of any purpose of this Act."

Commissioner to lay draft by-laws before the corporation for their consideration.

The Honourable Mr. TELANG moved that in section 468, line 9, "two months" be substituted for "one month."

The Honourable Mr. NAYLOR:—I have no objection to the principle of this amendment, but I think six weeks would be sufficient.

The Honourable Mr. TELANG:—Very well: six weeks.

This was accepted.

The Honourable Mr. TELANG moved that in section 491, the following new clause be inserted after cl. (c), viz. :—

“(cc) prior to making any such entry, the person proposing to make the same shall, in every case, intimate to the occupier of the premises that he is about to enter thereinto or thereupon.”

The honourable gentleman said:—Your Excellency,—The corporation recommend that this new clause be added.

The Honourable Mr. NAYLOR:—Your Excellency,—This proposal reminds me of what was recently told me by a lady who had been staying on the continent of Europe. The morning after taking up her residence she was astonished on awaking to find a *gendarme* in her bed-room, and on enquiring the reason of this unusual intrusion, she was informed by the *gendarme* that he was there in the exercise of his duty to ascertain what her business was, where she had come from, where she was going to, her age, who was her husband, who were her children, and all about her. In this country, the law does not allow such intrusion into the privacy of dwelling-houses, but the story furnishes an illustration of what is done in this respect in other countries. The country in which the incident I have described took place, is not, as the Honourable Mr. Telang may suppose, Russia or Turkey, but that free, enlightened and independent republic, Switzerland. I am far from arguing that the law in India should permit so much intrusion on the privacy of individuals; but section 491 of the Bill following the present Acts, already protects citizens from any undue invasion of their privacy, and I cannot help thinking that the recommendation of the Corporation is prompted by feeling of what I venture to call oversqueamishness. In my own place at Poona I frequently see the irrigation municipal officers about. They come and go whenever they like and certainly never ask permission. I am always glad to see the municipal officers there because they keep my servants in order and prevent them from doing anything which will endanger the sanitary conditions of the place. Looking at the matter in this light, I think it will be seen that the proposal submitted by the Honourable Mr. Telang is inexpedient. I fear that the adoption of his clause would tend to give rise to much obstruction and delay of municipal officers and servants in the discharge of their daily duties, without any commensurate advantage. There would often be a difficulty in finding the occupier, who might be away; it would not be possible for the officer or servant to wait and to defer the discharge of his duty until he returned.

The Honourable Mr. WEST:—And suppose the occupier were at home, the difficulty would be to find out who the responsible occupier really was. Then supposing he were even in his compound the officers would be kept standing until he chose to be found. They ought to get through a hundred compounds in the course of a morning; but they would get over the work very slowly if they had this formality to go through. As to intention it appears to me that clause (c) provides sufficiently against that. If this were added the effect would be that the superintendent of the *bhangis* would have to wait until the occupier returned, perhaps from Poona if he were there, before he could do his work. For my own part I should prefer him to do his work as quickly and unostentatiously as possible instead of coming and telling me “I am so-and-so, and my business is to do such-and-such a thing.”

The Honourable Mr. TELANG:—I will not press the amendment.

The amendment was accordingly withdrawn.

The Honourable the ADVOCATE GENERAL then moved to include sub-section 2 of section 372 under the sections embraced by section 492 (1). In so doing the honourable gentleman said:—Your Excellency,—This section allows the Commissioner to do certain works in cases when requisitions shall not have been complied with. I have a letter from the Chief Presidency Magistrate in which he refers to the working of this portion of the Act, and on the strength of what he says I think section 372 (2) might be added with advantage.

The Honourable Mr. WEST :—The Honourable Mr. Naylor does not object.

The amendment was agreed to.

The Honourable Mr. NAYLOR moved that the following words be added to section 506—

“on application being made to him for this purpose at any time within one year from the date when such expenses or compensation first became claimable;”

and that the following sub-section be added to section 13 of Schedule R :—

“If an application of the nature specified in section 506 is made to the Chief Judge of the Small Cause Court in respect of any expenses or compensation which became claimable before this Act comes into force, such application shall be deemed to be in time if it is made within one year from the date of this Act coming into force.”

Period of limitation for applications under section 506 in respect of claims which arose before this Act comes into force.

The honourable gentleman said :—Your Excellency,—The Commissioner has brought to my notice that applications for payment of compensation are not uncommonly delayed for a considerable time, and are brought forward when, perhaps, evidence of the circumstances on which the claim is based has been lost or mislaid and the officers who were acquainted with the circumstances have forgotten them or are no longer in the employ of the Municipality. It seems desirable to prescribe some period within which persons shall bring forward any claims they may have under this section. A year seems to be a reasonable period.

The Honourable the ADVOCATE GENERAL :—Clearly a limitation is desirable and the suggestion is a fair one.

The Honourable Mr. WEST :—I think so too.

The amendment was accepted.

The Honourable the ADVOCATE GENERAL moved that in section 513 the words “and it is hereby provided that nothing in this Act contained shall interfere with the right of any person who may suffer injury or whose property may be injuriously affected by any act done in the exercise of any power conferred by sections 222, 242, 243, 244 or 371 to recover damages for the same” be added after the word “order.”

The honourable gentleman said :—Your Excellency,—This to my mind, from a lawyer's point of view, seems to be one of the most important matters in the Act; and I do not see what the Honourable Mr. Naylor can have been doing when he has omitted it. I think he must have overlooked the point. Well, my object is to provide compensation. I am not particularly wedded to the mode by which it is to be obtained, but I think it would be best done through the Small Cause Court, though it may involve in some instances damages which would form one of the biggest cases that could be brought forward in the High Court. The Council will agree with me that the general principle to be observed is that when the Municipality or any one else interfere with property, they should make compensation for any injury which may accrue to the persons whose rights are interfered with. Of course in cities like London or Bombay it is not to be expected that you can get the same light and air as you can in the country, but you are entitled to what you have, and the question is how far the power is to be given to interfere with the rights of private persons. I am inclined to be liberal in the interest of the community, but it must not be at the expense of the individual. The powers which under the provisions of this Act you may give must be carried out so as not to create a nuisance; and if they are not so carried out, the individual who feels aggrieved must have a remedy. But unless that remedy is provided for in the Act he will be unable to procure it under sections 222, 242, 243, 244 and 371; and as the Corporation are given power to carry out certain works, and as these works may result in injury to the individual, the community at large who are to benefit must be made to pay compensation. I remember a case where the carrying out of works by the municipality resulted in such injury to an individual as I here anticipate. It was one in which I was engaged, and honourable members may have an idea of how long ago it is when I say that Mr. Chisholm Anstey was my leader on that occasion. It was in respect of a house called Love Grove where the result of constructing a sewage outfall was to render the house uninhabitable. Mr. Justice Green, one

of the ablest lawyers who ever sat on the Indian Bench, heard the case; and the result was he found that the nuisance had entirely destroyed the occupation value of the bungalow and the Municipality was not justified in so doing. He issued an injunction which was not to come into force so long as three hundred rupees per month was paid to the owner. Afterwards the sewage was carried further off and the late Sir Maxwell Melvill went into occupation. But after a short residence he intimated to the proprietor that he could not occupy the house any longer, and the Municipality again became liable to pay Rs. 300 per month and they are still paying it to this day; but under the present Act no compensation could have been obtained. Section 513 provides that whatever work is carried out by the Municipality shall be done with the least possible nuisance, but it ought further to provide that if by the carrying out of the work the individual suffer he shall have compensation. As a matter of fact I do not think it was the desire of the Honourable Mr. Naylor to confiscate property in the way in which this clause would do it. But some addition is necessary providing for compensation, and to obtain it I almost think it would be best for applicants to go to the High Court at once. I certainly hope that Mr. Naylor will see his way to meeting me in this matter.

The Honourable Mr. NAYLOR:—Your Excellency,—I am sure the Honourable the Advocate General and the other members of this Council will exonerate me from any desire to confiscate property or to insert anything in the Bill which would operate so as to have any such effect. In drafting the provisions of the sections specified in the amendment my object was to use language which should limit the Commissioner and his subordinates to such an extent as was reasonable and practicable. There are certain necessary duties to be performed by the Commissioner which, the Honourable the Advocate General will admit, cannot be performed without some nuisance being created. It cannot be the wish of anybody to impose upon the Commissioner such conditions as would render it impossible for him to carry out those duties. The object of the words adopted was to ensure that the Commissioner's work should be carried out with the least possible nuisance or annoyance to anyone, but not to expose him to claims for damages if, in the discharge of his statutory duties, he should cause some slight and unavoidable nuisance. This is in accordance with what, I believe, is the established law of England as well as of this country, viz., that if a public officer in the exercise of a public duty creates only the least possible nuisance, he cannot be held liable for damages. If the proposal of the Honourable the Advocate General is accepted, it will have the result of inviting people to claim damages because a dustbin is erected at the corner of the street in which they live.

The Honourable the ADVOCATE GENERAL:—I propose simply to give an actual sufferer damages.

The Honourable Mr. NAYLOR:—Section 371 empowers the Commissioner to provide convenient places, receptacles and depôts for the temporary deposit or final disposal of dust, rubbish, &c.; and if every owner of a house in the neighbourhood of which a dustbin is put up is to have it broadly suggested to him that an action for damages will lie against the Commissioner for setting up that dustbin, the Corporation will soon be overwhelmed with suits for damages and the working of the Act will become impossible. On these grounds, I oppose the proposal of the Honourable the Advocate General. If any act of the Commissioner gives a reasonable claim for damages, there is nothing in the Bill which deprives a claimant of his right to sue for them; but it is very inexpedient to insert anything which would directly induce people to go into Court against the Commissioner.

The Honourable Mr. TELANG:—Your Excellency,—I think the Honourable Mr. Naylor is wrong in his interpretation of the amendment proposed by the Honourable the Advocate General and his argument is therefore not entitled to weight. That amendment does not give a new right of action, but is intended to save alive such a right, if it exists, notwithstanding the provisions of this Bill. No damages ought to be claimable in case of the erection of a dustbin. And probably none will be awarded on the principle *de minimis non curat lex*. But take the case of a receptacle for dead animals. It may be necessary to set up such a receptacle in a particular place, but it is only fair and equitable that the general body of citizens shall pay some compensation to the individuals who suffer in consequence.

The Honourable Mr. WEST :—Your Excellency,—The two honourable members who have supported this amendment have themselves put entirely different constructions upon it, and if that is so, how can it be supposed that a good many wrong-headed citizens will not do so, I understood from the Honourable the Advocate General that it was to be a substantial addition to the legislative enactments of this Bill. The Honourable Mr. Telang says it is not.

The Honourable the ADVOCATE GENERAL :—The Honourable Mr. Telang agrees with me that the effect of the amendment is to prevent the confiscation of rights.

The Honourable Mr. WEST :—I understood the Honourable Mr. Telang to say that the Honourable Mr. Naylor's argument was thrown away and his object was to upset it. But either this does add to the Act or it does not. If it does not, it is needless to have it; if it does, we have to find out what it is intended to do. If it means anything it will be open for people living in a house next which a dustbin has been erected to go into Court against the Municipality. The English law, as I take it, is, as laid down in the case of Sutton and Clark, that a public duty shall be performed with the greatest possible care and the least practicable nuisance. A recent case in England supports this view—the case of one of the fashionable drapers against the Vestry of St. James's. In the reported cases of the English Courts the railway companies are the defendants in many such cases, people come against them with all sorts of claims, but it is always held that so long as they do their work with the least possible nuisance this is all they can be expected to do. Then in providing the Small Causes Court for actions which may arise under other sections the object has been to provide that justice shall be as cheap as possible and as prompt and peremptory. But as has been said, to adopt the Honourable the Advocate General's amendment, the result would be to overwhelm the Municipality. Of course the legal profession would benefit by it, but the result would be entirely disadvantageous to the citizens at large and to individual members of the community.

The Honourable Mr. FORBES ADAM :—Your Excellency,—It appears to me from what has fallen from the Honourable the Advocate General and Mr. West that there are two points of great interest affecting this question. I think that though it shall be incumbent upon the Municipality to carry out their work with the least practicable nuisance it should also be open for individuals who suffer injury to claim compensation from the community who reap the advantage.

The Honourable the ADVOCATE GENERAL :—Your Excellency,—I am very much astonished at what has fallen from the Honourable Mr. Naylor and the Honourable Mr. West. The remedy for injury must always be provided in the Act under which power is given to do such work as results in injury. I differ from the Honourable Mr. West as to the case of Vernon against the Vestry of St. James', Westminster. It was an injunction sewage case, and a different principle of law was involved from what would arise under such sections as those to which I have referred. There are numerous cases to support my contention in this amendment—that though it may be necessary for a man to have his rights interfered with, he must have compensation for that interference.

The Council divided.

Ayes.

The Honourable the Advocate General.
The Honourable Kashinath Trimbak
Telang.
The Honourable F. Forbes Adam.
The Honourable Ráo Bahádur Mahadev
Wasudev Barve.
The Honourable Pherozechah Mervanji
Mehta.
The Honourable Ráo Bahádur Behechar-
dás Veharidas.

Noes.

The Honourable J. B. Richey.
The Honourable R. West.
The Honourable J. R. Naylor.

So the amendment was carried.

The Honourable Mr. NAYLOR :—I would suggest to the Honourable the Advocate General that the first six words of his proviso be struck out and that the proviso be added to section 513 as sub-section (4), beginning with the word "nothing."

This was agreed to.

