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PART V.

PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

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

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

The Council met at Poona on Wednesday the 1st October 1890, at 3 P.M.

Present:

His Excellency the Right Honourable Lord HARRIS, G.C.I.E., Governor of Bombay, *Presiding.*
The Honourable Sir R. WEST, K.C.I.E.
The Honourable Mr. J. G. MOORE.
The Honourable Mr. RAHIMTULA MAHAMED SAYANI, M.A., LL.B.
The Honourable Mr. NAVROJI NASARVANJI WADIA, C.I.E.
The Honourable Ráo Bahádur MAHADEO GOVIND RANADE, M.A., LL.B., C.I.E.
The Honourable Mr. JAVERILAL UMIASHANKAR YAJNIK.
The Honourable Mr. T. H. STEWART.
The Honourable Mr. L. R. W. FORREST.

His Excellency the PRESIDENT in taking his seat said:—In taking the chair, on the first occasion, at a meeting of the Council, I merely express the hope that my honourable colleagues will assist me in seeing that the deliberations are conducted in a proper and business-like manner.

Papers presented to the Council. The following papers were presented to the Council:—

(1) Paragraph 1 of the letter from the Government of India, Legislative Department, No. 738, dated the 28th April 1890, returning, with the assent of His Excellency the Viceroy and Governor General signified thereon, the authentic copy of the Bombay Village Sanitation Bill.

(2) Letter from the Government of India, Legislative Department, No. 792, dated the 9th May 1890, returning, with the assent of His Excellency the Viceroy and

Governor General signified thereon, the authentic copy of the Bill to amend the Prevention of Gambling Act (Bombay IV of 1887).

(3) Letter from the Government of India, Legislative Department, No. 914, dated the 14th June 1890, returning with the assent of His Excellency the Viceroy and Governor General signified thereon, the authentic copy of the Bill to consolidate and amend the law relating to Salt and the Salt-revenue throughout the Presidency of Bombay.

(4) Letter from the Government of India, Legislative Department, No. 1208, dated the 30th July 1890, returning, with the assent of His Excellency the Viceroy and Governor General signified thereon, the authentic copy of the Bill to amend the Matádárs Act (Bombay VI of 1887).

(5) Letter from the Government of India, Legislative Department, No. 1328, dated the 16th August 1890, returning, with the assent of His Excellency the Viceroy and Governor General signified thereon, the authentic copy of the Bill to amend the Law for the Regulation of the District Police in the Presidency of Bombay.

(6) Report of the Select Committee appointed to consider and report on the Bombay Municipal Servants Bill No. of 1 of 1890.

THE BOMBAY MUNICIPAL SERVANTS BILL.

The Honourable Sir RAYMOND WEST, in moving the second reading of the Bill, said :—

Sir Raymond West moves the second reading of Bill No. 1 of 1890.

Your Excellency,—Since this Bill was before the Council on the occasion of the first reading, it has been submitted to the Corporation of Bombay, who are more immediately and largely interested in it than any other person in India, and it has also been before the public at large for a considerable time, and whatever may have been said of other Acts it cannot possibly be said of this Bill that it has been hurriedly rushed through, or that there has not been ample time to consider it in all its possible relations and bearings on society and on all individuals concerned. We have received and weighed the suggestions of various kinds which have come before us with regard to the principle and to the details of the Bill. Some of those were considered in the Select Committee, and some of the phases of that independent opinion were set forth in the report of the Select Committee, and our honourable colleague, Mr. Javerilal Yajnik, has, I believe, given notice of one or two amendments of clauses which, as they stand, he is unwilling to accept. There has been a consensus of opinion against him so far as the Select Committee is concerned. Of course honourable members have a perfect right to maintain not only in the Select Committee, but here as well, their views, and repeat their reasons here for the opinions they hold on the various points in which they differ from the principles of this Bill; but apart from the points I have referred to and on consideration of such matters as have come to the notice of Government Mr. Javerilal is in favour generally of the Bill. As I dwelt on the main principles of the Bill on the occasion of its introduction, I will not discuss them at length on the present occasion. In a great Municipality like Bombay, or even like Poona, a set of rules for the benefit of the public, who are embraced within the Municipality, have to be laid down, and the public have to submit to the restrictions laid down, which they would not have to submit to were they as savages roaming in the fields or in the primeval forest where as no one else would be concerned they could do as they liked. These same restrictions, which people have to submit to, are indeed the price paid for civilization, for the comforts of orderly social existence and the advantages of English life,—they have to submit to an amount of discipline which would be out of place in villages or in small hamlets. This is really the basis on which the Bill now before the Council rests; the general good of the community, which is the ground of all legislation, and is a sufficient justification for any necessary individual inconvenience. The Bill has been reviewed in the Select Committee, I think, most carefully on the basis of such principles as I have stated, and the members of the Select Committee, who are still Members of Council, will bear in mind that from such gentlemen as Mr. Latham and Mr. Beaufort, it underwent a most severe and searching criticism, and every point was well considered before the decision of the Select Committee was arrived at. The report now placed before the Council states what the views of the Committee were. I think it better, therefore, to rely on that general consensus of opinion than to go any further into the

influences which determined the changes which have been made, for it will be observed, they very slightly affect the principles of the Bill. In clause (*c*) of section 3, it will be found that the words, "Who abets an offence under clause (*a*) or clause (*b*) shall forfeit his pay accruing due under a current term of service, and arrears of pay due for a term of not more than one month," have been introduced by the Select Committee. Under section 40 of the Indian Penal Code there is a certain punishment attached to abetment, and therefore in cases of strike this clause is not absolutely necessary, a penalty against abetment of an offence being already provided, but its introduction, it was thought, would be a special convenience, making their responsibilites clear to subordinate servants of the Corporation of Bombay, into whose hands the Act, when it is passed, will be put, as a guide to them, and I would point out to the honourable members who have amendments to propose on this clause to consider whether the amendments will fit in with the general scheme of the Indian Penal Code. Another point I may refer to is that some communications which have reached us to the effect that the provisions of the Act should not only affect servants of the Municipality, but also the servants of contractors, who have taken contracts for work to the Municipality. It has been pointed out that the Gas Company employs gas lighters who, by striking, may cause difficulties and inconveniences which this Bill is intended to avoid. But on the other hand, the Corporation has nothing to gain and no money to make, by imposing undue restrictions on their servants or unfair terms upon them. But you cannot say the same of the contractor. If the contractor can take one anna a day more out of his servants, and put it into his own pocket he will so far be a gainer. He will have a private interest to serve which may not be identical with the public advantage and cannot therefore properly be given means of pressure which will be safely entrusted to a public body under no temptation to abuse them. The principles implied in the demand or request for rules I have received from the Municipal Commissioner and from the Solicitors of the Gas Company in Bombay, would, if carried out, inevitably lead to communism, because if we regulated the duties of employés to their masters, we could not do that without saying what were the duties of masters to their servants; and when we reach that length, we positively enter the field of communism. The inconveniences which the people in such a large city as Bombay are liable to suffer, justify this particular legislation being brought before the Council; but the primary difficulties in connection with it are such as may arise at times even in other large municipalities. If they do this we think it would be justifiable for Government at the instance of the Municipality to step in and say such a regulation may very well be applied to 150,000 people as well as to 800,000 people, because the necessity is as obvious in one case as the other. With such safeguards as have been provided we think the Bill in its whole extent, after such careful consideration, may fairly approve itself to the reception of the Council. I therefore move the second reading of the Bill.

The Honourable Mr. JAVERILAL UMIASHANKAR YAJNIK said:—I shall briefly state the circumstances under which this Bill has been introduced into the Council. In July last year the Health Department of the Bombay Municipality was threatened with strikes by the scavengers and *bigáries* in its service. Mr. E. C. K. Ollivant was then the Municipal Commissioner of Bombay. It appears that in reporting on the subject, he made an earnest appeal to Government for legal powers to deal more severely with strikes in the future. It was urged that the existing Municipal Act of 1888 was powerless to deal with combinations on the part of the workpeople. The old Act of 1872 did give power to the Corporation to make bye-laws "for the regular, efficient, and faithful performance of their several duties by all officers and servants of the Corporation subordinate to the Commissioner." Bye-law 9 was framed under that Act for the purpose of regulating the resignation, withdrawal from duty, and leave of such servants. That bye-law became extinct when the new Municipal Act of 1888 came into force. As, however, the new Act gave no power to the Corporation to make bye-laws, while it imposed heavy responsibilities on the Corporation in respect of the surface cleaning of the city and of the removal of the city's nightsoil through the agency of scavengers and *halálkhores*, some provision for the enforcement of discipline among these municipal servants became necessary. The obvious course under the circumstance was the revival of the old bye-laws. One would have thought that the recommendation of the Commissioner should have taken the form of a proposal for a Bill limiting legislation to empowering the Corporation to frame bye-laws on the model of the old bye-laws which had stood the test of seventeen years, and providing penalties for combinations and abetments thereof. Indeed, when the Bill, which was forwarded for the opinion

of the Municipal Corporation of Bombay, came up before that body for the adoption of the report of the Committee to which it was referred, an amendment in this very form was moved by one of the Councillors, my friend, Dr. Bhalchandra K. Bhatawadekar, in the absence of my other learned friend, Mr. Pherozeshah M. Mehta, the original proposer of the amendment. Mr. Mehta was one of the members of the Committee. In the minute of dissent recorded by him, and which was appended to the Committee's report, Mr. Pherozeshah Mehta discussed the merits of the Bill in detail, and set out his views with his usual clearness, forensic ability, and wide and intimate knowledge of the municipal affairs of Bombay. In recommending a resort to severer penalties for breaches of discipline hitherto liable to civil damages, Mr. Ollivant, it seems to me, put an unbounded faith in the virtue or efficacy of enactments, in a belief in what Herbert Spencer calls, "the unexpressed postulate that every evil in a society admits of cure; and that the cure is within the reach of the law," forgetting, at the same time that the remedy not unfrequently proves worse than the disease. A harsh law defeats its own object. In a special legislation of this kind it is not sufficient to keep before the mind the simple fact of the strikes and the necessity of preventing a recurrence of them. The experience gained in respect of the causes which produced the strikes and the lessons taught by them have to be correctly interpreted. It is necessary that the Council should have this phase of the question before it in considering the principle of the Bill. And here it may be asked, what are the facts connected with these strikes? In my opinion, the first and the most important fact in this connection is that last year was the second occasion on which the strikes occurred in the Health Department in the course of the past twenty-five years. The first occasion dates as far back as the 1st January, 1866. The strike then occurred among the *halálkhores*, and was due to the importation of up-country *halálkhores*; but the men soon got reconciled. In respect of the strikes of last year, it is noticeable that they were due mainly to the oppression and injustice practised upon the bigáries or scavengers in the Health Department by their immediate superiors, the mukádams. My Lord, I hold in my hand an official report on these strikes. It is dated the 17th December, 1889. It was made by Khán Bahádur M. Abdul Ali, Superintendent of the Detective Branch, to Colonel F. J. Wise, Acting Commissioner of Police, Bombay, and circulated to the members of the Corporation on the 15th May, 1890. This report is valuable as throwing a flood of light on the causes of the late strikes. Speaking of the grievances of the poor scavengers, the Superintendent remarks that "the principal grievances of the municipal *bigáries* at the time of the first strike in July, 1889, were (1) the payment of *dusturi* to the mukádams at the rate of annas 8 per male and annas 4 per female every month, and (2) the payment of one month's wages for procuring a permanent place and of a rupee per mensem for procuring a substitute's place." One of the mukádams, into whose conduct an enquiry was made by the Superintendent, admitted his guilt and, says the Superintendent, "offered under a promise of pardon to lay bare the organised system of receiving *dusturi* and other illegal remunerations complained of, which, he said, were levied by all mukádams and shared with their respective ward clerks, sub-inspectors, and even inspectors, with one or two exceptions. I brought the fact by your order to the notice of the municipal authorities concerned, but it was not considered advisable to accept the offer under the condition" (para. 9). Why this organised system of levying *dusturi* and other illegal remunerations was not enquired into it is for Mr. Ollivant to explain. But the results of the prosecutions of certain ringleaders among the mukádams before the Presidency Magistrates left no manner of doubt on the subject. In para. 16 of the report, the Detective Police Superintendent says:—"The results of the above prosecutions have, no doubt, proved satisfactorily the correctness of the allegations of the bigáries, who have now not only exposed their superiors, but have also deprived them of their long and uninterruptedly enjoyed illegal remunerations. Thus the *bigáries* in general, and especially those who have been the cause of the exposures, have naturally made themselves irreconcilable enemies of the persons under whom they have to serve daily; such being the case, their immediate superiors, especially the mukádams, will sooner or later try every possible means in their power to unnecessarily molest and ruin their accusers and exposers." Before ending his report, the Superintendent remarks:—"In laying the above facts before you, I beg to state that, unless prompt and effective measures are adopted to protect the poor *bigáries* against their offended superiors, none of the oppressed will ever venture to come forward for the redress of his grievances, and the thing again (will) become as bad as before, and may lead to serious consequences." It does not appear that the facts elicited in course of the enquiries in the Presidency Magistrates' Courts and the experience

thereby gained of the last strikes have been translated into any of the provisions of the Bill. While it is held that these workmen have in their ranks men with much power to do mischief, the fact that they are a very useful and indispensable class of work-people, and that the success of the sanitary administration of the city depends upon their cheerful and contented disposition, does not appear to have received a due measure of attention. The *Bombay Gazette*, in an admirable leading article the other day, called attention to this and other aspects of the question. Some idea, my Lord, of the very important and useful service these municipal servants do to the public in bringing about a low rate of mortality, in reducing the frequency of epidemics, and in maintaining Bombay in remarkably good health of late years, may be formed from the fact that on an average 3,974 men and women and 665 scavengering and drain carts and 158 nightsoil and cesspool carts were at work each day in 1888-89 for the collection and removal of many hundred tons of garbage or *kutchra* and nightsoil, and for the opening and cleaning of many hundred miles of covered drains. So rapidly has the city been extending of late that we, who live in the midst of the changes going on in respect of health and sanitation by the services these people perform, are scarcely able to appreciate them. No doubt the public who pay them are entitled to the performance of these services in a regular and faithful manner, but it is also due to the services they render that they should receive adequate protection from the municipal authorities against the levy of blackmail from their immediate superiors. And if, when failing to receive redress for their grievances, they abandon their work, and that, too, once in 25 years, what is it that the municipal authorities have recourse to? They consider the conduct of these men in asking protection against the levy of blackmail to be blameworthy, and ask Government to frame a law with a view to exact absolute obedience, on pain not only of forfeiture of pay and fine, but of imprisonment extending to three months. This brings me to the principle of the Bill. Section 3 of the Bill, which embodies the principle, makes resignation, withdrawal or absence from or neglect or breach of duty or of any law or rule or order by a person which, as a municipal servant it is his duty to obey, an offence punishable by imprisonment which may extend to three months. It seems to me that this principle goes far beyond the declared object of the Bill, which is to re-enact the penalties hitherto imposed under the old bye-laws. Para. 4 of the Statement of Objects and Reasons says that "the primary object of the present Bill is not so much to introduce any new obligations as to provide by legislation the penalty hitherto imposed under municipal bye-laws". Again, in para. 9 it is stated that "it appears to be necessary to provide by legislation the protection which the repeal of the bye-laws has withdrawn." Now, the penalty hitherto imposed under the old bye-laws for breaches of discipline consisted in a forfeiture of wages and fine. The principle of the Bill, however, goes further. It makes no distinction between light and serious offences, but treats all offences, whether they consist in absence or withdrawal from duty or wilful breaches on the part of individuals, as crimes punishable by imprisonment. Thus while the lighter acts or breaches of discipline by individual workmen, which cannot endanger public health or safety, are dealt with severely in the Bill, the more serious offences of combinations or strikes which really endanger public health and safety, and to prevent which is the avowed object of the Bill, are wholly ignored or indirectly dealt with. When the Bill came up before the Select Committee, it became my duty to point out that whereas absence or withdrawal from duty and wilful neglect or breach of discipline may be punished with forfeiture of pay and fine, the punishment of imprisonment should be reserved mainly for combinations and abetments thereof. To punish mere absence from or neglect of duty with imprisonment would involve excessive hardship in a matter in which public interests are not seriously jeopardised. In the case of strikes or combinations, public interests are seriously endangered. I accordingly suggested the addition of a special clause dealing with strikes. I also suggested that where acts on the part of individual workmen were such as to endanger public safety, as in the case of abandonment of duty by a member of the Fire Brigade, such acts should be made liable, not only to forfeiture of pay and fine, but to imprisonment. In making this recommendation, regard was had to the frequency with which fires have of late broken out in Bombay, resulting in a heavy loss of property. In a recent report of one of the Fire Insurance Companies (the Prince of Wales Fire Insurance Company) the following passage occurs :—"The year under review has been a prolific one for fires, the number and extent of losses being without precedent in Bombay. The yearly average loss by fire during the last 25 years amounts to Rs. 3,28,916, while the estimated value of property destroyed and damaged by fire during the year is about Rs. 50,00,000." In short, the principle I contended for was the award of punishments according to the