The Honourable Mr. Mehta proposed that the following words be added to sub-section (2) of section 515, *viz.* "and shall institute and prosecute any suit which the corporation shall determine to have instituted and prosecuted." This amendment was accepted.

The Honourable Mr. TELANG moved that in section 516, lines 10 to 12, the word "council" be substituted for the words "municipal authority whose duty it is to carry out or enforce the same"; and that similar corrections be made throughout the section.

The honourable gentleman said:—Your Excellency,—Under section 65 it is clearly laid down that the municipal government of the city is vested in the Corporation, therefore no communication concerning municipal government, no matter in what department, ought to go from the Governor in Council except to the Corporation. The Municipal Commissioner is the head of the executive and may have to carry out such works as Government may require to be carried out. But communications should be made by Government to the Corporation, and when it is a matter which falls within the functions of the Commissioner, the instructions should be conveyed to him through the Corporation. Although executive functions may be concerned, still the communication should proceed through the Corporation. The section, as it stands, is not consistent with the scheme of the Bill, and it is because of that that my amendment is suggested.

The Honourable Mr. NAYLOR:—Your Excellency,—This is a revival of the same question which was considered the other day—whether the Commissioner in the execution of his special duties has an independent authority, or whether he is subordinate to the Corporation. The Council, by their vote upon that question, have decided that the Commissioner is invested with special powers, and, subject to the limitations prescribed by the Bill, shall be an independent authority. That being the scheme of the Bill as approved by the Council, I take it that it would be wrong for Government to issue an order to the Corporation in a matter which affects the executive functions of the Commissioner, just as it would be wrong for them to issue an order to the Commissioner in a matter affecting the administrative functions of the Corporation. On this ground, I oppose the motion, but in order to meet it half-way and to make the section clear, I would suggest to the Council: (1) That in section 516, sub-section (1), the words "by the municipal authority whose duty it is to carry out or enforce the same" in lines 10 and 11, and the words "by the said authority" in line 15, be omitted. (2) That in sub-section 2 of section 516, line 21, the words "the Corporation, and if the Governor in Council shall think fit, or the Commissioner" be substituted for the words "such municipal authority." The effect of these proposals will be that, if the Governor in Council thinks fit, he will serve a notice upon the Commissioner as well as upon the Corporation, whenever he is satisfied that the blame falls partly on the Corporation and partly on the Commissioner. I think that the compromise suggested in this amendment is one that honourable members opposite should not hesitate about accepting.

The Honourable Mr. PHEROZESHAH MEHTA:—Your Excellency,—The remarks which have fallen from the Hon'ble Mr. Naylor will render it impossible, even if we were otherwise inclined, to accept any compromise in this instance. The decision of the Council on the matter the honourable member has referred to does not determine that the Commissioner was to be regarded as a co-ordinate authority in the municipal government of the city. That decision was distinctly admitted on all hands not to affect or modify in any way the provisions of section 65, which vests in the most unambiguous manner the municipal government of the Corporation: It is true that, by clause 3, the Commissioner is to carry out and execute whatever the Corporation may require to be done. But under section 65, as a whole, the Corporation is undoubtedly the supreme municipal authority, and though I for one am not anxious to call the Commissioner the servant of the Corporation, he is unquestionably their executive officer for the purposes of carrying out their municipal policy. I can find nothing in the Bill to justify his being called a co-ordinate authority. If Government transmit any orders which require executive action, the Corporation is the proper body to receive them and pass them on to their executive officer to do the needful with regard to this, as with all their other directions.

The Honourable the ADVOCATE GENERAL:—If I thought that the amendment proposed would in any way interfere with the executive control the Commissioner exercises I should not to be able to support it. We know the position of the Commissioner by this time, and

I do not think we shall be likely to change it. To my mind, notwithstanding the long quotations of the Honourable Mr. Naylor, it seems clear that Mr. Tucker, Mr. Rogers and the then Acting Advocate General Mr. Mayhew were all at one in considering, as I consider, the Municipal Commissioner as *one* of the executive officers; and I find the Honourable Mr. Tucker describing the powers of the Municipality and *the executive officers*. The Commissioner has independent powers of course; but he is the executive officer of the Corporation, and has always been considered so, and I do not see why he should object to the word *servant*. I have the honour to be an officer of your Excellency's Government; I have no objection to be called their servant. Like the Commissioner I am appointed by another authority and have duties assigned by Statute and independent functions. I have no doubt that the Commissioner is just such an officer. It appears to me there is a principle involved in Mr. Telang's amendment. The position of the Commissioner is settled long ago; why should we go back and disturb it from the grave in which it slumbers? Every power is given to the Corporation to call for such documents as he may have in his possession; and if he were an entirely independent officer, to give such a power as this to the Corporation would simply have been outrageous. I think we should recognise this and accept the Honourable Mr. Telang's amendment, unless it is shown that it will interfere with efficiency of control. I shall support the amendment.

The Honourable Mr. FORBES ADAM:—Your Excellency,—I also wish to support this amendment. I confess that when the Honourable Mr. Naylor used the words “co-ordinate authority” I was puzzled as to how it could be worked out. The Commissioner, he says, is not to rank among the servants. He has got special duties assigned to him, which he performs independently, but the main principle which, to my mind, overshadows the whole Bill is this, that the governing power rests under section 65 in the hands of the Corporation. It is no use mincing matters and evading the real issue. To calling him a servant no one should object. There is a tendency to avoid the direct issue or to discuss the point plainly. If the Commissioner is to carry the details of the policy of the Corporation as set forth in the budget estimates, and according to instructions decided upon by the Corporation and given to him by them, I cannot see—look at it from whatever point of view you may, you cannot get out of it—he is the servant of the Corporation. I know there is a dislike to refer to the point. I myself think it is better to clear the air at once. Recognise the fact before this Bill passes the third reading, and make the point clear once and for all.

The Honourable Mr. WEST:—Your Excellency,—Whether this amendment is carried or not the position of the Commissioner as servant or non-servant of the Municipality will not be determined by it. The position has already been determined, and I would ask the Council to accept the amendment which the Honourable Mr. Naylor has proposed. It is no use sending an order to any one but the authority or the person concerned. To apply to the Corporation for any information which is in the possession of the Commissioner would be just as absurd as to apply to the Commissioner for any purpose which may fall within the special functions of the Municipality. The compromise which the Honourable Mr. Naylor suggests it would be best to accept. I know from my own experience that there are matters which the Corporation cannot give information on, nor can it be obtained except through the Commissioner. There are many occasions of this sort and I see returns every week submitted by him upon which it would be most inconvenient to obtain the additional information Government may require, by a roundabout way through the Corporation. The Honourable Mr. Mehta said that the speech of the Honourable Mr. Naylor prevented him from accepting what he was otherwise prepared to accept. I hope that my speech will have the effect of bringing him back to his former position, and that the amendment may be acceptable. It does not involve any question of principle, but is a compromise for the sake of convenience. It would be a very elaborate analysis which would clearly distinguish between co-ordination and the respective positions of the Corporation and the Commissioner; but it is better, when the main principle has been settled, to accept the section as the Honourable Mr. Naylor proposes to amend it. It will prove convenient to work and will avoid occasions for disputes.

The Honourable Mr. TELANG:—In section 62, the Commissioner is not referred to. The duties there enumerated are stated to be the duties of the Corporation, and it seems to me there is nothing wrong in insisting that with respect to those duties Government should send its communications to the Corporation.

The Honourable Mr. WEST:—In section 65 the executive power is dealt with, and the Corporation need not be sent to in respect to anything relative to the Commissioner. The amendment of the Honourable Mr. Naylor preserves the dignity of the Corporation at the same time it does not lead to a dead-lock.

The Honourable Mr. FORBES ADAM:—Could not the Corporation pass on to the Commissioner anything concerning the executive duties?

The Honourable Mr. TELANG:—I would have no objection to its being provided that the Corporation should pass on to the Commissioner forthwith any communication it receives from Government about executive work.

The Honourable the ADVOCATE GENERAL:—I think that would meet the matter.

The Honourable Mr. NAYLOR:—It would; but there is but one executive authority, and his position justifies us in providing that he shall be recognised by Government as a separate authority.

The amendment of the Honourable Mr. Naylor was then put to the vote, with the result that it was carried by the casting vote of His Excellency the President.

Ayes.

The Honourable J. B. Richey.
The Honourable R. West.
The Honourable J. R. Naylor.
The Honourable Ráo Bahádúr Mahadeo Wasudev Barve.
His Excellency the President.

Noes.

The Honourable the Advocate General.
The Honourable Kashinath Trimbak Telang.
The Honourable F. Forbes Adam.
The Honourable Pherozechah Merwanji Mehta.
The Honourable Ráo Bahádúr Behcharidas Veharidas.

The Honourable Mr. NAYLOR:—The amendment of the Honourable Mr. Telang cannot co-exist with the one which has just been carried and will, I presume, not be put.

The Honourable Mr. WEST:—The amendment of the Honourable Mr. Naylor was on an amendment of Mr. Telang's. By it new words are struck out. That procedure seems right.

The Honourable the ADVOCATE GENERAL:—I do not think that quite applies here.

The Honourable Mr. WEST:—I would submit to Your Excellency that the adoption of the one amendment involves the rejection of the other as inconsistent.

The Honourable Mr. TELANG:—Supposing it had been lost, then the question would have still lain between my amendment and the section in its original form. The vote now taken only decides the question as between the original section and the amendment of the Honourable Mr. Naylor. My amendment has not really been voted upon yet.

The Honourable Mr. WEST:—The rules of the House of Commons would, I think, settle the point as I have said.

The Honourable the ADVOCATE GENERAL:—I think not; the vote was between the amendment and the original form, and now it should be between the other amendment and the original form of words.

The Honourable Mr. PHEROZESHAH MEHTA:—The two amendments have not yet been pitted against each other. It is conceivable that a member may prefer Mr. Naylor's amendment to the section as it stands, and Mr. Telang's to both.

The Honourable Mr. WEST:—The other amendment is merely to negative this and you cannot reject what you have just adopted.

The Honourable Mr. FORBES ADAM:—Would it not have been proper to have put Mr. Telang's amendment first and Mr. Naylor's afterwards.

The Honourable Mr. WEST:—I think the general rules of public assemblies are to the contrary, you put an amendment on an amendment first as the more convenient course.

His Excellency the PRESIDENT:—The words of the Honourable Mr. Telang's amendment are contradictory to the words we have just accepted, and members who have voted for the Honourable Mr. Naylor's amendment could not vote for the Honourable Mr. Telang's. A vote on the latter would therefore be nugatory.

The Honourable the ADVOCATE GENERAL:—The only course that I can see is to bring the matter forward in the third reading. I had an amendment to the same effect to section 516, that in section 516, line 21, the words "such municipal authority" be omitted and the words "the Corporation" inserted in lieu thereof.

Section 517 being reached, the Honourable Mr. Naylor moved that in sub-section (1) of that section, lines 11—16, the following words be substituted for the words "the commissioner" down to the end of the sub-section, *viz.*:—

"that the said portion of the said works be repaired, improved or otherwise rendered sound and effective, within a reasonable time to be prescribed in the notice;"

and that for the first two and a half lines of sub-section (2) of section 517, down to and including the words "to do," the following words be substituted, *viz.*:—

"(2) The said notice shall be addressed to the Corporation and to the Commissioner, and it shall be incumbent on the Corporation and on the Commissioner, within the limits of their respective powers, to give effect thereto. If effect be not given thereto."

The honourable gentleman also moved that for the first three lines of sub-section (2) of section 518, the following words be substituted, *viz.*:—

"(2) On receipt of any such requisition, the commissioner shall forthwith forward a copy thereof to the corporation, who shall be bound to take steps, if any be necessary, for enabling the commissioner to comply therewith, without prejudice to other claims on the municipal fund. If within fourteen days from the delivery of the requisition to the commissioner, the same is not complied with."

The honourable gentleman said:—Your Excellency,—I have to offer the same kind of provision in the case of these two sections as the Council have already accepted in the case of the previous section. Section 517 relates specifically to the Vehar Water Works, and as the section is at present worded, if the Governor in Council shall think that any portion of those works is defective, he may give notice, under the signature of a Secretary, requiring the Commissioner to repair or improve the works. The proposal I submit would have the effect of omitting from sub-section (1) of section 517 all reference to the authority to whom the notice from Government is to be addressed; and the amended sub-section (2) will provide that the notice shall be addressed to the Corporation and to the Commissioner—to the Commissioner, because he is the executive authority, and to the Corporation to save their dignity and to let them know what the executive authority is doing. The amendment I propose in section 518 will also save the dignity of the Corporation, as it provides that whenever a requisition is received by the Commissioner, he shall forthwith forward a copy thereof to the Corporation, who shall take such steps as may be necessary for enabling the Commissioner to comply therewith.

The Honourable Mr. PHEROZESHAH MEHTA:—Your Excellency,—I have given notice of my intention to move amendments in section 517 as well as section 518, with the object of having the word "Corporation" substituted for the word "Commissioner" wherever it occurs. With regard to section 517 I am prepared to accept Mr. Naylor's proposal in regard to it in accordance with the suggestion thrown out by the learned Advocate General, as the question of repairs to the Vehar Water Works stands on a somewhat special footing; but I shall press my amendment with regard to section 518 for the reasons that have been already stated and discussed, and which therefore need not be repeated.

The Honourable the ADVOCATE GENERAL:—There is a difference between the Vehar Water Works and any other works which may be in question. I will accept the amendment to section 517, but not that to section 518 as proposed by the Honourable Mr. Naylor.