degree or nature of the offence. These proposals did not meet with the acceptance of the Select Committee. The proposal to insert a clause dealing with strikes was objected to, on the ground that there would be considerable difficulty in defining the word "strike", or in introducing into our legislation a law of criminal conspiracy. But the Committee agreed to go so far as to add a fresh clause (*c*) which they thought would to some extent meet the case by providing a punishment, conformable to the existing law, for the abetment of the offences created by clauses (*a*) and (*b*). It was also thought that my proposed amendments would have had the effect of completely remodelling the first part of the section by creating three distinct classes of offences, with a distinct punishment for each. With regard to the last objection, I confess I do not see how the first part of the section would have been completely remodelled by my proposal. The three classes of offences are not created by my proposal. They already exist in the Bill, and it was only in respect of punishments for them that I proposed what seemed to me to be a more logical arrangement. As to the difficulty of giving a legal definition of "strikes", I am quite prepared to admit it. In view of that difficulty I have proposed the addition of a clause dealing with combinations for purposes which are indicated in the Bill as offences under clauses (*a*) and (*b*). As regards the introduction of a law of criminal conspiracy which would be new to our Penal Code, I admit that it is a very difficult question to deal with. I may venture, however, to say that though a law dealing with industrial conspiracy may be unknown to the Indian Penal Code, it is by no means unknown to countries where labour disputes have been far more frequent and far more serious in their results than in India. The English statute of 1875 recognises it. I find from it that breaches of contract by the employés of gas and water companies acting in combination, and resulting in failure of supplies of gas and water, are liable to the punishment of imprisonment. Section 4 of 38 and 39 Victoria, chap. 85, known as the Conspiracy and Protection of Property Act, 1875, provides that where a person employed by a municipal authority or by any company or contractor on whom is imposed by Act of Parliament the duty, or who have otherwise assumed the duty of supplying any city, borough, town, or place, or any part thereof, with gas or water, wilfully and maliciously breaks a contract of service with that authority or company or contractor, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination will be to deprive the inhabitants of that city, borough, town, place, or part, wholly or to a great extent of their supply of gas or water, he shall, on conviction thereof by a court of summary jurisdiction, or on indictment, be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labour. If, then, the object of the present Bill is to punish strikes or illegal combinations, the legislature is, I am humbly of opinion, bound to recognise the principle of the English statute; but if the recognition, in an open manner, of such a principle for industrial conspiracy would not be conformable to the provisions of the Indian Penal Code, then any attempt to punish combinations of workmen through the indirect mode of punishing individual acts is, I respectfully submit, highly objectionable. Either punish strikes by a direct and straightforward provision of law, or leave them alone, but I consider it inexpedient to inflict penalties for combinations through or in the name of individual breaches of discipline. But if a law of criminal conspiracy in the shape of strikes or illegal combinations is not conformable to the provisions of the Indian Penal Code, still less, I presume, is the ordinary neglect of duty by an individual considered a fit subject for penal legislation. On this subject nothing can be more explicit, I think, than the view taken by Lord Macaulay and the other Commissioners on the Indian Penal Code. They appear to have shown great reluctance to treat neglect of duty by a servant as a crime. In note P. on the chapter on the criminal breaches of contracts of service, the Commissioners observe:—"We agree with the great body of jurists in thinking that in general a mere breach of contract ought not to be an offence, but only to be the subject of a civil action." To the general canon thus laid down the Commissioners make some exceptions. They agree (1) that some breaches of contract are very likely to cause evil such as no damages or only very high damages can repair, and (2) that they are also very likely to be committed by persons from whom it is exceedingly improbable that any damages can be obtained. My honourable and learned friend, the mover of the Bill, will perhaps take hold of these exceptions as justifying the principle of the Bill. He will urge that in the ranks of the municipal workmen, such as scavengers and *halálkhores* there is much power to do mischief; that this mischief would be such as no amount of damages can repair, nor are the workmen in a condition to pay any damages. For instance, the refusal on the part of the scavengers to

sweep streets or clean drains, or on the part of the *halálkhores* to remove nightsoil will give rise to epidemics which no amount of damages can repair, and that such evil will be caused by men from whom there is not the remotest possibility of recovering any damages. To this my reply is that such dangers to public health and safety are likely to arise by neglect of duties on the part, not of individuals, but of combinations of them, and that neglect of duty on the part of individuals can be met without difficulty by replacing such individuals by others. The Municipality of Bombay possesses resources which are ample enough for this purpose. The Commissioners on the Indian Penal Code then discuss concrete cases involving such breaches of contract as in their opinion are fit subjects for penal legislation. The cases are those of palanquin-bearers, seamen bound to carry a vessel to a particular port, and men having the care of infants, of the sick, and of the helpless. And they say:—"We have indeed been urged to go further, and to punish as a criminal every menial servant who before the expiration of the term for which he is hired quits his employer. But it does not appear to us that in the existing state of the market for that description of labour in India good masters are much in danger of being voluntarily deserted by their menial servants, or that the loss or inconvenience occasioned by the sudden departure of a cook, a groom, a hurkaru, or khidmatgar would often be of a serious character. If the words, 'scavenger,' 'halálkhore,' 'drain-cleaner,' 'fireman', are substituted for the words 'cook,' 'groom,' 'hurkaru,' or 'khidmatgar', in the above quotation, the argument would, *mutatis mutandis*, stand equally good for municipal employés. And the conclusion which the Commissioners come to is:—"We are greatly apprehensive that by making these petty breaches of contracts offences we should give, not protection to good masters, but means of oppression to bad ones." On a careful review of all these considerations, the conclusion which the Indian Law Commissioners arrived at was that "they are not prepared to punish as criminal every menial servant who quits his employer without a certain notice upon the expiration of the term for which he is hired under ordinary circumstances." So much, my Lord, for what I may call the juridical view of the principle of the Bill which seeks to inflict heavier penalties for breaches of contract hitherto liable to civil damages. Since this expression of opinion by the Indian jurists, there have been, it seems to me, only two instances or, strictly speaking, only one instance in which the legislature has thought fit to interpose its authority. By Section II of Act XIII of 1859, if a workman, after having received money in advance from a person, wilfully neglects to perform the work he has contracted to perform, he shall be tried before a Magistrate who, on being satisfied of such wilful neglect, may order him to perform such work or repay the advance received by him, and in case of refusal to comply with such order, may direct to him to be imprisoned for a period not exceeding three months. Thus no workman can pocket advances with impunity if the work is not done. The only instance in which the principle of the Bill has found application, and which has been put forward as a precedent for the present legislation, is that of the Calcutta Municipal Act. I am not, however, sufficiently well posted in the circumstances which rendered such legislation at Calcutta expedient or necessary. But, apart from the legal aspects of the Bill, there are a few practical considerations which, I think, the Council have to bear in mind. By far a large number of municipal servants in the Health Department are mahárs, bhangis, dheds, &c. They occupy a very low *status* in Hindu society. They belong, in fact, to what are known as the Hindu outcastes. As such they are debarred from employment as domestic servants for in-door or out-door work. It is, therefore, their interest as well as their duty to remain in the service of the municipality. Whether the present legislation would have the effect of preventing strikes or not, it is hard to say, but the probable result of holding the punishment of imprisonment *in terrorem* over their heads would be, in my opinion, to cause a serious disappointment to them. They will constantly be under the fear that the law will be used as a handle for extortion and oppression by the mukádams, their immediate superiors.

If their disappointment and fear will not drive them into open strikes or combinations, it is quite possible to hold that they may drive them to leave the service of the municipality one by one, consistently with the letter of the law, for I consider that a repressive measure like this which does not discriminate between light and serious offences but holds out the same penalties for all cannot fail to be ultimately productive of more harm than good. One more remark and I have done. The scope of the Bill is not limited to Bombay. Its operation admits of being extended to any municipal district in the Bombay Presidency. Now the measure may be necessary for Bombay,

though the strikes even there have occurred at the interval of a quarter of a century, but not one out of the 160 municipalities or so that are spread over the different parts of the Bombay Presidency has, to my knowledge, ever complained of any strikes having taken place amongst its workmen and have ever wanted a law. The state of the labour market in the mofussil is entirely different, want of employment for workmen or cheapness of labour being its prominent feature. I therefore fail to see that any case whatever has been made out for extending the application of this Bill to any district municipality. And now to sum up what I have said. It seems to me, my Lord, that the principle of the Bill is open to the objection that whereas the object and reason of the Bill is to re-impose the penalties under the old bye-laws, the Bill goes far beyond this object in legislating for severer penalties; that while individual acts or offences of a lighter nature not hurtful to public health or safety are proposed to be penally dealt with, acts of combinations, which are really dangerous to public health and safety, are altogether ignored, any penal provision for them being considered as not conformable to the existing law in India, or if dealt with at all, they are reached indirectly through or in the name of lighter offences; that penalties for combinations and the principle which regulate them are known to the English Statute; that if they are not conformable to the existing law in India, neither has the treatment of individual breaches of contracts of service as crimes found favour with the Indian Law Commissioners; that the only case where the principle has found application is that of the Calcutta Municipal Act; that the very useful and indispensable class of municipal servants, on whose contented and cheerful service the success of the sanitary administration of Bombay depends, deserve better at the hands of the municipal authorities in Bombay than so serious a curtailment of their freedom; that stringent legislation in their case would be no certain guarantee that the public interests of health and safety will be safeguarded, but that, on the contrary, it is just possible to hold that it may result in consequences far more serious than those contemplated by the municipal authorities from the disappointment and heart-burning which the Bill may create, and, lastly, that no case has been made out for extending the application of the measure to any municipal district in the Bombay Presidency.