The Honourable Mr. TELANG:—It appears that this elaborate circumlocution is an attempt to avoid the assertion that the Commissioner is subordinate to the Council. That being so, I shall decline to accept the amendment. I am not prepared to accept any compromise or any section which goes on the basis that the Commissioner is not subordinate to the Council.

The Honourable Mr. RICHEY:—What section makes him so?

The Honourable Mr. TELANG:—Sections 65 and 66, not to mention others, make it clear that he is subordinate, for he cannot carry on any work unless the Corporation sanctions it and provides the money.

The Honourable Mr. RICHEY :—But there is something above “ except as in this Act otherwise provided.”

The Honourable Mr. TELANG :—He is subordinate, for he carries out works laid down by the Corporation and no others.

The Honourable Mr. WEST :—May I ask Your Excellency to clear this point a little by saying whether the amendment as proposed by the Honourable Mr. Naylor may be considered as accepted.

The Honourable Mr. MEHTA :—Yes; as to section 517.

The Honourable Mr. WEST :—Then, as to the others, I would ask Your Excellency to let them be considered separately.

The various amendments being put to the meeting those referring to section 517 were accepted. The proposed alteration of sub-section (2) of 518 was rejected, but it was agreed, instead, that, in lines 7 and 8 of sub-section (1) of this section, the words “ the corporation shall cause to be paid ” be substituted for “ the commissioner shall pay.”

The Honourable the ADVOCATE GENERAL moved, that in section 524, line 3, the words “ any municipal authority ” be omitted and the words “ the Corporation ” inserted in lieu thereof, and in line 16 the words “ municipal authority ” be omitted and the words “ the Corporation ” be inserted in lieu thereof.

The honourable gentleman said :—Your Excellency,—There is not much use discussing this matter; it concerns the same question as before. I think Government ought to address the Corporation directly.

The Honourable Mr. NAYLOR :—Your Excellency,—In this matter also I have tried to meet the views of the Honourable the Advocate General and of the other gentlemen who think with him. On the suggestion of the Honourable Mr. West, I propose to adopt the language of the clause in the Letters Patent of the High Court, which renders it obligatory on the Honourable Chief Justice and Judges of that Court to comply with requisitions from Government. The Corporation will, perhaps, not object to be placed on the same footing, in this respect, as the Chief Justice and Judges of the High Court. My amendment is to this effect :—

“ The Corporation, the Standing Committee and the Commissioner shall comply with such requisitions as may from time to time be made by the Governor in Council for extracts from proceedings or records or for statistics concerning or connected with the administration of this Act, in such form and manner as the Governor in Council shall deem proper.”

The Honourable the ADVOCATE GENERAL :—I do not see that this meets the objection.

The Honourable Mr. TELANG :—With regard to the Chief Justice it was said in a well-known document that he is only *primus inter pares*. That phrase is certainly inappropriate as applied to the three authorities mentioned in the proposed section.

The Honourable Mr. FORBES ADAM :—It appears to me the Corporation should be addressed.

The Honourable Mr. NAYLOR :—We want requisitions to go to the authority directly concerned.

The Honourable Mr. WEST :—I do not attach any importance to the words “ Standing Committee,” and I do not think it would make the section any less effective to take them out. As I said before, the Commissioner has to send in statistics concerning health which I see every week, and if he omitted them at any time it would necessitate considerable delay if Government had to wait until the Corporation at its next meeting might deal with the matter.

The Honourable Mr. PHEROZESHAH MEHTA :—If the Commissioner has been guilty of negligence, the circumstance that Government had sent a communication on the subject could not fail to come to his knowledge, and he would immediately send in the return. The necessity of waiting till the next meeting of the Corporation would always be thus practically obviated.

The Honourable Mr. WEST:—But the information wanted would not brook delay. I do not say the Corporation would be negligent, but in case the information were wanted at once the delay might have a serious effect.

The Honourable Mr. TELANG:—It is said that hard cases make bad law.

The Honourable Mr. WEST:—I specify vital statistics as being nearest to my mind—they are such as I deal with every week, and naturally they are uppermost in my mind. To wait for a month for any information as to these might defeat the purpose of the returns altogether. Generally speaking, Government does not want to send in these requisitions at all.

The Honourable Mr. NAYLOR:—I should be very happy to strike out the words “or Standing Committee”; but if that will not satisfy honourable gentlemen opposite, I should like to take the opinion of the Council on the section as it stands.

The Honourable Mr. TELANG:—I should not be prepared to accept that.

The Council divided—

Ayes.

The Honourable J. B. Richey.
The Honourable R. West.
The Honourable J. R. Naylor.

Noes.

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

So the Honourable Mr. Naylor's amendment was lost.

The Honourable Mr. TELANG withdrew his amendment that in section 524, lines 3 and 2, the words “the council” be substituted for the words “any municipal authority” and that similar corrections be made throughout the section; also that in line 8 “section 41” be substituted for “this Act.”

The Honourable the ADVOCATE GENERAL'S amendment that in section 524, lines 3 and 2, the words “any municipal authority” be omitted and the words “the Corporation” inserted in lieu thereof, and in line 16 the words “municipal authority” be omitted and the words “the Corporation” be inserted in lieu thereof was then put to the meeting and adopted.

The Honourable the Advocate General then moved that in section 525, line 26, the word *three* be omitted and the word “six.” inserted in lieu thereof.

The honourable gentleman said:—Your Excellency,—I have been asked to bring this matter forward by one of the most eminent members of the Bar. It is an extraordinarily short period. One month is taken up by the notice, and several cases of hardship have arisen. I think the time should really be prolonged. By adopting this amendment the law becomes similar to what it is in England.

The Honourable Mr. NAYLOR:—I have no wish to oppose the motion, but the limit of three months has been the law in Bombay for many years, so the amendment was agreed to.

The Honourable Mr. WEST:—There appears to be a supplementary section necessary after 168, otherwise it would give rise to much controversy, and I propose to add a new section.

After section 168, insert the following new section:—

“168-A. If, in respect of any premises, water-tax would be leviable under this Act

Government and the Port Trust
to be charged for water by Govern-
ment.

from the Secretary of State for India in Council or from the Trustees of the Port of Bombay, the Commissioner, in lieu of levying such tax, shall charge for the water supplied to such premises, by measurement, at such rate as shall be prescribed by the Standing Committee in this behalf, not exceeding, in the case of the Secretary of State for India in Council, the minimum rate and, in the case of the said Trustees, the maximum rate at the time being charged under clause (a) of section 168 to any other person; and such charge shall be recoverable as provided in sub-section (3) of the said section.”

The Honourable Mr. FORBES ADAM :—I would point out that the Port Trust's contribution has already been included in the present Budget.

The Honourable Mr. WEST :—At present the Port Trust pays the full rate?

The Honourable Mr. FORBES ADAM :—Yes.

The amendment was agreed to.

The Honourable Mr. WEST :—I have another supplementary sub-section to propose. It is :

(1) Add at the end of sub-section (1) of section 170 :—

“ whether the service in respect of which such tax is leviable be performed by halálkhors or by substituted means or appliances.”

(2) After sub-section (1) of section 170, insert the following sub-section :—

“ (1 A)—In the case of premises in respect of which the halálkhor-tax is payable by the Secretary of State for India in Council or by the Trustees of the Port of Bombay, the Commissioner shall fix the said tax at a special rate approved as aforesaid.”

(3) In sub-section (2) of section 170 make the following alterations, viz :—

Line 12, after “ cost ” insert “ or probable cost ; ”

Line 13, for “ municipal agency ” substitute “ the agency of municipal halálkhors ; ”

Lines 15 and 16, omit the last words of the sub-section, beginning with “ for which.”

It is necessary to make it conform with what has been agreed to already.

The amendment was agreed to.

The Honourable the ADVOCATE GENERAL :—Section 30 will require amending if you are not to invalidate your elections. There is no such person as the chairman of the justices ; some proper person must be fixed upon to give notice. I do not care whether you fix upon the Commissioner or some other person to do it.

The Honourable Mr. WEST :—The Honourable Mr. Naylor proposes to draw up an amendment and is willing to accept your suggestion as to the Commissioner. He has it included in a string of verbal amendments.

The Honourable Mr. NAYLOR :—Your Excellency, — I have already, with as great care as possible, gone through the Bill in the various intervals I have had at my disposal, and have prepared a list of the verbal amendments rendered necessary by the changes and additions adopted by the Council in the course of these debates ; but I do not doubt that further examination will prove that other such amendments have become necessary. There are certain other amendments which have become necessary in consequence of the receipt of a letter from the Government of India relative to the jurisdiction of the Chief Judge, of the Small Cause Court in cases arising under this Bill. I think it will be convenient to have these two sets of amendments taken simultaneously at the next sitting ; and I shall be prepared with them on any day to which your Excellency may think fit to adjourn.

His Excellency the PRESIDENT then adjourned the Council to Saturday the 24th March 1888.

(Signed) J. J. HEATON,

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

Bombay, 19th March 1888.

PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

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

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

The Council met at Bombay on Saturday the 24th March 1888.

PRESENT:

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

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

The Honourable R. WEST.

The Honourable the ADVOCATE GENERAL.

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

The Honourable F. FORBES ADAM, C.I.E.

The Honourable J. R. NAYLOR.

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

The Honourable PHEROZESHAH MERVANJI MEHTA, M.A.

The City of Bombay Municipal Bill.

The Honourable Mr. NAYLOR:—Your Excellency, amongst the other alterations in the existing municipal system which the Bill now under our consideration proposes to bring into force, is the transfer of the adjudication of what I may call municipal civil cases from the court of the Chief Presidency Magistrate to the jurisdiction of the Chief Judge of the Small Cause Court. The reason for this change must be very obvious to every member of the Council. The Chief Presidency Magistrate, being an official who is specially trained for the disposal of criminal cases, has no special aptitude for the decision of civil matters, whereas the Chief Judge of the Small Cause Court is a judge with peculiar qualifications for the decision of cases of this nature. In drafting this Bill, I proposed, therefore, with the approval of Government, that the hearing of all such cases should be transferred to the Chief Judge of the Small Cause Court, and the Bill as introduced into this Council provided that the cases should be heard by that authority. But, whilst the Bill has been under consideration by the Select Committee and this Council, correspondence has taken place with the Legislative Department of the Government of India, from which it appears that the Government of India are doubtful as to the power of this Local Council to enact that civil cases arising under this Bill should be heard and disposed of by the Chief Judge of the Small Cause Court. The legal question involved is one of a complicated and highly technical nature, and I need not trouble the Council with it, for it was considered by the Select Committee, and the conclusion at which the committee arrived is stated in our report. We were of opinion that it is highly expedient that our jurisdiction in these cases should be transferred to the Chief Judge of the Small Cause Court and trusted that by correspondence with the Government of India, a way would be found in which the legal difficulties in bringing about such an arrangement might be overcome. This Government have now received a final reply from the Government of India, to the effect that this Council may be invited to insert in the Bill all such provisions as they deem proper for regulating the jurisdiction of the Chief Judge of the Small Cause Court in cases arising under the Bill, and the Government of India will hereafter take steps for confirming those provisions in such manner as they may consider necessary. The difficulty is briefly this that, in 1882, the Governor General in Council passed an Act entitled the Presidency Small Causes Courts Act, which determines the jurisdiction of those courts, and it is thought that the provisions of our Bill may, perhaps, conflict with the provisions of that Act, and if they should so conflict, the passing of such provisions by this Council would be *ultra vires*. But the Government of India have undertaken to see any such difficulties righted, and they have

further agreed that they will, in the Bill to be introduced into the Council of the Governor-General, as soon as may be, insert other provisions (1) for giving the Chief Judge of the Small Cause Court power to refer cases of assessment in which any legal point of difficulty occurs for the opinion of the High Court, and (2) allowing a right of appeal to the latter Court in cases regarding compensation and expenses in which the amount at issue exceeds Rs. 2,000. And I may also add that it is proposed to ask the Government of India to give a right of appeal to the High Court, by the same Act, against decisions of the Chief Presidency Magistrate under section 513, the section which we were considering the other day and to which, on the motion of the Honourable the Advocate-General, an additional sub-section was added. These being the facts regarding the jurisdiction of the Chief Judge of the Small Cause Court, I have now only to ask this Council to adopt the amendments and certain additional sections which I have to propose, and which appear necessary in order to complete what is already contained in the Bill concerning the Judge's power and the exercise of his jurisdiction. It will be convenient if I take up each of the motions as they stand in my name and explain them *seriatim*.

In section 21, line 11, it is sought to substitute "twenty" for "ten." This relates to appeals to be made against decisions of the Municipal Commissioner regarding the entry or non-entry of names in the municipal election roll. The section, as it stands, provides that the Chief Judge of the Small Cause Court shall hear and determine such appeals within ten days after their receipt. The present Chief Judge of the Small Cause Court has pointed out that this is too short a time, as perhaps on some occasions many applications might be made simultaneously. It is, therefore, thought desirable that as much time as possible should be allowed. The Municipal Commissioner has to hear applications for alterations in the list, under sub-section (12) of section 20, on some one of the first ten days of November, and under sub-section (22) of the same section 20, he may adjourn the hearing of any such application from time to time, but only so that no adjourned hearing be held after the tenth day of November. So the Commissioner's work in respect of the preparation of the election roll must be completed by the 10th of November. By section 22, sub-section (1), it is provided that the municipal election roll shall be completed and come into operation on the 1st of December, and this allows an interval of only twenty-one days after the 10th November before the roll comes into operation. Section 21 allows a person who wishes to make an appeal 5 days in which to do so, and the Chief Judge by the same section has only ten days in which to hear and decide such appeals. That takes away 15 days out of the twenty-one. The remaining six days were considered sufficient for the printing of the roll. But as it is now deemed advisable to give the Chief Judge of the Small Cause Court longer time, the date on which the roll will come into operation may, it is thought, be postponed until the 10th December. By this arrangement we are able to give the Chief Judge of the Small Cause Court 20 days for hearing and deciding appeals, instead of only 10.

The amendment was accepted.

In section 22 (line 10) for the "first" of November, the "tenth" was substituted, to bring the section into conformity with section 21.

The Honourable Mr. NAYLOR then proposed that at the end of sub-section (1) of section 510, the following words be added: "and in all matters relating to any such inquiry or proceeding the said chief judge shall be guided generally by the provisions of the said Act in like cases, so far as the same are applicable." The honourable gentleman in proposing this amendment, said the sub-section gives the Chief Judge of the Small Cause Court the same powers to summon and enforce the attendance of witnesses and to compel the production of documents in cases arising out of this Bill, as he has under the Presidency Small Cause Courts Act in cases which come before the Small Cause Court. The object of the addition is merely to provide still further in the same direction, by saying that in all matters relating to any such inquiry or proceeding he shall be guided by the provisions of the Presidency Small Cause Courts Act in like cases.

The amendment was carried.

The Honourable Mr. NAYLOR then moved that the following new sections be inserted after section 510 of the Bill:—

"510A. (1) The Governor in Council may, from time to time, by notification in the *Bombay Government Gazette*, prescribe what fee, if any, shall be paid :

Fees in proceedings before the Chief Judge of the Small Cause Court.

(a) on any application, appeal or reference, made under this Act to the Chief Judge of the Small Cause Court ; and

(b), previous to the issue, in any inquiry or proceeding of the said Chief Judge under this Act of any summons or other process.

Provided that the fees, if any, prescribed under clause (a) shall not, in cases in which the value of the claim or subject-matter is capable of being estimated in money, exceed the fees at the time being levied, under the provisions of the Presidency Small Cause Court Act, 1882, in cases in which the value of the claim or subject-matter is of like amount.

(2) The Governor in Council may from time to time by a like notification determine by what person any fee prescribed under clause (a) shall be payable.

(3) No application, appeal or reference shall be received by the said Chief Judge until the fee, if any, prescribed therefor under clause (a) has been paid.

“510B. The Chief Judge of the Small Cause Court may, whenever he thinks fit, receive an application, appeal or reference made under this Act by or on behalf of a poor person, and may issue process on behalf of any such person, without payment or on a part payment of the fees prescribed under section 510A.

Exemption of poor persons from fees.

“510C. Whenever any application, appeal or reference made to the Chief Judge of the Small Cause Court under this Act is settled by agreement of the parties before the hearing, half the amount of all fees paid up to that time shall be repaid by the said Chief Judge to the parties by whom the same have been respectively paid.”

Repayment of half-fees on settlement before hearing.

The Honourable Mr. NAYLOR said :—These sections have for their object to require that for applications, appeals, and references made to the Chief Judge of the Small Cause Court under this Bill, fees shall be payable upon a scale to be fixed from time to time by the Governor in Council ; those fees not exceeding, in cases which are capable of valuation, the fees paid in cases of like valuation arising under the ordinary jurisdiction of the Small Cause Court. The sections are based upon similar sections in the Presidency Small Cause Courts Act. Some of the members of this Council are familiar with the Small Cause Courts Act and in the practice of the Small Cause Court and they will require no further explanation of these proposed new sections.

The additions were agreed to.

The Honourable Mr. NAYLOR then moved the addition of the following new section :—“510-D. The Chief Judge of the Small Cause Court may :

(a) delegate, either generally or specially, to any other Judge of the said Court, power to receive applications, appeals and references under this Act, and to discharge any other duty in connection with such applications, appeals and references, except the hearing and adjudication thereof ;

Power to the Chief Judge of the Small Cause Court to delegate certain powers and to make rules.

(b) if for any reason it shall be necessary so to do in order to secure the disposal of any application made to him under section 21 within the limited period prescribed in the said section, delegate to any other Judge of the said Court the hearing and adjudication of the said application ;

(c) from time to time with the approval of Government make rules, not inconsistent with this Act, providing for any matter connected with the exercise of the jurisdiction conferred upon him by this Act which is not herein specifically provided for.”

The honourable gentleman said :—The addition of this section is for a somewhat different purpose. It has three clauses, (a), (b), and (c), with respect to each of which I may make some explanation. The reason for (a) is that the work of the Small Cause Court is, as is generally well known, very heavy, and the Chief Judge of the Court is naturally generally engaged upon the more important and intricate cases arising in that Court. Ministerial work is not usually discharged by the Chief Judge himself, and it does not seem advisable to impose it upon him even in cases which may come before him under this Bill. The object is to relieve him of the necessity of receiving in person the appeals and references which may be made to him under this Bill and of discharging other similar

ministerial duties with regard to them. In the case of clause (b), the object is that if for any reason the Chief Judge is himself unable to dispose of all the appeals against the Commissioner's orders under section 21, within the limited period of twenty days, he may delegate their adjudication and hearing to other judges of the Court, in order that there may be no delay in getting them disposed of; and clause (c) contains a general proviso enabling the Chief Judge, with the approval of Government, to provide for miscellaneous matters, for which he may find no specific provision in this Bill, by rules.

The Honourable Mr. TELANG :—As to (a) in section 510D, is it necessary to confine the power of delegation to any other judge of the Court? We know the work of the Small Cause Court now is very heavy, and I understand that there is a very considerable amount of arrears, and that unless Government give some aid to the staff, this additional work will be very difficult for the judges to keep pace with. Will it not be well to allow the Chief Judge to receive applications through the Chief Clerk of the Small Cause Court.

The Honourable the ADVOCATE-GENERAL :—All applications are received by the judges, and it appears it is not the practice to have applications made through the Chief Clerk.

The Honourable Mr. WEST :—We settled the wording of these clauses with the assistance of the Chief Judge, though he, of course, objects to the additional work being forced upon him. But then he may be able to show a good case in favour of an increase of staff, and if the work proves heavy, as I think it will, the same work under a proper system of fees will furnish a fund. There are interlocutory applications which it would not be well to give to a clerk. They want some judicial faculty to deal with them properly.

The Honourable Mr. TELANG :—If the matter has been settled in consultation with the Chief Judge I do not wish to say any thing more.

The amendment was then carried.

The Honourable Mr. NAYLOR then moved :—In schedule R, section 13, sub-section (2), lines 5 and 6, for "after the passing of this Act" to substitute "on or after the first day of November, 1888." The honourable gentleman said :—The object of this change is this. It was pointed out by the Chief Judge of the Small Cause Court that schedule R imposed upon him the duty of hearing applications, appeals and references from the very day on which this Bill will become law. But the day when it will become law is uncertain. It depends upon the date when the assent of the Governor-General is received and the day when that assent will be published. But as a certain amount of machinery must of necessity be got ready before he can begin to exercise his new jurisdiction, the Chief Judge has suggested that it would be more convenient to himself and to all concerned that this jurisdiction should commence from a fixed date, and for this reason we propose now to provide that it shall commence from the 1st November, 1888.

The amendment was agreed to.

The Honourable Mr. NAYLOR then moved that in schedule R, section 13, the following new sub-section be inserted between sub-sections (2) and (3), viz :—" (2-A). Any such legal proceeding as aforesaid which is commenced before the said date, and any legal proceeding commenced after the date when this Act comes into force, but before the first day of November, 1888, which under the provisions of this Act should be instituted before the Chief Judge of the Small Cause Court, shall be instituted before the Chief Presidency Magistrate and be heard and determined by the said Magistrate; and the decision of the said Magistrate in every such proceedings shall have the same validity, as if this Act had not been passed or as if such decision had been made by the Chief Judge of the Small Cause Court, as the case may be."

The honourable gentleman said :—The object of this amendment is that the Chief Presidency Magistrate shall continue to try any cases arising under the existing Act, and also cases which may arise under this Bill if it should become law at an earlier date than that on which the jurisdiction of the Chief Judge of the Small Cause Court is to commence.

The amendment was accepted.

The Honourable Mr. NAYLOR then moved that in the new sub-section (3) of section 13 of schedule R recently approved by the Council, after the word "Chief" to insert "Pre-

sidency Magistrate or to the Chief." This, he explained, was only a verbal amendment to make the sub-section (3) which the Council had already approved tally with the sub-section (2 A) just now passed.

The amendment was adopted.

The Honourable Mr. WEST:—Your Excellency,—In proposing the amendments I have now to recommend, I feel I owe somewhat of an apology to the Council for bringing these matters forward at so late a date, but the truth is that section 41 was in somewhat vague language. It was only on repeated inspection of it that I came to the conclusion that, although it contained implicitly the provisions requisite for carrying on the educational duties of the Corporation, it did not provide sufficiently in detail for the performance of those functions. The framing was so obscure that it might give rise to disputes. I have endeavoured, therefore, to draw up explicitly what was contained implicitly in the section as it stood.

The honourable member then proceeded to read the sections which he proposed should be substituted for section 41 of the Bill.

"41. It shall be the duty of the Corporation and of the Government each to appoint four members of a Joint Schools' Committee of eight members for the purpose of giving effect to the provisions as to primary education hereinafter enacted and to such other measures and arrangements in furtherance of education as to the Corporation shall seem desirable.

"41 A. (a) The first appointments to the said Committee shall be made within one month from the date on which this Act comes into operation. The members then or thereafter duly appointed may perform all the functions legally pertaining to the committee notwithstanding any default or delay or defect in the appointment of any member.

"(b) At the end of each of the first three years after this Act shall come into operation one of the members of the Joint Schools' Committee appointed by Government and one appointed by the Corporation shall retire by ballot. Thereafter the two senior members shall retire at the end of each calendar year and two shall be appointed or reappointed by Government or by the Corporation after the manner of the appointments first made."

The honourable gentleman explained: In (b) I contemplate, as the honourable Mr. Telang knows the existence of a School Board, a larger and more dignified board than under this Act which, as I hope, will some day exist to supervise the general educational work of the entire presidency, but just as honourable members would prefer I will use the term "Board" or leave the word "committee" in this section of the Act.

[Reads.]

"(c) The Joint Schools' Committee shall by election from amongst its own members appoint one member to be Chairman for the current term of his office or for any shorter period. The Chairman so appointed shall preside and, in his absence, the senior member according to date of first appointment shall preside at meetings of the committee. He shall have a vote and, in case of equal division, a casting vote.

"(d) The Corporation shall provide for the Joint Schools' Committee a competent secretary and such clerks and messengers as shall be necessary. It shall also supply the committee with accommodation, stationery and the other material requisites for the due discharge of its duties on the requisition of the Chairman, signified by him, by any member of the committee, or by the secretary."

Here I would observe in (c) that the Chairman will not occupy the position for life. His time will expire as that of other members. In (d) I refer to such requisites as lamps or candles which may be necessary for evening sittings and to other necessaries of that sort.

[Reads.]

"(e) The Joint Schools' Committee shall administer the School Fund hereinafter defined and prescribed and shall provide thereout for the accommodation and maintenance of schools which at any time vest wholly or partly in the Corporation and for otherwise aiding education in accordance with the bye-laws duly made and with the rules made or approved by Government in this behalf.

“(f) An order signed by the Chairman shall be sufficient warrant for the disbursement by any person holding the School Fund or any part thereof of any sum thereout in accordance with such order.

“(g) The Joint Schools' Committee shall appoint and remove masters, teachers and other persons employed in the schools maintained out of the School Fund, and shall direct and control the instruction given in such schools and the terms and conditions of such instruction, and annex to the aid given to other schools or places of instruction such terms as shall seem expedient, subject always to the bye-laws duly made and to the rules made or approved by Government on this behalf.

“(h) The Joint Schools' Committee may by a bye-law duly made be invested with the powers and duties of any authority constituted under this Act in so far as shall be necessary or expedient in order to the fulfilment of the functions imposed on such committee as contemplated in sections 41, 41A, 41B, and 62 (p) of this Act and to the extent to which such committee is invested as aforesaid, the powers and duties of the said authority shall be in abeyance save as so vested and exercised accordingly.”

These are rules, Your Excellency, which appear desirable whatever may be the Corporation's special and legally prescribed educational functions. They provide the machinery by which the educational duties which are imposed upon the Corporation may be carried out and upon which the Government grants-in-aid are made. These rules are important and I trust they will be accepted.

The Honourable the ADVOCATE-GENERAL :—As to the Chairman, it strikes me that it will be well to specify where two or more persons are elected on the same date which under (c) shall be Chairman.

The Honourable Mr. WEST :—That point escaped me. The man whose name appears first on the list in the *Government Gazette* will take precedence. We can add that.

The Honourable Mr. TELANG :—I would like to ask whether it is not intended to confine the duties of the committee to primary education.

The Honourable Mr. WEST :—Certain duties are imperative on the Corporation, but it occurred to me that perhaps the Corporation awaking to the necessity for secondary education or technical education might desire to take it in hand, and, if so, here would be the committee ready.

The Honourable Mr. TELANG :—Would it not be better to provide a separate committee for that? The committee which will deal with the imperative duties of the Corporation would not necessarily be qualified to deal with secondary education or technical education.

The Honourable Mr. WEST :—Then shall we leave it as the Corporation shall deem desirable?

The Honourable Mr. PHEROZESHAH METHA :—Supposing Government should not hold the same view as the Corporation, how would it work?