The Honourable Ráo Bahádur MAHADEO GOVIND RANADE said:—My friend, the Hon'ble Mr. Javerilal, has already anticipated much of what I had intended to say, and I do not think it right to take up the time of the Council by going over again the points on which he has dwelt at full length. He has referred to the Bill chiefly in so far as it seeks to extend the scope of the old byelaw, which worked satisfactorily in Bombay for many years past; but I have my own remarks to make on what may be properly spoken of as the application of the principle of the Bill for the first time to the mofussil municipalities. My honourable friend has dwelt on the peculiar circumstances of Bombay, and I freely admit that to a certain extent special legislation is justified in the interests of the large population of Bombay. But when the legislature seeks to remove a difficulty only felt in practice in the special circumstances of Bombay, and not likely to occur in any other part outside the Town and Island of Bombay, I think those who have some experience of mofussil life may be justified in asking your Excellency and the honourable members of this Council to consider whether, after all that has been said, a case has been made out proving the necessity of the extension of the Act to the other municipalities outside the City of Bombay. I for my part have been watching all that has been said by the honourable mover on this part of the subject and I have not been able to discover that there has been anything in the past history of these Municipalities or their present needs or in the previous legislation regarding them which can be referred to as sufficient to justify the present proposed extension of this special legislation to the other municipalities. The only city which at present has any special legislation of the kind is the town of Calcutta. I do not think there is any city outside Bombay which will require the help of this special legislation for forty or fifty years to come. I have gone carefully into the history of all special legislation seeking to regulate by criminal law the relations of master and servant for the last fifty years, and I have not been able to find a precedent in regard to such criminal legislation as is now proposed for the mofussil. I have made a note of every statute that has been passed and I find that unless very special circumstances compelled it, Government has never moved, and what is more, it has never thought it desirable to move in this matter on the lines now suggested. There is an Act (No. 1 of 1858) which regulates what is called the compulsory labour of citizens in the preservation of irrigation works, and it provides that in the case of threatened or unexpected

breach of a dam, the villagers shall be obliged to give their labour freely. The special circumstances of the case justify this apparent departure from the general law. There is again the Merchant Seamens Act, No. I of 1859, the Binding of Apprentices Act, No. 19 of 1850; the Pilots' Act, No. 12 of 1859; Act 13 of 1859 for preventing fraudulent breaches of contract by workmen &c., who have received advances; Act No. 9 of 1860 for regulating disputes between employers and workmen who have engaged to serve on large works for fixed periods and the Emigration Act No. 7 of 1871. The Law Commissioners in dealing with the Indian Penal Code expressly refused to treat breaches of contract between employers and servants as offences except in three particular cases described in sections 490, 491 and 492, where the special circumstances justified a departure. It will be seen that in all these cases there were special considerations of fraud or force of advances made, which were not repaid, of engagements made and expectations created which could not justly be disappointed, of benefits conferred which needed a requital of obligations imposed upon the masters as well as the employés. These considerations can be clearly traced out in all these laws. Mere inconvenience by itself has never been accepted as a sufficient reason for taking out this relation of master and servant from the domain of civil liability and constituting disobedience or withdrawal or absence from duty, an offence punishable with fine and imprisonment. In the present case there is no special advantage conferred, no advances made, no engagement broken, no expectations disappointed, no indication of fraud or force which requires criminal punishment. When municipal servants leave their service without any warning it is proposed to hold them criminally liable. But there is no obligation on the municipality to give two months' notice to their servants before dismissing them or see that they are not overworked or to take care of them in the same way that apprentices and seamen and emigrants are taken care of. They may dismiss them on short notice and frequently make up no deficiencies of pay to them. This seems to me to violate the principle of all previous legislation. Certainly in a large place like Bombay, where the late strike may be repeated, some coercive action may be justifiable; but for the special extension of the measure to the mofussil, no case has really been made out, and it does not seem to me to be called for. I am not opposed to the Bill so far as it refers to Bombay. Outside of Bombay there has been no occasion to exercise such powers for the last twenty years at least, and I do not believe there will be any occasion for it for fifty years to come until society advances. Out of Bombay we have at present dearth of employment and not of labour, while the reverse is the case in Bombay. There is no necessity therefore for this Council to legislate on matters which will not happen for fifty years, and this circumstance seems to me to be a sufficient reason why the Bill should not be read a second time.

The Honourable Mr. L. R. W. FORREST said:—I wish to express the satisfaction I feel at being present on this my first appearance in the Council for the discussion of a Bill brought forward in the interests of a city to which I am so greatly attached. For the twenty years that I have resided in Bombay I have, like many others of my fellow-citizens, been under the apprehension of the very calamity which this Bill is especially introduced to avoid. Though, like most Englishmen, I have not much sympathy with particular class legislation, I do not attach much weight to the fact that such a Bill has never been introduced into England, and there are certainly signs of a strong feeling setting in that the interests of the public shall not be injuriously affected by the action of its own public servants. This Bill, however, is a very powerful instrument, and for that reason I object to its being applied, at any rate for the present, to other municipalities only on the grounds that I do not consider these bodies are at present fit to administer such a powerful Act. I do not think Mr. Ranade has quite recognised the importance of a halálkhore service, for the halálkhore service protects Bombay from disease and death. With a carefully selected committee and a superior staff of officers there is only a slight chance of power being abused. But I do not think there is the same security in the present constitution of mofussil municipalities. I also object to section 5 giving the power to the Executive Government, in consultation with the Corporation to legislate. I think the very careful manner in which this Bill has been discussed shows the advantage of all legislation passing through the Legislative Council, and I, for my part, am not willing to abrogate to the Executive Government and the Corporation the powers of this Council. I think Mr. Ranade has not sufficiently recognised the importance of a halálkhore service, or of the scarcity of the available supply of the necessary labour. If the army is to

protect a country from an enemy the halálkhore service protects the city of Bombay from disease and death, and the exceptional legislation applied to the soldier is also necessary for the halálkhore. In conclusion, I will only express a hope that the officers, who will have the powerful Bill to work under, will use it with justice, moderation, and mercy, and that there shall be no complaints that legislation was invoked to effect what might have been equally well done by judicious administration. For the leading officers of the Bombay Municipality I have no fear.

The Honourable Mr. MOORE said:—As a revenue officer, I have been in charge of many districts, and I have had to do with the working of a good many municipalities, and I quite admit what the Honourable Mr. Ranade has said that hitherto no cause has arisen for any such special legislation for mofussil municipalities. But I do not see why the principles of this Act, which admits of such an extension to mofussil municipalities, should not be allowed to stand, because the Government certainly would not apply the Act to any mofussil municipalities except on an urgent requisition. In these days of education and independent thought, what has not happened yet may happen, and with such a deficiency in the Act we should have to legislate when it was wanted. If the contingency does arise there will be some delay in legislating. Whereas, if we have this provision in the Act we can always apply it where it is wanted. No harm can possibly be done by leaving the provision in the Bill. As to what has been said about the Commissioners not being fit to carry out the provisions of the Act, of course the Government will naturally take care to see that they do not give authority to any Commissioners who are not fitted to use it.

The Honourable Mr. STEWART said he agreed with the remarks that had been made by the Honourable Mr. Moore.

His Excellency the PRESIDENT said:—I think it is only fair to myself to offer a few remarks on the Bill. I was not here when the occurrence, which caused the demand for the Bill, took place, and I was also not here when the Bill was first introduced. But, holding, as I do, very strong opinions as to the right of labour to sell itself for the best price it can, I looked very carefully into the Bill, and I found it had got through the process of consideration by the Corporation and the Select Committee. I am bound to say, therefore, that I think there are special circumstances in the City and Island of Bombay, which do warrant a drastic measure of this kind. I have looked at the schedule of the Bill, and I find that it practically refers to sanitary matters. I speak with the greatest deference to the opinions of the gentlemen who know Bombay well, but from what I have heard I am inclined to suppose that any great delay in the application of those matters might expose the city of Bombay to the gravest risk of pestilence. It seems to me that if there is such a risk as that, it is one of those exceptional cases where drastic measures should be applied. There is an exceptional aspect in this case which affects the employers of labour in this particular work in Bombay, which possibly cannot be found in the whole of England. Mr. Javerilal has referred to the men who are employed in this kind of work as being outcastes of the district. I do not know whether there is any superfluity of them in Bombay. I am alluding to the previous occasion when men had to be sent for from a long distance—from hundreds of miles and more in order to take the place of those who had struck. I am not prepared to admit that Mr. Ranade was justified in saying that there was such a superfluity of labour, or that the employer of labour here could turn to another source if his labour was suddenly withdrawn. In England there are generally men prepared to turn their hands to almost any novel work. In one of the most recent cases, when there was a large strike in the docks, there were undoubtedly ample numbers of men willing to do the work demanded if they only dared to. The difficulty was that they were not prepared to face the odium of their fellow-workmen if they had undertaken the work. And, therefore, I think that looking at the character of the work to be done, and the risk of it in the City of Bombay if that work is not done, and allotting some little weight to the fact that there may not be a sufficient supply of that particular class of men, I think that upon all those grounds the special legislation, which is proposed in this Bill, is, on the whole, justified. Mr. Javerilal has based such objections as he intends to propose to the Bill to the origin of the demands for it, that there were causes, not on the surface, which caused the strike some little time ago, and that there was oppression and jobbery going on among the overseers. But it seems to me that if this is so, that is a subject which the Corporation should look to, and they should see that their servants are not imposed upon by those immediately over them. But I do not think that that is any