The Honourable Mr. WEST :—It would work in this way. If the Corporation want any aid from Government there would be negotiations and so the matter would be adjusted as by a higgling of the market between the Government and the Corporation. Would the honourable members desire a separate clause allowing the Corporation to assent to the addition to the duties of the same Committee or would they prefer a separate Committee? Perhaps the Honourable the Advocate-General will help us to frame it. Will that suit you?

The Honourable the ADVOCATE-GENERAL, the Honourable Mr. TELANG, and the Honourable Mr. PHEROZESHAH MEHTA :—Yes.

The Honourable Mr. WEST :—Then we will cast that into shape.

Further consideration of the subject was then postponed.

In the meantime the Honourable Mr. WEST proposed 41(B) as follows :—

“The Corporation, either singly or in concurrence with the Government, may appoint a hospital committee with such constitution, powers and duties with respect to hospitals and institutions for the benefit of the aged, sick and infirm, vesting wholly or partly in the Corporation and supported or aided out of its funds as may be defined and provided by bye-laws, or by any agreement made with Government in this behalf.”

The honourable gentleman said:—This section rests upon a somewhat different basis from 41A. The Act does not impose the same obligation upon the Corporation with regard to hospitals as it does to schools. But it seems not altogether unlikely that the Corporation will be the owner for charitable purposes of one or more of the hospitals, so that considerable elasticity of expression was thought desirable, but whenever the Corporation has to deal with hospitals, it will be necessary to have some committee, because the whole Corporation would be practically unwieldy for such a purpose and indeed incompetent—a great portion of them not having any acquaintance with the working of hospitals.

The amendment was accepted without discussion.

The Honourable Mr. NAYLOR:—Your Excellency,—I propose to submit now some verbal and other small amendments which have become necessary owing to the various amendments which have been accepted by the Council.

Section 2, clauses (c) and (d), to be restored as before they were amended by the Select Committee.—Agreed.

Section 2, clause (e), omit words in italics in lines 47 to end.—Agreed.

Section 3, clause (b), line 1, omit "municipal."—Agreed.

Section 3, clause (bb), in the new definition of "Councillor" omit the word "municipal," and the words "otherwise legally," and, at the end of the clause, add "under this Act."—Agreed.

Section 3, clause (v), line 153, omit "municipal."—Agreed.

Section 30, line 8, for "Chairman of the Justices" substitute "Commissioner."—Agreed.

Section 37, line 134, omit "clear."

The Honourable Mr. NAYLOR:—This is proposed for the sake of uniformity. After some discussion it was decided by the Council to provide for urgency meetings being called at three days' notice. Words were inserted in clause (j) for this purpose and "three days" are specified. In clause (l) of the same section "three clear days" are spoken of. It will be better to have the same words in both places.

The Honourable the ADVOCATE-GENERAL:—It would be better to say "clear" in both cases. Three clear days are always held to be necessary.

The Honourable Mr. WEST:—Yes, perhaps that would be better.

The Honourable the ADVOCATE-GENERAL:—The High Court has often decided this.

The Honourable Mr. NAYLOR:—Then we will put "clear days" in both cases.

This was agreed to.

The honourable gentleman then proposed, in section 37, line 139, for "being not less than fifteen," substitute "such three-fourths being not less than fifteen in number," which was agreed to. And in section 49, line 56, after "under" insert "clause (r 1) of," remarking that this was rendered necessary by the adoption of the Honourable the Advocate-General's new clause (r 1) in section 465. This was agreed to, as also were the following:—

Section 60. For lines 3 *et seq.* to the end of sub-section (1), substitute the following:—

"(a) to the Commissioner by the Governor in Council, with the assent of the Standing Committee;

"(b) to a Deputy Commissioner, by the Corporation."

Section 60, sub-section (2), line 17; after "Council" insert "or the Corporation, respectively."

Section 60, sub-section (3), line 26; after "Council" insert "or the Corporation," and in line 41, after "Government" insert "or the Corporation respectively."

Section 67, line 69, omit "section 314, sub-section (2)."

Section 88, line 6, omit "municipal."

Section 89, line 11, omit "municipal."

Section 115, clause (h), for the first words down to and including "committee," substitute "costs incurred by the commissioner."

Section 116, lines 12 to 19, omit the words "and in the case" down to the end of the section.

The honourable gentleman said an amendment was also desirable in the additional words adopted by the Council at the end of clause (c) of section 139. His object was to make it clear that the new tax on property for the maintenance of the fire-brigade is to be levied as a part of the general tax and not as a separate tax. He therefore proposed that the added words should run as follows: "together with not less than one-eighth and not more than three-quarters per centum of their rateable value added thereto in order &c. (as before)."

This was agreed to.

The Honourable Mr. Naylor then said:—In section 240 I would ask the Council to restore the same words as there were before the Select Committee amended it.

This was agreed to.

The Honourable Mr. NAYLOR then moved that in section 294, line 1, for "and 91", "91 and 92" be substituted, if he was right in believing that section 92 had not been specified in the amendment of this section adopted by the Council the other day.

It appeared however that s. 92 had been specified, so the amendment was unnecessary.

The honourable gentleman said that had been understood when the Honourable the Advocate General's amendment on section 296 (2) was considered by the Council, that some alteration of the wording of this sub-section might be perhaps agreed upon between that gentleman and himself. He had been waiting to see whether any alteration would be suggested by the Honourable the Advocate-General, but that gentleman was, he believed, now satisfied that no alteration need be made.

The Honourable the ADVOCATE-GENERAL assented.

The Honourable Mr. NAYLOR proposed to add a proviso to section 297, as under:—
"Provided that when the land or building is vested in the Secretary of State or in any Corporation constituted by an Act of Parliament or by an Act of the Governor General in Council or of the Governor in Council, possession shall not be taken as aforesaid without the previous sanction of Government."

The honourable gentleman said:—Your Excellency, this is something more than a verbal amendment. The object is to prevent any clashing of authority or of interests between the Municipality and any other large body, such as the Port Trust or a Railway Company, holding land in the city of Bombay. Section 297 enables the Commissioner, whenever there is a piece of land within the regular line of a public street which is not occupied by a building, although it may be enclosed, to take possession of it and throw it into the road and afterwards to give compensation. The process, in fact, amounts to taking a set-back where there is no building. The object of the proviso is that this power shall not be used by the Commissioner in cases where large public bodies and Government themselves are concerned, without the sanction of Government. In the case of Railway Companies, I may explain that land has to be provided for the purposes of their railways by Government, and if land be taken from the companies in one direction for the improvement of the city, they may call upon Government to provide them with land at the public expense for their purposes in some other direction. Disputes may also arise under the section between such companies or between the Port Trust and the Municipality for which there should be some arbiter. It is better, therefore, to leave the decision in the hands of Government, whether in such cases the claim of the Commissioner shall be allowed or not.

The Honourable the ADVOCATE-GENERAL:—I am not sure that some of the Railway Companies were not constituted by Royal Charter.

The Honourable Mr. WEST:—The provisions of the section contemplate mostly such bodies as represent great public interests, such as the Port Trust, Railway Companies, and those which were constituted by Act of legislature, but we may add the words "or by Royal Charter." Some such provision as is proposed is necessary, for otherwise, as the amendment contemplates, it may lead to public inconvenience. For instance, suppose the Commissioner sees a piece of land near a Railway station which he thinks will improve his road—an indispensable siding runs on to it but he takes it. Then the Company comes

in and claims a piece of land on the other side where some houses stand and the result is Government has to buy the houses so that the Company may get its piece of land.

The Honourable Mr. FORBES ADAM :—I think this is a wise provision.

The Honourable Mr. WEST :—The Honourable Mr. Naylor does not object to introduce the words "Royal Charter."

This was agreed upon, and the sub-section, as amended, reads : " Provided that when the land or building is vested in the Secretary of State, or in any corporation constituted by Royal Charter, or by an Act of Parliament or of the Governor-General in Council or of the Governor in Council, possession shall not be taken as aforesaid, without the previous sanction of Government."

The following verbal amendments were then adopted on the proposal of the Honourable Mr. NAYLOR :—

Section 350, line 12, for " whether " substitute " that."

Section 351, line 15, after " work " insert :—

" or if the person who has erected or executed such building or work is not at the time of the notice the owner thereof, then the owner of such building or work."

(2) Section 474, line 23, omit " 314, sub-section (1)", and in line 24 for " sub-sections and " substitute " sub-section."

Schedule R, section 1, line 1, omit the word " municipal " ; and in line 7, for the words " a vacancy in the Municipal Corporation " substitute " it."

Schedule R, section 3, line 2, omit " municipal."

Schedule R, section 5, line 2, for " Standing Committee " substitute " Town Council."

Schedule R, section 8, line 1, omit " municipal."

Schedule R, section 9, line 1, omit " municipal."

Schedule R, section 11, lines 7—9, omit the last words of the section, commencing with " and a contribution".

The Honourable Mr. WEST then submitted the following amended section to be substituted for section 41 :—

" 41. It shall be the duty of the Corporation and of the Government each to appoint four members of a Joint Schools' Committee of eight members for the purpose of giving effect to the provisions as to primary education hereinafter enacted, and as shall be assigned to such committee.

" 41 A. (a) The first appointments to the said committee shall be made within one month from the date on which this Act comes into operation. The members then or thereafter duly appointed may perform all the functions legally pertaining to the Committee notwithstanding any default or delay or defect in the appointment of any member.

" (b) At the end of each of the first three years after this Act shall come into operation, one of the members of the Joint Schools' Committee appointed by Government, and one appointed by the Corporation, shall retire by ballot. Thereafter the two senior members shall retire at the end of each calendar year, and two shall be appointed or re-appointed by Government, or by the Corporation, whereof each shall appoint to the place vacated by any member previously appointed by itself, whether such vacancy has arisen as aforesaid or by death or resignation of the member. The names of all persons appointed shall be published by the Municipal Secretary in the *Government Gazette*.

" (c) The Joint Schools' Committee shall by election from amongst its own members appoint one member to be Chairman for the current term of his office or for any shorter period. The Chairman so appointed shall preside, and, in his absence, the senior member, according to date of first appointment, or in case of equality of date the member whose name appears first in the list published in the *Government Gazette*, shall preside at meetings of the committee. He shall have a vote and, in case of equal division, a casting vote.

" (d) The Corporation shall provide for the Joint Schools' Committee a competent Secretary and such clerks and messengers as shall be necessary. It shall also supply the committee with accommodation, stationery and the other material requisites for the

due discharge of its duties on the requisition of the Chairman, signified by him, by any member of the committee, or by the Secretary.

“(e) The Joint Schools' Committee shall administer the School Fund hereinafter defined and prescribed, and shall provide therefor for the accommodation and maintenance of primary schools which, at any time, vest wholly or partly in the Corporation and for otherwise aiding primary education in accordance with the bye-laws duly made and with the rules made or approved by Government in this behalf.

“(f) An order signed by the Chairman shall be sufficient warrant for the disbursement by any person holding the School Fund, or any part thereof, of any sum thereout in accordance with such order.

“(g) The Joint Schools' Committee shall appoint and remove masters, teachers and other persons employed in the primary schools maintained out of the School Fund, and shall direct and control the instruction given in such schools and the terms and conditions of such instruction, and annex to the aid given to other primary schools such terms as shall seem expedient, subject always to the bye-laws duly made and to the rules made or approved by Government in this behalf.

“(h) The Joint Schools' Committee may, by a bye-law duly made, be invested with the powers and duties of any authority constituted under this Act in so far as shall be necessary or expedient in order to the fulfilment of the functions imposed on such committee as contemplated in sections 41, 41A, 41B, and 62 (p) of this Act, and to the extent to which such committee is invested as aforesaid, the powers and duties of the said authority shall be in abeyance save as so vested and exercised accordingly.”

And the following new section :

“41B. The Corporation may for the purpose of giving effect to measures and arrangements in furtherance of secondary education or any branch of technical or other instruction, appoint or join in appointing a committee as aforesaid as may be determined by any bye-law, and such committee shall have in relation to the branch of education and the institutions for which it is appointed the like powers and duties as are herein assigned to the Joint Schools' Committee save as the same may be varied by any bye-law.”

These were accepted.

The Honourable Mr. PHEROZESHAH MEHTA drew attention to schedule M and its reference to the spinning and weaving of cotton. He said:—I think this is an innovation which may affect an important industry most disadvantageously.

The Honourable Mr. NAYLOR:—I will consult with the Municipal Commissioner on the subject and it can be decided at the next meeting.

The Honourable Mr. NAYLOR intimated that he had not yet had time to revise the whole Bill with reference to the several changes made in it by the Council and that he might, therefore, have to propose one or two more minor amendments at the next meeting.

His Excellency the PRESIDENT then adjourned the Council till Wednesday the 28th instant for the third reading of the Bill.

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, 24th March 1888.

PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

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

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

The Council met at Bombay on Wednesday the 28th day of March 1888.

PRESENT :

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

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

The Honourable R. WEST.

The Honourable the ADVOCATE GENERAL.

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

The Honourable F. FORBES ADAM, C.I.E.

The Honourable J. R. NAYLOR.

The Honourable RAO Bahádur MA'HÁDEV WA'SUDEV BARVE, C.I.E.

The Honourable PHEROZSHA'H MERVÁ'NJI MEHTA, M.A.

The Honourable RAO Bahádur BEHECHARDA'S VEHA'RIDA'S.

The City of Bombay Municipal Bill.

The Honourable Mr. NAYLOR :—I have a few further amendments, Your Excellency, to propose; they are set forth in the paper which has been circulated to honourable members. The first is in section 30, clause (a). The Honourable the Advocate General has suggested that it would be desirable to provide in this section specially for the appointment of a chairman whenever Justices meet for the purpose of an election. I propose, therefore, to add to clause (a) of section 30 the following words :—

“ and which shall be presided over by such one of the Justices present as may be chosen by the meeting to be chairman for the occasion.”

This was agreed to.

The Honourable Mr. NAYLOR :—Then in the last lines of section 30, clause (f), there is at present a provision that voting papers shall be kept for three months by the clerk of the Justices; but the clerk of the Justices, like the Chairman of the Justices, has ceased to have any legal existence, and I propose to replace this provision by imposing the duty of preserving the voting papers upon the chairman of the meeting.

The Honourable the ADVOCATE GENERAL :—Your Excellency, in regard to that, I believe I accepted the Honourable Mr. Naylor's suggestion; but I think the Chairman is not a very good person to undertake the custody of the papers. It may happen that he may not have any convenient place to keep them in. The Municipal Secretary would be the best person to take them.

The Honourable Mr. WEST :—It seems to me he would be the proper person.

The Honourable Mr. NAYLOR :—If that proposal be accepted, then after the word “ shall ” in line 39, instead of the word “ unless,” insert “ be delivered by the chairman of the meeting to the Municipal Secretary, by whom, unless they are ”; and in lines 41 and 42, for “ be kept by the clerk of the Justices ” substitute “ they shall be kept.”

These alterations were agreed to.

The Honourable Mr. NAYLOR :—Then in line 46 of clause (g) of section 30, between “ councillors ” and “ elected ” the words “ to be ” seem to have been dropped out by mistake; they should be re-inserted.

This was agreed to.

The Honourable Mr. NAYLOR:—In the next place, in section 41A the Honourable Mr. West has suggested a slight amendment in line 8. Instead of “as aforesaid,” “in the manner described under the last preceding section, or” should be inserted.

The Honourable Mr. WEST:—The other words were no longer appropriate.

This amendment was agreed to.

The Honourable Mr. NAYLOR next moved in section 122, line 24, to omit the word “other” saying: the word “other” should have been struck out by the Select Committee; but it has inadvertently remained.

This was agreed to.

The Honourable Mr. TELANG:—Your Excellency,—Before we pass on to the next amendment, I would like to mention section 65B with reference to the production of papers in which it has been suggested that there is just a possibility, under the section as it stands, of things coming to a deadlock. There might be a difficulty in the event of the Chairman of the Standing Committee and the President of the Corporation being one and the same person. It is not a very likely occurrence. It has never occurred in the past but once and I hope it never will occur in the future.

The Honourable Mr. WEST:—I should think that the two incidents here foreshadowed will never come together or that the possibility of their doing so may be represented by a fraction of some millions to one.

The Honourable the ADVOCATE GENERAL:—But it is always the impossible that occurs.

The Honourable Mr. WEST:—Then we had better provide that the senior member of the Standing Committee shall take his place in case the Chairman is also President of the Corporation.

The Honourable Mr. FORBES ADAM:—Or elect two members of the Corporation.

The Honourable Mr. WEST:—But the two would represent the views of the majority and would outvote the one presiding official, who, it is expected, will be at the time a calm and more impartial member of the committee. The object was to have for the specific enquiry two comparatively calm and unbiassed men.

The Honourable the ADVOCATE GENERAL:—You might give the Chairman a casting vote. It is not a likely occurrence.

The Honourable Mr. WEST:—I would suggest that one scrutator be elected by the Corporation and one by the Standing Committee to supplement the Chairman.

The Honourable Mr. MEHTA:—It is not very likely that the circumstances will ever arise.

The Honourable Mr. WEST:—I hope it will not during the next two or three centuries.

The Honourable Mr. NAYLOR:—I would suggest that the possible difficulty be met by inserting, in line 50, after the word “committee,” the following words, *viz.* “or if the president of the corporation is also chairman of the Standing Committee with the said president and one member of their own body elected by the Standing Committee.”

This amendment was agreed to.

The Honourable Mr. NAYLOR:—In the first line of clause (f) of section 155, it is necessary to insert after “168,” “or 168A”, that being the number of a new section similar to section 168, which the Council have passed.

This was agreed to.

The Honourable Mr. NAYLOR:—Then in section 432 there is another slip. In line 3, the word “aforesaid” is unnecessary. I propose that it be expunged.

This was agreed to.

The Honourable Mr. NAYLOR:—In section 439, it is necessary to introduce the words which have been introduced in other sections—after “by” in the last line, insert “or under the supervision of”—such surveyor.

This was agreed to.

The Honourable Mr. NAYLOR :—In section 465, the by-laws' section, it seems desirable, in order to supply the necessary complement to the schools' committees' sections inserted on the motion of the Honourable Mr. West, at the last meeting, to introduce two new clauses. I propose, therefore, to add after clause (r 1) the following two new clauses :—

“(r 2) assigning the functions of the joint schools' committee under sub-section (10) of section 41, regulating the exercise by the said committee of its functions so assigned and of the functions assigned to it under sub-section (9) of the said section, and regulating the administration by the said committee of the school-fund under sub-section (7) of the said section ;

“(r 3) determining the constitution, powers and duties of any committee which the corporation may appoint under section 41A or 41B.”

The insertion of these clauses was agreed to, without comment.

The Honourable Mr. NAYLOR :—The last proposal I have to make is with reference to the remarks which fell from the Honourable Mr. Mehta at the close of last sitting. I was not at the time prepared to state exactly what views were entertained with regard to the licensing of the spinning and weaving of cotton. I have made inquiries and I find that the impression I then had is confirmed, namely, that it was never contemplated that the spinning and weaving of cotton should be subject to license. The license is only intended for dangerous or offensive trades. I would propose, therefore, that the following be substituted for the foot-note to schedule M, *viz.* :—

“ Spinning and weaving of cotton and storing of pressed bales of that article are excepted.”

But since I have entered this room, I have had some conversation upon this matter with the Honourable Mr. Forbes Adam and he thinks that the exception should be extended to silk and jute. I, myself, am not acquainted with the subject, but on the suggestion of the Honourable Forbes Adam, I would make the exception read :

“ spinning and weaving of cotton, silk and jute and the storing of pressed bales of those articles are excepted.”

The Honourable the ADVOCATE-GENERAL :—Your mills will have to be licensed just the same. The cleansing of cotton is a dangerous process against which you will want protection.

The Honourable Mr. WEST :—It is considered part of the process just as slubbing and twisting are.

The Honourable the ADVOCATE-GENERAL :—Would it not be well to take out silk, cotton and jute altogether ?

The Honourable Mr. NAYLOR :—No, for loose cotton is highly inflammable and may cause serious danger.

The Honourable Mr. MEHTA :—In all mills a great amount of loose cotton is required to be on the premises.

The Honourable Mr. WEST :—In a spinning mill it is loose until the manufactured article takes its place.

The Honourable Mr. FORBES ADAM :—What the Honourable Mr. Mehta says is absolutely true.

The Honourable Mr. NAYLOR :—I think the storing should be under license ; the portion of the mill premises used for this purpose should be licensed.

The Honourable the ADVOCATE GENERAL :—I do not think so. I don't think it has ever been found to be necessary in the large English towns.

The Honourable Mr. FORBES ADAM :—I would object to that. When the insurance agents go to inspect a place before undertaking the insurance they take great care that the premises in which inflammable goods are to be stored shall be fully safe. Would you not also include wool ?

The Honourable Mr. WEST:—License or no license, if your manufacture of wool becomes a nuisance you can put down the nuisance. There are plenty of honourable gentlemen whose services are available for the purpose.

The Honourable the ADVOCATE GENERAL:—I would not put in anything which is not for the protection of the inhabitants themselves.

The Honourable Mr. NAYLOR:—Perhaps the best form of amendment will be to add an additional sub-section to section 398, leaving the footnote to schedule M, with regard to pressed bales, as it stands. The sub-section might be that “Nothing in this section shall apply to mills for the spinning and weaving of cotton, silk or jute.”

The Honourable Mr. WEST:—The difficulty would remain where mills manufacture mixed goods. This should be avoided.

The Honourable Mr. MEHTA pointed out that “drugs” were included in the schedule and asked if it was meant that dispensaries should have to take out licenses. He was of opinion that “drugs” should be struck out from the list.

The Honourable the ADVOCATE GENERAL:—Then as to drugs; would it not be better to alter the word to chemicals. As it is it might be open to an unreasonable interpretation.

The Honourable Mr. WEST:—Of course, it may be held to cover the making up of prescriptions which would be carrying the verbal interpretation to an absurd length.

The Honourable Mr. TELANG:—What is the object of making any provision here as regards drugs?

The Honourable Mr. WEST:—In some towns in England the manufacture of chemicals such as vitriol and so forth are the cause of great nuisance; but here the term used is only drugs. The manufacture of such chemicals should not be allowed here or in any populous city.

The Honourable the ADVOCATE GENERAL:—It would be well to take out “drugs” and insert “chemical preparations.” That would cover it.

The Honourable Mr. NAYLOR:—I do not object to take out “drugs.”

The word “drugs” was accordingly removed from Schedule M, and the amendment to section 398, as proposed by the Honourable Mr. Naylor, was accepted without further discussion.

His Excellency the PRESIDENT:—We have now reached the third reading.

Before the third reading was moved the Honourable Mr. FORBES ADAM said:—Your Excellency,—After the full discussion which has taken place during the debate on the amendments it may perhaps be thought superfluous that anything should now be said. I cannot, however, refrain from taking advantage of this opportunity to observe that much as I hope that the Bill now about to be read a third time may be found in practice to work smoothly and satisfactorily, I harbour and entertain grave misgivings. I regret that Your Excellency's Council has not seen its way to give such consistency and all-pervadingness to the great central principle of the Bill, the principle that the Corporation is the governing body,—that no possibility of question, uncertainty or clashing could hereafter arise. The idea of co-ordinate authority seems to me to be fraught with chance of friction and irritation. It is an attempt to reconcile what is irreconcilable. It possesses the elements of unsettlement and feud. I firmly believe the Bill might throughout all its sections have emphasised and accentuated its central principle without running the slightest danger of fettering or interfering unduly with the Commissioner in carrying out the details of the executive work of the Municipality. I am also sorry that the Council has not decided to leave the appointment of the Chief Accountant in the hands of the Corporation. I considered the Corporation had a right to expect this check and safeguard against irregularities in accounts. I admit that the provision of frequent audits is an improvement, but as a matter of sound business principle and in the interests of good Municipal Government I cannot but regret the Council did not accept the view regarding the appointment taken

by the Corporation. I would only wish to add that the Honourable Mr. Naylor deserves great credit for the manner in which he has performed his difficult and labourious task, the order and arrangement of the Bill, to my inexperienced eye, seem to be very excellent indeed.

The Honourable Mr. NAYLOR then moved the third reading of the Bill:—In so doing, the honourable gentleman said: Your Excellency,—After the very complete manner in which both the principles and also many important details of the Bill have been discussed by the Council, there remains little for me to add, in proposing the third reading. In some of the amendments which have been carried in Council, I have been unable to concur. But the Bill as it has been adopted and now stands amended by the Council is a measure which provides very amply for all the wants—present and future—of the municipal administration of this city, is specially tender towards the rights and feelings of the people and, I believe, is readily intelligible, as well to the ordinary reader as to those who will have to administer it. Such constitutional changes as the Bill will introduce are in the direction of placing the control of affairs more completely in the hands of the Corporation and of the Standing Committee. But whilst the Commissioner will have to submit his proposals for the sanction or approval of one or other of those bodies much more frequently than it has hitherto been incumbent upon him to do, he will still have control and supervision of the entire executive department of the municipality and be responsible for its work. This system of division of duties and powers has been working in this city for many years with marked success. It is not, perhaps, such a system as would be proposed now-a-days if we had to inaugurate a municipal institution, and had no previous experience to fall back upon. But its justification is that it suits the conditions of Bombay and that no other plan of municipal administration, which promised to be efficient, has found favour with the representatives of the people, upon whom it would be worse than useless for the Legislature to force a law which, being unsuitable to them, they would not effectually carry out. I think, therefore, that the Council have wisely determined to adhere, in the main, to the existing form of municipal government; and looking to the past and to the careful definition of the respective powers and duties of the authorities which this Bill contains, we have every reason to hope and believe that the new law will operate successfully and satisfactorily. As this is the last occasion on which I shall speak on the subject of this Bill, I should like to embrace the opportunity of thanking the honourable members of this Council—and especially my colleagues in the Select Committee—for the great consideration which has been shown me, whenever I have endeavoured to explain or to justify various portions of this necessarily complex measure, although I have, I fear, often sorely taxed their patience. I now beg to move that Bill No. 4 of 1887, to consolidate and amend the law for the municipal government of the city of Bombay, be read a third time.