reason why the health of the City of Bombay should be put to so great a peril, because the bulk of the men employed in this particular work think it too difficult for them, and strike work in order to maintain their case. Then, I think, Mr. Javerilal went on to substantiate his argument that it was preferable to legislate against strikes rather than against individuals. I am by no means certain that legislation against strikes is very successful from our experience of the attempts that have been made to prevent them, and, certainly if I may judge from the amendments which we have to discuss, I am inclined to think that, on the whole, labourers will be much better treated under the provisions of the Bill as it has come up to us from the Select Committee than they would be under the provisions of the amendments proposed by Mr. Javerilal, because it seems to me that what he proposes in those amendments would be far more drastic than they are in the Bill as it has come up from the Select Committee; and it is quite possible that the five or more persons dealt with by the amendment, might actually be prevented by the amendment from giving the two months' notice which it is intended to provide for in the Bill as it now stands. And then Ráo Bahádur Ranade has dealt with the subject of the extension of the Bill to other bodies than the Municipal Corporation of Bombay; and Mr. Forrest is inclined to hold the same opinion. Well, I think that the strongest argument that can possibly be adduced in favour of the introduction of that provision is the one which has been advanced by Ráo Bahádur Ranade himself. That gentleman thinks that fifty years will have elapsed before there is any need for special legislation. It is obvious that if such a long time is going to elapse before the provisions of the Bill are needed in the mofussil, then nobody can be hurt by them. On the other hand, if any special circumstances did arise on which it becomes necessary to apply the provisions, here are the provisions, and the power to extend them are ready to hand. It is possible on the application of a municipality and with the consent of the Government, and with the ample time which is given for a full consideration of the matter, that it may be necessary to have to extend the Act to a mofussil municipality. A notification will have to be made public, and the public will have ample time to consider it. And so, with all these safeguards, I suggest that it would be wise to introduce a provision for the enlargement of the Bill, so that it may be applied to the mofussil with those safeguards. It is not likely to be applied unless it is necessary to apply it; secondly, it requires the demand of the municipality; thirdly, it requires the consent of the Government; and fourthly, a public notification has to be given of it, and some trouble taken before it can be applied. I submit that the Government is justified in adhering to the retention of such words as will make the Bill applicable to the mofussil.

The Honourable Sir RAYMOND WEST in reply said:—The second reading of this Bill appears not to be objected to by at any rate more than one of our Honourable members, and therefore I will not make many remarks in answer to the objections raised. Of course it is quite open to any Honourable member to discuss the points in detail as we come to each particular section. But I may be allowed to say with regard to the historical *resumé* of the Honourable Mr. Javerilal, that rightly considered it must produce quite a different impression from what it was meant to convey. When the report of its Select Committee was brought up, the Municipal Corporation strongly supported this Bill, and therefore we have the general consensus of opinion of the representative body of Bombay entirely in favour of the measure before us. No other Municipality has expressed an opinion, but as His Excellency has pointed out, this Bill, if passed, would only be extended to places where it was found necessary. In regard to the practices referred to by the Honourable Ráo Bahádur Ranade, we know the Penal Code already provides for their prevention. But as regards his objections as to the mode of dealing by penal legislation I have to observe that the line between the penal and the civil mode of dealing with injuries and misconduct is entirely arbitrary, and therefore it is a matter of discretion to determine whether you are to enforce duties by a civil or a penal sanction. In England I believe the criminal law punishes a man for giving drink in a public house at five minutes past eleven, when the public house should be shut at eleven. In the interest of the public at large, it has been found necessary to adopt legislation of that kind; and with regard to the extension of the law of conspiracy to this country, I think if Mr. Yajnik were familiar with the English law of conspiracy, he would be the last to desire the introduction of it in the interest of his protegés. It is a law which has had to be modified again and again by special provisions on account of its bearing too harshly on the working classes. Therefore if we were to introduce this it is not the poor people of Bombay who

would benefit from it. The Honourable Mr. Yajnik and Ráo Bahádur Ranade have dwelt on the exceptional character of this legislation as being something entirely without example. The answer to that is in the instances given by the Honourable members themselves. In the Calcutta Municipality an offence of the class we deal with is made penal with three months' imprisonment. This term was suggested to us by the Government of India, and out of deference to the highest authority we decided to adopt as in Calcutta, a higher penalty instead of a lower one. But of course although three months is set as the maximum, it does not mean that the maximum penalty is to be imposed in every case. The maximum penalty is not imposed except in the case of some exaggerated form of the offence, and a man subject to the maximum of three months' imprisonment may be let off with a fine of four annas as just sufficient to make the law effectual. In regard to the other case brought forward of our police who are subject to two months' imprisonment for being absent from duty, their liability does not stand alone, there is a section in the Indian Penal Code which says with reference to breach of contract :—

Breach of contract of service during a voyage or journey.

Whoever, being bound by a lawful contract to render his personal service in conveying or conducting any person or any property for one place to another place, or to act as servant to any person during a voyage or journey, or to guard any person or property during a voyage or journey, voluntarily omits so to do, except in the case of illness or ill-treatment, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

The breaches of contract we have to deal with are not less mischievous and not less irremediable except by means of a penal law. The general principle of the Bill should be modified in the opinion of the Honourable members on the ground that it differs from English legislation ; but English legislation entirely bears out the principles of this Bill which is now before the Council, if we limited ourselves to legislate on such principles as have been advocated by the Honourable members opposite, it certainly would not be working. English legislation affords us much to imitate and also to avoid in the spirit of recent English legislation. Supposing a gas or water difficulty arose in London, it would have been said by the Honourable members that there had never been a case of this kind in Leeds, and therefore the legislation ought to be confined to the metropolis. Leeds is excluded, and a fortnight after there is a strike in the gas-works of Leeds, the whole city is plunged in darkness and the streets rendered dangerous. I think it would be much better that you should foresee the necessity and legislate with due regard to the circumstances of the case ; and there are sufficient reasons why you should anticipate difficulties of that kind. If a strike occurs amongst those classes of society with which this Bill deals it cannot be practically dealt with by suits for damages. Such a strike is a source of great danger to large communities like Bombay and Poona. It is necessary, therefore, to provide measures of this kind ; and the distinction between Bombay and the mofussil has been explained by the Honourable Mr. Moore. He has had much experience of the mofussil, and I have had cases brought before me which have proved the absolute necessity of stringent legislation. But again the application of the Act is subject to certain stipulations. It cannot be extended to those new classes without first coming before the municipality. Not only have they to satisfy those representatives that an advantage is to be gained from it ; but after it has been made apparent to the municipality, Government have also to consider whether it is desirable to introduce the measure ; and not till Government has arrived at a clear understanding as to its necessity will it be extended. No one will place himself under the law unless he chooses. There is surely no appearance of any tyranny or tampering with freedom and liberty in this. It is better, I think, to be armed beforehand than to wait until it is too late ; and I think the principle of the Bill being admitted its particular provisions are justifiable by the opinion of those most nearly concerned, viz., the representatives of the mofussil. These appear to me to be the answers to the objections which have been raised to the Bill ; but the Honourable members will have an opportunity of explaining their objections on each section as the Bill is discussed in detail.

Bill read a second time.

The second reading of the Bill was then agreed to and the Bill was read a second time.

Consideration in detail of the Bombay Municipal Servants' Bill.

The detailed consideration of the Bill was next proceeded with.

At the suggestion of His Excellency the President, consideration of the title and preamble was postponed, pending consideration of the amendments affecting the body of the Bill.

The Honourable Ráo Báhádur RANADE moved:—In section 1 to omit sub-section (3). He said:—I do not think in cases of special legislation we ought to go beyond the limits of the special purpose it is intended to serve. This Bill is admittedly a special drastic measure introduced to meet the special wants of Bombay, and I do not think we ought to go beyond this special case. Government has enough to do to provide for the wants of the day; and the necessity has not yet arisen—nor I believe will arise for the next fifty years—for the application of such an Act in any of these outside municipalities, which is not convenient or even right. It is merely expected it may be required in the mofussil, but such expectation does not justify the retention of this clause in section 1.

The Honourable Mr. JAVERILAL:—I concur with the observations made by the Honourable Mr. Ranade. In the case of Bombay there is at least this to be said, that there have actually been strikes, and that there has been necessity of legislating for it; but I have known of no single instance of any application having been made by any municipality throughout this Presidency for a law of this kind for the purpose of putting down strikes. It is possible that circumstances may arise hereafter, as the Honourable member has said fifty years hence; and if such a case does arise it will be then the business of Government to legislate for it. Up till the present no such case has arisen, and, in the absence of any demand for legislation, I really do not see any special reason for the retention of this clause.