The Honourable Mr. TELANG:—Your Excellency,—When the important measure before the Council was read a first time I ventured to express my opinions and feelings with reference to it without reserve and in a way which was generally understood as it certainly was intended to convey a somewhat severe criticism upon the Bill. At the same time I expressed my confidence and my hope that in its later stages the Bill would be so improved as to become acceptable to those whose municipal government it was to regulate, and that both the Corporation and the public of Bombay would find that in the end the Bill was no longer as objectionable as in the form in which it was originally introduced. I am very happy to be able to say that the later history of this measure has fully justified in my judgment the confidence and hope I then expressed. In its progress through the Select Committee it was, in my opinion, very considerably improved, and I think it has been still further improved in the course of the detailed consideration before the full Council. On the occasion of the second reading I was so satisfied with the improvements made in the Bill and I felt so much confidence that the momentum of the Council, so to speak, was in the direction of further amendment, that I was content to give a silent vote. But now we have reached the final stage, I may express my belief that upon the whole, and notwithstanding certain defects and shortcomings and notwithstanding deviations in some sections from the principle which has been accepted in other sections—and notwithstanding also individual provisions which I would still see amended, I am content to accept this Bill as for the present a sufficient measure of advance in local self-government, for I am a believer in the general wisdom of the maxim that we ought to hasten slowly. There are still one or two points of some importance on which

I hope a great advance will be made when the municipal government of Bombay has again to be considered by the authorities. I am not a believer in finality in these matters. Like *Oliver Twist* we must always be asking for more, and I hope Government will always be ready to give us more. Looking at the specific sections in the Bill, with reference to which I made some special remarks on the first reading, I find that nearly every one of them has been rendered less objectionable either by the action of the Select Committee or the Council itself and the change in every case has been in the direction which I desired to go. On that occasion I endeavoured to deal with all the more important features of the Bill. I dare say, some points were omitted, but most of those which struck me as being really important I alluded to. I do not know whether the Honourable Mr. Naylor will concur in my views as to their improvement. Perhaps not; but in my opinion the alterations are for the better; and now the measure is much more satisfactory to myself and much more in accordance with those principles which I should like to see developed more fully in the municipal government of Bombay as years go on. There is one other observation which I am particularly anxious to make. There has been a considerable feeling in reference to this Bill outside the Council, as is only natural and as I think also desirable. A great deal of enthusiasm is felt and considerable interest taken in the deliberations of this Council, but there has been some slight misunderstanding in reference to the Bill as it affects the position of the Municipal Commissioner. This is due probably to the view which the Honourable Mr. Naylor takes of it—though I am not prepared to coincide with him,—that the Municipal Commissioner is not the servant of the Municipality. But, in my opinion, he clearly is the subordinate of the Corporation, and that is the proper position for him to occupy. I am not in the least anxious that the Corporation should have anything to do with purely executive matters, and as regards the opinion of the Honourable Mr. Mehta and myself upon that point I hardly think the Honourable Mr. Naylor fully appreciated it when he delivered what the Honourable the Advocate General called a second second reading speech, and went elaborately into the respective functions of the Corporation and the Commissioner to prove that those of the latter ought to be purely executive. I am almost inclined to think that the Honourable Mr. Naylor, having thrown overboard the scheme of Executive Committees, still seems inclined to cast a longing, lingering look behind, whereas we, who have always objected to that scheme, have no desire to go back to it in any form whatever. Mr. Pherozsháh and myself are most anxious that there should not be any interference with the executive functions of the Commissioner. We only want that it should be subject to the general control of the Municipal Corporation, and that is substantially provided for in the present Bill. I am not prepared to admit that under the sections of the Bill as we have passed them the Commissioner is what is called a co-ordinate authority. I do not think he is. That is not a correct description of his position under the Bill. I understand he is a subordinate in every respect, except as regards the details of executive work, in which he is untrammelled and not to be interfered with. That is his position, and that is what it ought to be. In sections 517 and 518 there is a certain amount of deviation from this and a slight inconsistency in a certain sense, but I am prepared to waive that small point, as I consider, looking at the Bill as a whole, that the Commissioner's position is defined in the way it should be. There are certain respects in which this Bill is preferable to the law under which we at present live, which, as I remarked at the first reading, is full of anomalies, laxities of phraseology and conflicts of jurisdictions. In lieu of that we shall now have a methodised and symmetrically framed law that will not starve out local self-government as the Bill as originally introduced would have done. I am therefore prepared to accept it. There is only one further observation I should like to make. The Commissioner, as I have said before, has great power under the Bill as it now stands, though he has much smaller power now than was proposed in the Bill as originally framed. Under the Bill, as it now stands, legislative power, financial power, the power to sanction large contracts and works, to call for the production of papers, to increase the pay of the Commissioner are vested in the Corporation, and that shows precisely what is the Commissioner's position and that of the Corporation under the scheme. He is the municipal executive officer, and I accept him as such. I would here take the opportunity of referring briefly to a question which has been raised outside the Council as to whether it is not desirable that the Commissioner should be "improved" out of the Municipal constitution altogether. Believing as I do, that now he is under proper checks and safeguards, I am opposed to any such scheme. If it is adopted, we shall, I presume, have to resort to Executive Committees to which I have always objected. If we get rid of the Municipal Commis-

sioner we shall either have another officer under perhaps another name with the same functions, or we shall have what will be equivalent to municipal anarchy. We shall not have one governing spirit ruling the whole of the Municipal Administration, and I am not prepared to look upon this with complacency. I am in favour of the preservation of the Municipal Commissioner, though I can quite see that the time may come when we shall take a further step in the direction of local self-government, and the Municipal Corporation will have to ask the Council of that day to concede the power to the Corporation to appoint its own Municipal Commissioner. I am not prepared to ask for that yet. The Corporation does not want that power at present, but I can quite see that here a further step may hereafter be taken. It must not be in the direction of abolishing him, but of vesting in the Corporation the power of appointing him. I can quite understand, that in the hands of certain Commissioners the powers here given to them might lead to some friction. I can quite see the possibility of such friction, but if the Corporation and the Commissioner behave as they have behaved in the past, such occasions may be minimised. And I am prepared at present to accept this chance of friction rather than abolish the Commissioner altogether, for the result would be that the executive work of the Municipality would thereby be paralysed. Considering, therefore, that the various defects I have pointed out have been cured or removed, I am prepared to hold that the Bill, as it stands, is now one worthy of acceptance, for the present, as a solution of the question of municipal reform. But I will not pledge myself to finality in this matter. Occasions may arise on which changes may be required. In a complex measure of this kind which touches many interests in many different quarters and in many different ways possibly the course of actual administration may disclose various defects and difficulties which will have to be remedied by legislative enactments. But we cannot provide for that now. In conclusion I should like to express my agreement with what the Honourable Mr. Forbes Adam has said of the part taken by the Honourable Mr. Naylor in respect to this Bill. I have worked with him in the Select Committee, and have since had his assistance also in putting into shape the amendments which I have had to propose to this Council. He was good enough to put into regular form what I had merely thrown out as suggestions, and I have had the greatest assistance from him in that respect. He has shown in the course of the whole debate a familiarity with the Municipal matters of the city, which on some points I must admit was greater than my own. And, therefore, I desire to express my concurrence with what the Honourable Mr. Forbes Adam has said in reference to Mr. Naylor's labours in connexion with this important measure.

The Honourable Mr. MEHTA :—Your Excellency,—I shall vote cordially for the passing of this Bill into law. I entirely concur in all that has been said by my honourable friend, Mr. Telang, as to the character of the Bill as a whole. The detailed discussion in Council, in which the desire of your Excellency and the members of your Excellency's Government has been so conspicuous to give the most patient and careful consideration to suggestions and proposals from all quarters, has left me but one disappointment of any severity with regard to any important matter. But it is well to remember that no practical legislation in a matter of such complexity can ever be perfect, from a special or individual point of view. It is to the general result we must look to guide us in giving or withholding our acceptance. Looking at it this way, I cannot but regard this Bill as being substantially in conformity with the views and opinions of the Corporation as representing the city, contained in the various representations sent by them to Government since 1883. It is drawn on sound practical principles—sound in theory and tested by long experience. It has carefully steered clear of two pitfalls. On the one hand, it has avoided the blunder of making the Commissioner anything more than the executive officer of the supreme administrative body—the Corporation. On the other, it has not succumbed to the temptation of abolishing the Commissioner in favour of Executive Committees or Councils or of changing the mode of his appointment. The Corporation have always viewed with great alarm the prospect of either course being adopted; they have always firmly resisted all endeavours to seduce them to give their approval to either. I should like to add one word more before this Bill is finally launched on its new career. I believe it is an eminently workable and practical measure. But it will be in the future as in the past. The prospect of its success will not lie simply in its own excellence. Whether it be perfect, or whether it be faulty in some respects, its success will in a great measure depend upon its being worked in that combined spirit of enlightened zeal and public spirit, and of sound practical common sense, which has distinguished the conduct

of municipal affairs in this city for the last 15 years. Worked in that spirit, as I feel confident it will be, this Bill is well calculated to add fresh laurels to the municipal fame of this city.

The Honourable Mr. WEST :—Your Excellency,—I suppose there are very few occasions on which a Bill of such complexity and involving the balancing of so many principles, which at the first seemed more or less opposed, has been passed through a Legislative Council with such general approval of its provisions as this has, and I trust that in the course of a few months more the Bill, which the Honourable Mr. Mehta has said is sound in principle and conforms to experience, will come into beneficial operation. It has not been based upon mere theory. It has been drawn by careful induction from experience. Facts and tendencies have been accepted as guides of policy. This gives the best prospect of future efficiency and success, for in the life of a Municipality even more than in the life of an individual, the past affords much that the present may profit by.

“ There is a history in all men's lives,
Figuring the nature of the times decas'd;
The which observ'd, a man may prophesy,
With a near aim, of the main chance of things.”

And past experience affords grounds for fair judgment as to the chances of what is to come. This is the proper basis approved by many centuries of English political and civic life, upon which, when the time for a reform has come, we may put the legislation of a great city or country right. This principle having been adopted, I cannot feel any grave misgivings as to the working power of this Bill, so I do not share the feelings expressed by the Honourable Mr. Forbes Adam as to the necessity for accentuating more strongly the subordination of the Commissioner to the Corporation as the governing body of the Municipality. What after all will determine their relative positions will not be any abstract principle, nor any general phrase, which tries to give the summary result of more specific enactments. It will be the precise provisions of the several sections of the Act, and when you come to any one of these sections and can say that there and in relation to the function contemplated, the Commissioner is put in a false position relative to the Corporation, and that the work of the Corporation as representing the City to be served alike by the Corporation and by the Commissioner will not be well done, then I shall say here is necessarily a bad principle. You cannot get a bad rule out of a sound principle, there must be a mistake somewhere. But I take it that these sections as they stand have been very deliberately and carefully framed, to avoid a temptation and difficulty which have presented themselves in nearly every civilised constitution. Everywhere there has been found a tendency of the deliberative body to encroach upon the Executive. Such a tendency one may observe in the constitutional history of America, and of Switzerland, and the same tendency has manifested itself under the Republican constitution of France. I think the principles embodied in this Act have proved themselves, by general as well as local history, sound and just, and as to the Commissioner being placed in a position which will prevent him from carrying out the ideas and policy of the Corporation, as he ought, I think it is hardly possible to find that in any sense he is put into such a position. He is given independent power within his own strictly limited circle of activity; but he cannot in any way thwart the general policy or desires of the Corporation. If he should attempt anything of the kind the remedy is in the hands of the Corporation. They have the control of him in two ways—he is controlled by the hope of reward and the fear of punishment from them, and these are supposed to be the two strongest motives to human action. They can also stop his proceedings by refusing to grant his budget—that is his position with regard to the Corporation. The Corporation has to do with the general conceptions, with the higher regulative work, whilst the administrative, commonly called executive, work is placed directly in the hands of the Commissioner. The regulative part is that which determines the legislative and general policy in all things which affect the civic life of a place. To the Corporation is assigned the Government—that is the word which has been used by great political thinkers from Plato to Lord Bacon for the supreme, vital and regulative force in a community, and when it is used in this sense I do not think any higher or more comprehensive word can be conceived to describe the function assigned to the Corporation. But then as history shows there is a tendency in all deliberative bodies to carry themselves beyond their deliberative and controlling functions into the details of executive action, and it was thought undesirable that this temptation should be here placed before

the Corporation. I believe it has been wisely enacted that the Commissioner—having this executive power and having for his own purposes and within the sphere distinctly assigned to him the management and preparation of his own accounts—he individually should be responsible for them equally as he is for the other parts of his business. He is the responsible—“authority” is the word used, but “officer” would imply it sufficiently, as indicating one clothed with an “officium” and a discretion: Being the authority responsible for the accounts he ought, in the opinion of Government, to have there as all through the hierarchy of officers beneath him, the control and governing hand, and the process by which the Commissioner should be kept in check would be by an audit from outside the executive system of which he is the head. These appear to be the only points in the Bill as it stands, which have called forth any serious censure on the part of the honourable members opposite. Certain aspirations have been expressed by the Honourable Mr. Telang, and I am sure he will give me credit for joining with him in the desire for still further advance when the way is safe and clear. I am willing even to make an experiment and to go beyond the line of absolute safety when strong reasons and strong opinion invite us to it; but it seems his aspirations are not shared by the honourable member who sits next to him, and until perfect agreement exists between members of the civic body themselves it is not to be expected that Government will be induced to grant them. The difference of opinion on this matter would be calculated to make one say of the Honourable Mr. Telang’s desire that on a general vote the balance of the community would be against him. For the Government at any rate, which ought to see clearly where it is going, it is better to be just in the rear of public opinion rather than just in advance of it. I think the provisions of the measure as they now stand must satisfy the reasonable and fair aspirations of the citizens of Bombay. I should have been in horror of a Bill which delegated everything to sub-committees, and no one has ever ventured to say that the Corporation as a body could carry out the executive work of the city itself. The abolition of the Commissioner would necessarily lead to one or other of these results. The experience of past years shows that you must have an executive functionary or body apart from the deliberative body, to carry out its wishes. I trust the Act will be carried out in its intended spirit by all parties concerned, and I will add that I hope every citizen will play with regard to this Act that part of a good citizen of which we read in our Latin Grammar—*Vir bonus est quis? Qui leges jaraque servat.*

His Excellency the PRESIDENT:—I may perhaps be permitted to state the interpretation I put on the Bill before it is read a third time. The Bill gives full recognition to the authority of the Corporation in whom the Municipal government is vested. The Corporation exercises among other powers that of passing by-laws and of determining what revenue should be raised, and what expenditure may be incurred, and such general control of the executive as is the natural result of that power. No money can be spent, or a future liability incurred, without the sanction of the Corporation. No transfers can take place without the knowledge of the Corporation. The Corporation will find in the Bill what are its obligatory and its discretionary duties. The Standing Committee will bring the controlling power of the Corporation to bear more directly on the executive without preventing or unduly hampering energetic action, and it will also intervene, as the delegate of the Corporation, between the Commissioner and the public in the many matters of executive detail, in which private interests are likely to be considerably affected. Through this committee the Corporation will exercise the special control which cannot be exercised by large deliberative assemblies. Subject to the general and the special check of the Corporation and of the Standing Committee, the Commissioner will have to conduct the executive operations without any minute interference which would only do harm. The Bill having clearly defined the duties of the Municipal authorities, it is simply an academic question how far the Bill is in accordance with the various theories which obtain on the subject. It would not be correct to say that there are three co-ordinate authorities, because it is obvious that the Corporation has legislative powers, and powers of imposing taxation and of sanctioning expenditure which the others have not. Neither is it correct to speak of the Municipal Commissioner as *only* the servant of the Corporation, though he must carry out its commands, designs and desires in the sphere prescribed by law because those are not his *only* duties, and the law imposes on him *other* statutory duties to be performed on his own responsibility. The Commissioner is a servant of the public, in the same way that I am a servant of the public. For instance, in framing a by-law, the Commissioner will execute the will of the

superior legislature; in carrying out a by-law adopted or amended by the Corporation, he will act under instructions of the subordinate legislature after they have exercised their statutory function. To the ratepayers the relative superiority of these organic functions is of no importance whatever. To them it matters whether the by-laws are clear, and whether they are framed by a person who has thorough administrative experience and knowledge of their wants. By-laws framed and passed in this way will satisfy Mill's conditions of good Government, "secure, as far as they can be made compatible, the great advantage of the conduct of affairs by skilled persons, bred to it as an intellectual profession, along with that of a general control vested in, and seriously exercised by, bodies representative of the entire people." The functions of a representative assembly, such as the Corporation, are superintendence and check; administrative work, on the other hand, can only be done by those who have been trained to it. Unless "the line of separation is recognized" between general and special superintendence and administrative work, as Mill points out, the ratepayers, for whose benefit both the Corporation and the Commissioner are called into existence, will not have their interests properly looked after. The appointment by Government of the Municipal Commissioner does not affect his character as a *Municipal* authority. He does not thereby become, if he was not before, or continue to be, a servant of Government. His position will be substantially the same as that of officials who are lent by Government to Native States. He will not receive any instructions from Government except in the cases as provided by this Bill, and Government will have to pay a scrupulous regard to his independence. Any other interpretation of this Bill would be erroneous. Incidentally I may bring to notice that in the past Government have very seldom given any orders to the Municipal Commissioner: twice in 1878, once in 1880, once in 1881, once in 1882, twice in 1884, in which year he was also twice asked for information. The interference of Government with the affairs of the Corporation is limited to the occasions and to the manner in which it can be exercised under the Bill. There is not the slightest inclination on the part of Government to overstep these limits. The Municipal Commissioner does not represent or commit Government by anything he says or does. He must—in order to serve the ratepayers satisfactorily—have the discretion, the qualified freedom of action which the exercise of executive authority implies. Government gave effect on that point to what they understood to be the wishes of the Corporation as expressed in their letters of 10th October 1884 and of 8th March 1886. The Commissioner appointed by Government was retained at the express desire of the Corporation, and the Honourable Mr. Pherozeshah Mehta, who speaks with authority on the subject, has in the sitting of March 17th accentuated the necessity of retaining this officer, as he has done again to-day, as also the Honourable Mr. Telang, and neither favours the delegation of executive powers to committees. In the opinion of those who are best qualified by long experience of municipal affairs to determine how work could be most efficiently performed, it was unwise to make a change in this direction, and assimilate our Municipality to mofussil municipalities. The Bill is not the Bill which was originally intended by Government. The Bill does not give the power which Government intended to confer on the Standing Committee, of undertaking executive functions, and of delegating such functions to working committees, each of which was to consist of such a limited number of members as would ensure methodical and continuous transaction of business in a prompt and practical manner. Government were quite prepared to entrust executive details to these working committees, having the co-operation of a full-time official. The designation of this official, his position with regard to these committees, were points open to discussion and modification, but the principle itself—delegation of executive authority to working committees—was rejected by the Corporation, and Government therefore abandoned it. They never at any time approached the subject matter of the Bill with any foregone conclusions, and wishing only to create a machinery which would work with a minimum of friction, they authorised the framers of the first Bill to withdraw it and to substitute for it a measure based, as regards the main features of the constitution, on the lines which the Corporation had indicated would be acceptable to them. Government has mainly had in view to give by this Bill to the ratepayers the greatest security against extravagance and a wasteful administration. To the mode of election of the representatives of the ratepayers' interests no exception has been taken. The Bill recognises that these representatives are responsible for the good government of the city. A number of duties are imposed on them, which it would be impossible for them in their corporate capacity to fulfil in detail. They are obviously a deliberative assembly, and the result of their

deliberations will naturally assume the shape of by-laws, resolutions or instructions, the execution of which must be left to another authority. Their constitution prohibits the performance of administrative duties which no representative assembly in any country has ever dreamt of undertaking. They, like all other legislative assemblies, influence, control, and direct the administration by giving or withholding funds for certain purposes, but they are not and cannot be administrative bodies. The same act of the Legislature which creates them must, therefore, create other authorities for the purpose of carrying out the duties which the legislative and superintending body cannot execute. These authorities are the Standing Committee and the Commissioner. Their duties are of a different kind and of a different nature. A clear separation of functions is intended, and it is by definitely recognizing this that effect will best be given to the law and the spirit of the law, and friction avoided between these various authorities. The Commissioner will have to exert himself in keeping expenditure down. The invariable tendency of specific departments, and those who represent them, is to press for increased expenditure. The Commissioner will, by his intimate acquaintance with administrative details, be able to resist this tendency. His resistance can only be successful if he has full control of the spending departments and if he has the support of the Standing Committee and of the Corporation. When the Corporation and their late Chairman asked for a trained administrator, I suppose they had in view the necessity of central control in this respect, and of undivided responsibility for the utmost contraction of expenditure. A weak administrator will not have the courage to face the unpopularity of retrenchment, but a strong administrator will have no scruple in protecting public interests by dealing firmly with all attempts to expand the outlay of Municipal revenue. I do not think the ratepayers will have any reason to complain if a strong Commissioner is constantly on the alert scrutinizing minutely every demand on the Municipal purse. The Council will see that I have laid great stress on securing economy by attention to minor executive details. For this reason frame your estimates as carefully as you like, have a perfectly rigid system of audit as we have created by this Bill, unless the administrative agency has the knowledge and the will to enforce strict economy, the ratepayer will have to pay for unnecessary waste. The great difficulty in all branches of the administration is to secure administrators with a sensitive economic conscience. I need not point out that you also get your work done better. Supervision of expenditure in detail leads to supervision of work in detail. Wasteful work is scamped work. The great and main reason of the success of German administration in all departments, Civil and Military, is the constant application of skilled supervision to financial and administrative detail. *De minimis non curat praetor* is absolutely incorrect in administrative matters. If the ratepayers want an economic administration, they must insist on obtaining a Commissioner who will set the example to all branches of the Municipal administration to make the most of the available resources by making them go a long way. Nothing is more difficult than to prevent the varied growth of small items of expenditure and to deal with the plausible pretexts to which a weak administrator will not turn a deaf ear. The Commissioner has of course other functions, but I lay the greatest stress on his being what I should call the eye of the ratepayers. I am aware that there is another picture: a Commissioner less addicted to administrative duties and setting up as a local orator, detaining the Corporation by irrelevant speeches and rehearsing some of the oratorical efforts which earned him a reputation at the Oxford Union. I can well conceive the terror with which the community beheld the possibility of seventy-two speeches from such an individual with his pockets filled with secret correspondence which he refused to produce. Whoever contemplated such a future, certainly it was not Government. I need hardly say that the alarm felt on that score, due to the employment of words which possibly were open to the construction put upon them, but which were intended to convey a different meaning, never had any foundation in fact. Efficient administration saving the ratepayers' money means constant hard work *in camera*, and it is for that object that Government lend the Municipality the services of a highly trained and competent officer, not necessarily a Covenanted Civilian. Government certainly do not lend him for the purpose of developing his debating and oratorical powers, if he has any. If he attends the debates of the Corporation and of the Standing Committee it will be to throw light on the details of the administration of which naturally his duties give him a full command. The Corporation, the Standing Committee, and the Commissioner are not authorities created by this Act to engage in a perpetual conflict, but to co-operate in getting the work done for the ratepayers whose property they are administering. The Bill does not proceed on theoretical and abstract lines, but on practical

necessities, and it is an attempt to secure the highest degree of efficiency of administration guided and controlled by popular representation. I believe that the revised machinery created by this Bill will be found adapted to the enlarged functions which it has to perform. If our successors introduce an executive of committees with or without a responsible head of the executive, they will try the experiment which has been rejected, but it is quite possible that the principle of undivided responsibility may gain ground and be welcomed even by the ratepayers of the larger mofussil municipalities, and that the Hon'ble Mr. Mehta will, if the misfortune should befall him of having to deal with another Bill of this dimension, still adhere to his first love. The Bill, will, I believe, after the great attention which has been given to this subject by the Select Committee, the Council, and in this respect more especially by the Honourable Mr. Telang, give to the individual householder the amount of protection which he needs from unnecessary interference developing into a hardship. It also gives those powers which are required for the convenience of the public. The Bill does not satisfy the Honourable the Advocate-General. Government never expected it would, even if it had been drafted by those experts at home whose merits our learned colleague invariably proclaims; but I confess that to a Philistine like myself it is much more intelligible than the records of the English Statute Book which the legal sybils alone can interpret. It would I think be ungracious not to recognize the amount of research and labour which has been bestowed on its technical parts by Mr. Ollivant and by my honourable friend the mover, whose courtesy, knowledge and conciliatory disposition, both his colleagues on the Select Committee and in this Council have had reason to admire throughout. To the Select Committee our best thanks are due, more especially to the Acting Advocate-General, whose views—though diametrically opposed to those of our learned colleague whose place he was temporarily filling—were, I am informed, laid before that Committee with great talent and to whom several improvements are due. I shall have no hesitation in sending this Bill to Professor Gneist, the greatest living authority on local government legislation, and I am sure that the members of various legislative bodies will envy us the business-like way in which we have dealt with this comprehensive measure. I appointed the Honourable Mr. Mehta on this Council so that we might have the benefit of his intimate knowledge of Municipal affairs in the Select Committee and in our debates. The honourable member has taken a considerable share in facilitating the passage and the improvement of this Bill, which, I believe, meets his views, which, I take it, are representative of those of the community, though I may be permitted to add that his views were characterized by that independence of judgment which marks a representative as distinct from a delegate. I do not think that it is required on my part to give any evidence of my wish to further local self-government. I may perhaps remind the Council of our action with reference to the Poona Municipality, and we certainly never for one moment thought that in this city there are not as abundant elements to secure good Municipal representation as in Poona. But I would further point to the fact that we have in this Bill made the Corporation largely responsible for the control of primary education. It would be unpardonable if Government handed over this great trust to a body in which they had a limited confidence. The Corporation has very grave responsibilities, but of those perhaps the most formidable is the organization of a system of primary education which will satisfy the wants of all sections of the community, and which will tend to the advantage of future generations in this city. The success of local self-government is tested in most countries by the character of their primary schools, and a strong emulation exists between their great towns. We invite the Corporation to join in this contest. It is a forward step. It gives to this bill the character of a progressive measure. We are confident that it will be attended with beneficial results. Another forward step has, to my regret, not been taken. Schedule X.—the town duties on grain, flour, ghee, timber and firewood—survives; it constitutes a blot which I hope the next amending Bill will remove. The local administration of Bombay has hitherto been conducted in a way which has excited the admiration of impartial and expert critics who judge by results. To make sweeping changes in an organization which had produced these results would have been unstatesmanlike. A systematic measure of amendment and consolidation was the need of the hour. In maintaining a high standard of primary education, of sanitation, which in Bombay owes so much to Deputy Surgeon-General Hewlett, in improving the system of communications and of lighting, in preserving open spaces, in the care of the sick, in giving increased facilities to trade by the reduction of town duties, the Corporation will find a noble field for its initiative and its energies. That it can rely on the cordial support of Government whenever it may require it I need not add. Government has always taken

and will always take a lively interest in the development of self-government in this city and in everything which can increase its unrivalled beauty for which nature has done so much and in all the Corporation's efforts to enhance the welfare of its singularly privileged inhabitants.

Bill read a third time and passed.

The Bill was then read a third time and passed.

His Excellency the PRESIDENT then adjourned the Council.

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

J. J. HEATON,

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

Bombay Castle, 28th March 1888.