The Honourable Mr. FORREST:—As the Honourable Sir Raymond West has said that Government will take care that the provisions of this Bill are not extended to any municipality unless Government is satisfied that there is really a necessity for it, I will not oppose the provision enabling this to be done.

His Excellency the PRESIDENT:—We are glad to hear the Honourable Member has seen fit to change his mind, and thank him for the confidence he shows in Government.

The Honourable Mr. FORREST:—My previous remark was with regard to the members of district municipalities, and not about Government. I said I did not consider the members of district municipalities were at present fit to administer such a powerful Act.

The Honourable Mr. SAYANI:—Whenever there is legislation on any particular matter, I think it ought to be uniform, and as this Bill, if it is passed into law, cannot be extended to the mofussil until the corporation of that particular place demands it, and Government deem it fit to extend it and give notification of it for two months, there consequently cannot be any reason why this sub-clause should be omitted. Because were we to omit it now, and the necessity arises at some future period for legislation for a district municipality, there will not only be great delay, but legislation will have to be completed in haste, and the possibilities are there may be some difference between what then may be enacted, and the provisions of the Bill we are now considering. There should not be any difference in such a law in the same Presidency. Consequently I think this is an additional argument why we should have a uniformity of law, and why we should retain this sub-section.

The amendment on being put to the vote was lost.

The Honourable Mr. JAVERILAL withdrew the amendment to the same effect standing in his name. On the loss of this amendment, all the undermentioned amendments relating to the extension of the Act to Mofussil Municipalities standing in the names of the Honourable Ráo Bahádur Ranade and the Honourable Mr. Yajnik were withdrawn—

In the preamble, in lines 2 and 3, omit the words "and elsewhere".

In section 2, sub-section 2, to omit all the words after "Bombay Municipal Act, 1888," in line 12.

In section 3 to omit the words "or a Municipality" in line 5.

In clause (*a*), lines 11, 12 and 13 of the same section, to omit the words "and elsewhere of the officer authorised by the Municipality to give such permission."

In line 16 of the same clause to omit the words "or to such officer."

In lines 22, 23, of the same clause, to omit the words "or such officer".

In clause (*b*) of section 3, to omit the words "or a Municipality" in line 30.

In lines 51, 52 of the same section, to omit the words "and elsewhere by a Municipality in this behalf."

In section 4, lines 1—7, to omit the words "or officer authorized by the Municipality under section 3 (*a*)."

In lines 21, 22, of the same section, omit the words "or Municipality."

In section 5, lines 4, 5, omit the words "or of a Municipality."

In the same section, line 16, omit the words "or a Municipality."

In lines 23, 24, of the same section, omit all the words following the words "of this Act" down to the end of the clause.

In section 6, line 3, omit the words "or a Municipality."

In lines 12, 13 of the same section, omit the words "and elsewhere from the President of a Municipality."

In the Schedule, line 3, omit the words "or a Municipality."

The Honourable Sir RAYMOND WEST moved:—In section 3, line 1, insert the figure '(1)' denoting a sub-section before 'Any'."

The amendment was accepted.

The Honourable Mr. JAVERILAL then proposed, that in line 14 of the same clause the word "one" should be substituted for the word "two" before the words "month's notice." He said:—I understand that the object of providing for such a lengthened period of notice as two months is to enable the Bombay Municipality to recruit *halalkhores* from up-country, but it seems to me in these days of railways and telegrams there cannot be much difficulty in obtaining men in a month. I think the prospects of the employés would be injured if they had to wait for two months; since their employers could easily get good hands to replace them in less than two months. Both on the precedent of the Calcutta Municipality and on the ground that it is very easy to replace the men by others from up-country, I think a month's notice is sufficient. Again I should say this Bill applies equally to inspectors and others whose prospects would be seriously injured if they had to wait for two months.

The Honourable Mr. SAYANI:—I happen to know something about the late strike, and I know the Municipal Commissioner could not get men in place of those who stopped work. I think therefore from experience that two months would be necessary.

The Honourable Mr. MOORE:—I have personal knowledge of the case, and can testify from experience to the difficulty which was felt on that occasion, for as Commissioner, Central Division, at the time I was called on to assist in obtaining substitutes from Poona and elsewhere for the Corporation. We found it very difficult to get any duty. If the men do not return to duty, it is impossible to get men from up-country on a month's time.

His Excellency the PRESIDENT:—The provision does not absolutely prevent the men from going under two months, because if a man wishes to go he can get the written permission of the Commissioner, and I think it is only reasonable to suppose that if any individual asked such permission it would not be withheld. It is only where there is a combination or where there may be a danger of a strike as in the city of Bombay, where it would be enforced; but I should think in individual cases it would be perfectly different. Of course, in a case of this kind I am bound to accept the opinions of gentlemen who have had experience of the difficulty of getting men in less than two months and who are of opinion that the time is absolutely necessary.

The Honourable Sir RAYMOND WEST:—This matter was considered in the Select Committee. The Honourable Mr. Latham remarked on the length of time proposed in the Bill. But the matter was carefully considered, and we came to the conclusion that two months were absolutely necessary. The history of previous strikes was considered, and also the great difficulty of preventing combinations, and thus the two months' notice was

arrived at. The practical question was, what was the minimum time in which the difficulty could be met, and two months was the time considered by the Select Committee as the proper minimum. His Excellency has pointed out that the Municipal Commissioner may give a written permission. Under section 4 the Municipal Commissioner may accept any resignation and take less notice than two months. And as there is no object to be gained in keeping unwilling labourers to their work, the Commissioner will no doubt accept gladly in all ordinary cases a resignation for a period less than two months in advance. But I think it is very necessary to keep this provision in hand in order to secure the practical working of the measure. I would also point out that, under the Act, any man entering the service, if he does not like the idea of the two months' notice, may make special terms with the Commissioner, and then the Bill cannot touch him; so that therefore there is no undue pressure put upon people by keeping this two months in the section. I would also remark that the period of two months is the same time as that for which a police constable has to give notice. It is only a matter of practical convenience. A strike of a few police constables may cause some inconvenience; but not so great as a strike amongst these people may cause.

The Honourable Ráo Bahádur RANADE:—Is not one month generally the legal period for notice?

The Honourable Sir RAYMOND WEST:—No: it depends on the circumstances.

The Honourable Ráo Bahádur RANADE withdrew his amendment.

The Honourable Ráo Bahádur RANADE also withdrew his amendments to insert after the word 'accident' in line 19 of section 3 the words 'or other reasonable cause,' and in line 20 to omit all following the word "duties" to the end of clause (*a*).

The Honourable Ráo Bahádur RANADE moved:—In section 3, clause (*c*), lines 32, 33, for the words "who abets an offence under clause (*a*) or clause (*b*)" to substitute the words "who combines with five or more persons to commit or abet the offence of withdrawing or absenting himself from duty without legal excuse as defined under clause (*a*), or is guilty of wilful breach or neglect under clause (*b*)." He said:—My reason for proposing this amendment is that I consider it a matter which should be left to the judge or magistrate; for if the Commissioner has to depute his authority to another, he is the proper person to judge whether it is reasonable or not.

The Honourable Mr. SAYANI:—It would be better in my opinion to leave the clause as it is, because if you substituted these words it would become a matter of litigation, which in my opinion would be so expensive, it would be better to avoid it.

The Honourable Mr. JAVERILAL:—I have a similar amendment on the same subject, but I withdraw it in favour of Ráo Bahádur Ranade's. My reason is that the Commissioner is such a busy man that he will find it necessary to depute his authority to another person, who will not exercise it properly, and therefore it should be left to the magistrate to decide whether the reasons are sufficient or not. For this reason the section should in my opinion be altered.

The Honourable Sir RAYMOND WEST:—The objections raised by the Honourable Members opposite have been met very simply by the Honourable Mr. Sayani. To say that there is any danger of injustice through the Commissioner deputing his authority to another officer is purely imaginary; and again I repeat that any one who does not like the terms under the Act may insist upon other terms when he enters the service. The additional words to the clause also, were introduced by the Select Committee as a safeguard against what the Honourable Members are apprehensive of.

The amendment was then withdrawn.

The Honourable Mr. JAVERILAL moved:—"In clause (*b*), line 31, between the words 'obey' and 'or', insert the following:—

> 'Shall, in addition to such forfeiture of pay as aforesaid, be liable to a fine not exceeding Rs. 20, and in case of his being a member of the Fire Brigade shall be further liable to imprisonment which may extend to three months.'

He said:—My intention was that the punishment should be dealt out according to the nature of the offence. It seems to me that in regard to an offence connected with absence from duty, the penalty should be only forfeiture of pay; in case of gross neglect or wilful breach of duty, fine might well be added to forfeiture of pay, and in the special case

of a member of the Fire Brigade the punishment might even be extended to imprisonment, for this reason that it is very necessary in cases of fire that men should be on the spot, as otherwise valuable properties would be consumed in a few hours. Such negligence therefore arising from absence of duty should be visited with imprisonment.

The Honourable Sir RAYMOND WEST :—I put this amendment as it stands and the clause as it stands before the Council, and I beg to point out to the Honourable Members that if they turn their eyes to line 37 or 38 of the clause following, that servants or other persons in the employment of the Municipality of Bombay guilty of absence from duty without sufficient reason may be subject to forfeit his pay for one month, "and in addition to such forfeiture and any other penalty which may be imposed on him under any enactment or rule for the time being in force, shall be liable, on conviction by a magistrate, to imprisonment, which may extend to three months, or to fine, or to both imprisonment and fine." Mr. Javerilal says a fine of Rs. 20. A fine in general terms covers all I think that is necessary; and so far as I can judge at present this is absolutely superfluous. Every thing can be done that is necessary according to the circumstances. Therefore I think these words need not be accepted.

His Excellency the PRESIDENT :—I take it the effect would be that a person who leaves his situation without the written permission of the Commissioner or without two months' notice, and again a person guilty of any wilful breach of order which he ought to have carried out, is to be liable to a penalty of Rs. 20, except in the case of the fire brigade, when a person who commits an offence of this kind is to be liable to imprisonment. You wish to draw a distinction between the person who commits the offence and who abets the offence.

The Honourable Mr. JAVERILAL :—That is what I observed, your Excellency, but I withdraw my amendment.

The Honourable Mr. JAVERILAL moved :—Before clause (*c*) in the revised Bill, substitute the following as clause (*c*) :—

> (*c*) joins or combines with five or more persons to commit an offence under clause (*a*) or clause (*b*).

The Honourable Sir RAYMOND WEST :—There are various objections to this amendment, and one which is very conclusive to my mind is that it will involve us in contradictions of law. When this Bill was sent to the Government of India they pointed out very naturally that it was not necessary to retain the section for abetment. But for the sake of convenience it was thought desirable to keep the provision, even although sections 40, 108 and 116 of the Penal Code provide for it. But if the Penal Code says that such and such a punishment shall attend abetment, we are quite powerless to say some other punishment shall attend it. The effect of the provision pressed by the honourable member would cause an antinomy. If the Bill were sent up to the Government of India, it would be rejected on account of this; and I do not think this is the intention of the honourable member. And to propose that five persons must of necessity be concerned—I take it in the wording of this amendment—is such as would create considerable difficulty about the persons who should give the notice under clause (*a*) as to whether they will become under the Penal Code or this Bill personally liable for enquiry to absent themselves from duty. A ruling in a very famous case is clear on this point as to the English law—

> "The offence of conspiracy is rendered complete by the bare engagement and association of two or more persons to break the law without any act being done in pursuance thereof by the conspirators."

So that here in introducing the number five we should be entirely opposed to the English law of conspiracy, and I think it would be most injurious and dangerous to say that the number must be no less than five. Suppose you have a person going about trying to breed dissension amongst workmen, it would be better to check him and bring him before a Magistrate at once than to wait until the number is increased to five. The clause as it stands, you may say, is subject to the objection that it is superfluous, because it is provided for in sections 40 and 108 of the Indian Penal Code; but it involves no contradiction of law. And it was thought by the Special Committee, and I rather think Mr. Javerilal was of the opinion, that it would be desirable to have this clause in the Bill (I am speaking of clause (*c*)) rather than leave it out. We consider this Bill will be put into the hands of a great number of half-educated and, on the whole, ignorant men, and it is necessary the law should be put before them plainly in order that they may arrive at

a sense of their obligations. According to the amendment it would involve difficulties which I think it is desirable to avoid.

The Honourable Mr. JAVERILAL withdrew the amendment.

The Honourable Ráo Bahádur RANADE next moved:—In the same section, lines 42—45, for the words "to imprisonment which may extend to three months, or to fine, or to both imprisonment and fine," substitute the words "to fine which may extend to Rs. 100 or in default to three months' imprisonment." He said:—In moving this amendment I have only to remark that it has been the practice in Bombay to impose a fine to carry out the administration of the Municipality; and I think in the case of a withdrawal from business it is better to impose a fine rather than to imprison, or when necessary the punishment of imprisonment could come in as an alternative.

The Honourable Sir RAYMOND WEST:—The section as it stands is not exactly in the shape in which it was originally conceived by the Bombay Government; but the Government of India pointed to a provision, which the Honourable Mr. Javerilal also pointed out, and a power exercised by the Calcutta Municipality. It was not necessary to make it imperative to imprison, we have put in the alternative of a fine; and although imprisonment is provided as a punishment, it does not mean that imprisonment is to be inflicted in every case. If it were inflicted wrongly, there is the High Court to cut it down; but then the honourable member opposite will agree with me, that in many cases, especially this case of abetment of breach of or neglect of duty, it would be very proper to inflict imprisonment. It is only in the most pressing cases that fines and imprisonment or both are imposed; and there is a sufficient safeguard in our High Court to prevent too severe punishments by means of fines and imprisonment combined. I therefore trust the Council will leave the section as it stands.

The amendment was then withdrawn.

The Honourable Mr. FORREST moved, with the permission of the President, to insert the words "be liable to" between "shall" and "forfeit" in section 3, clause (*c*), line 33.

His Excellency the PRESIDENT:—The amendment does not affect the principle of this section and I think it may be accepted.

The Honourable Sir RAYMOND WEST:—I do not think the introduction of the words suggested by the honourable member will alter the sense in the slightest degree. However, if the honourable member prefers that form, I think there need be no difficulty about it, and I shall accept the amendment.

The amendment was accepted.

The Honourable Sir RAYMOND WEST moved:—After line 55 of section 3 add the following sub-section:—

> "(2). The provisions of clauses (*a*) and (*b*) of sub-section (1) shall not apply to persons at the date of the passing of this Act in the employment of the Corporation or of a Municipality until the lapse of two months from such date."

He said:—The object of this amendment is to give to those who are in the employment of the Municipality plenty of time to consider their positions without being involved in difficulty, and I think the clause will commend itself at once to the honourable members.

The amendment was accepted.

The Honourable Mr. JAVERILAL withdrew his amendment to change clause (*c*) into clause (*d*).

The Honourable Mr. JAVERILAL moved to omit section 5. He said:—It will be remembered that at the first meeting of the Select Committee the omission of this clause was advised, because it was thought it would be practically giving power to Government to legislate by notification in the *Government Gazette*. This omission was communicated to the Corporation. The Corporation thought that this section might prove useful in connection with the contemplated lighting of the city by electricity. On the receipt of the Corporation's report, the Select Committee found that the Corporation had approved the section. It was therefore accepted by the Select Committee with a few modifications, and the modifications introduced were that instead of Government bringing about the operation of this section by notification it would be better that application should be made by the Corporation or the Municipality for its introduction to Government before they took any action in the matter. But it seems to me that the simpler course would be to specify

in the schedule the objects to be carried out by it. In this view of the matter I think it would be desirable to omit the section.

The Honourable Sir RAYMOND WEST:—The honourable member will recollect that the Select Committee were divided in their opinion as to the retention or omission of this clause, but many wished it to be retained, and the Corporation expressed a strong wish that it should be retained. We thought it proper that the Corporation which wanted such a measure should come to Government, and they thought the modification of it could not introduce any danger whatever. Nothing can be done except in matters which concern the public health and safety; the Corporation must make this application to Government; and then after considering whether any objections are urged the notification is to be made. I think it desirable that we should retain it as it is.

The Honourable Mr. FORREST:—I think I must oppose it. In discussing this clause in the Select Committee the Advocate General did not think it wise to include a clause of this sort, and I do not think the advice of the Corporation matters in any way. I can quite understand the Corporation wanting to legislate, and I may say my conviction is confirmed by the way they have asked for increased powers. Evidently the Corporation thought the Bill should include contractors' men, and this Council is not prepared to give them such powers to enforce them on contractors' men. It is not good law to legislate by notification because the Corporation ask for it.

The Honourable Sir RAYMOND WEST:—These objections were considered by the Select Committee, and surely the opinions of the Bombay Municipal Corporation should have some weight with us. We have only weighed them in the balance; and as to the honourable member's conception of the law, I do not think he has been any more happy than some other of the honourable members who have not made it their special study. The matter of the employment of contractors by the Municipality was one of the matters I referred to in my opening speech. It is not the case that persons, employed by a contractor, or employed by him on behalf of the Corporation, are liable. If they are employed on behalf of the Corporation, they must become servants of the Corporation and be paid by the Corporation in order to become liable under the Act.

The amendment on being put to the vote was lost.

The Honourable Sir RAYMOND WEST moved:—In Section 6, line 7, between the words "service" and "receive" insert "and every person now so employed shall forthwith".

The amendment was accepted.

The Honourable Mr. JAVERILAL moved:—In the Schedule—Under Duties, Class I, to omit the words "(*e*) preventing nuisances generally."

He said:—This expression "preventing nuisances generally" may mean anything and everything. In clause (*z*), section 3 of the Municipal Act of 1888 the word "nuisance" is defined to include any act or anything that is likely to cause danger or offence to the sense of sight, smell or hearing, or dangerous to life, or injurious to health or property. It is of such a general character that in a special legislation like this it should have no place. Special legislation like this should avoid going beyond the specific objects intended to be promoted by it.

The Honourable Sir RAYMOND WEST:—This clause would not mean "anything." It would mean only such things in the way of nuisance as would be so interpreted by a court of law, and I do not think we should eliminate it, as it is one of the duties which this Bill provides for. It is very desirable there should be a general expression to include all nuisances; and I think it may be left in, with advantage, because without it we might find something afterwards not specified, and there would be no remedy but further legislation, which would be inconvenient. I think it desirable that the honourable member should not press his amendment.

The amendment was withdrawn.

The Honourable Mr. JAVERILAL moved:—In the Schedule—Under Duties, Class II, to omit in (*b*) the word "drain" and all words "including" to "(8) workmen" inclusive.

He said:—My reason for moving this is that we have already in Class I "duties connected with public health," the cleansing or flushing of drains, and I do not know what duties under the head of public safety are included in drains.

The Honourable Sir RAYMOND WEST :—I can explain. Supposing you have a hundred men employed in drains and they all suddenly strike. The drains are left as they are, and in the dark, people—say two honourable members of this Council—fall into the drain, then the public safety would be inconvenienced, and Government would be without the presence of those honourable members at its meetings. That is an instance of what is meant by drains being connected with public safety.

The amendment was withdrawn.

The Honourable Mr. JAVERILAL moved :—In the same class to omit "(c) lamp-lighters." He said :—This is a Municipal Servants Bill, and it is intended for those persons who are in the actual service of the Municipality and receive pay from them. The Municipality is supplied by gas from contractors.

The Honourable Sir RAYMOND WEST :—Unless the Municipality take the gas supply into their own hands, or unless they should undertake the lamp-lighting for themselves, lamp-lighters will not be affected, for they will not be the servants of the Municipality. But if they ever become Municipal servants, it is desirable that the Municipality should have the power of punishing them for breaches of duty involving public danger.

The amendment was withdrawn.

His Excellency the PRESIDENT then adjourned the Council.

By order of His Excellency the Right Honourable the Governor,

A. C. LOGAN,
Secretary to the Council of the Governor of Bombay
for making Laws and Regulations.

Poona, 1st October 1890

PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

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

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

The Council met at Poona on Monday the 20th October 1890, at 3-30 P.M.

PRESENT:

His Excellency the Right Honourable Lord HARRIS, G.C.I.E., Governor of Bombay, *Presiding.*
His Excellency Lieut.-General the Honourable Sir GEORGE R. GREAVES, K.C.[illegible], K.C.M.G.
The Honourable Sir R. WEST, K.C.I.E.
The Honourable Mr. J. G. MOORE.
The Honourable the ADVOCATE GENERAL.
The Honourable Mr. NAVROJI NASARVANJI WADIA, C.I.E.
The Honourable Ráo Bahádur MAHADEO GOVIND RANADE, M.A., LL.B., C.I.E.
The Honourable Mr. JAVERILAL UMIASHANKAR YAJNIK.
The Honourable Mr. FAZULBHOY VISRAM.

Papers presented to the Council. The following papers were presented to the Council:—

(1) Letter from the Secretary to the Bombay Presidency Association, dated the 17th October 1890, submitting the views of the Bombay Presidency Association on the Bombay Municipal Servants Bill No. I of 1890.

THE BOMBAY MUNICIPAL SERVANTS BILL.

The Honourable Sir RAYMOND WEST then said:—Before proceeding to move the third reading of the Bill I perhaps might be permitted to move a formal amendment, and I would ask the honourable members to turn to section 3, where the second proviso to sub-section 1, has by some mistake got misplaced, and I would propose accordingly that this proviso should be placed below the first proviso, line 56.

The amendment was agreed to.

Sir Raymond West moves the third reading of Bill No. 1 of 1890.

The Honourable Sir RAYMOND WEST, in moving the third reading of the Bill, said:—Your Excellency,—The principles upon which it rests have been pretty thoroughly sifted in the discussions which have already taken place, and one must frankly admit that the objections which have been raised to the Bill are based on very reasonable grounds of principle. But it is exactly one of those cases in which you have to balance the conflicting interest on one hand and on the other; while it is utterly impossible to accept without qualification the principles on both sides. The Government of Bombay has to provide for the general welfare of the community, and endeavours to conscientiously perform that duty, and in this case it has to steer its course between the advantages and disadvantages, and so far as it can, to consider itself a free agent in the matter. It has therefore drawn up a Bill, calculated as it thinks to promote the public interests without any undue pressure on any member of the community, that is any pressure beyond what is necessary for the general good. The substance of the Bill both before and after the second reading has been considerably debated, and it is very evident from the discussions in the public prints that all the arguments which have been advanced here on every side are perfectly well appreciated by the public. They have been put forward with considerable ability in the public prints; so much so that if one wants to select one particular aspect, he could make out a strong case from one newspaper on one side, and from another public print on the other. But we are not quite at liberty in this case to take any one-sided view of the matter; we must endeavour to adapt ourselves to circumstances. There is one document which has come in since the second reading which would have deserved more full consideration than it is perhaps proper to give to it now had it come in before the principle of the

Bill was accepted and was adopted on the second reading. I refer to the letter from the Bombay Presidency Association ; and the principal remark I have to make on that is that it rests very much on misapprehension. The gentleman who signs this document—one of the secretaries—points out that the danger which was apprehended from the strike a good many months ago was more from the mukádams than from the men under them, and he seems to think they—the mukádams—would be left free in this Bill. That is not so. The mukádams would be as liable as any other servants. There is nothing to exclude mukádams from the operation of the Act, as that useful little clause (*c*) will show. But there is another point I dwelt on last time, and that is that the mukádams, having a somewhat stringent Act of this kind to rely upon, may possibly make use of it as a means of extortion or bribes from their subordinates. There is possibly a danger of that kind, but one must remember that in all legislation there is a possibility of duties being abused, and we must suppose that new Bills and new Acts will be carried out just as the old ones have been by people having a good deal of common-sense and having an interest in the community ; and if they abuse the principles of this Bill we know there are vigilant watch-dogs who will not fail to bring their grievances to notice. Supposing those watch-dogs are awakened by anything of the kind suggested, there is the Penal Code waiting to punish people for extortion. But if the Corporation should put itself between the mukádams and the punishment they deserve, it is not impossible to repeal an Act of this kind, and even a Corporation should not abuse the law. With safeguards of this kind, it cannot be said that the servants of the municipality will be subjected to any oppression or tyranny. We must bear in mind that people will enter the service of the municipality with the provisions of the Act before them, and they need not take service unless the terms suit them ; and they cannot fairly complain that the municipal law which they accept is unjust or tyrannous any more than he who becomes a constable can complain of being subjected to police law. And that leads me to another consideration; and that is that it is not only those people who carry on municipal duties who have to be considered, but it is the great mass of population living in cities and municipalities who are not allowed their own free action in matters of this kind. We must all submit to sanitary requirements in our houses and in our roads While we pay taxes we are subjected to rules of this kind, and as we, being members of a great community, submit to these rules, we must by way of consolation consider what great privileges we enjoy. So also the people who are banded together to carry out these measures which we now allude to must be subjected to this particular rule. While we and they have the advantages, we must also accept the disadvantages. This brings us back to the foundation and justification of all law. Every man must submit to law by which his happiness is enormously increased and the consideration of that is enough to compensate for the disadvantages which attend its rules. The utmost disadvantage those servants are put to is that they must give two months' notice of leave unless they are ill. When you have got a thousand men employed you must have long notice, otherwise the city might be put into an awkward situation. This time was fixed on a consideration of the absolute necessity of the case, and this is the utmost tyranny—if you can call it tyranny—which those subject to the law must submit to ; and in the meanwhile if there is not a really serious combination or breach of law, no magistrate in his senses would impose the maximum penalty or anything like it. I do not think any of the objections to the Bill in its present state are of any such considerable weight as will prevent the Council from cordially adopting the Bill considering its principles have been adopted. Even the Bombay Presidency Association admit the general principle of the Bill ; but they say "the Council is quite prepared to admit that for the better and more efficient conservancy of the city it is expedient that Municipal servants, on whose faithful and diligent performance of the work the protection of public health greatly depends, should be subjected to such statutory discipline as shall most advantageously accomplish the purpose in view. But at the same time it is essential that the measures introduced should neither be so harsh nor unreasonable as to defeat the very object which is sought to be carried out." Well, Government are of opinion in having admitted the Bill in its principles on the second reading the Council has recognized that it is not so dangerous or unreasonable as to defeat the objects sought to be carried out. We were not disposed to go quite so far as the Calcutta Act, but it will not be necessary to carry out the provisions of the Act to a harsh extent except in extreme cases. No such severe punishments will be inflicted, but a moderate penalty in moderate cases and a minimum penalty in trifling cases, and we may with that explanation assure the members of the Bombay Presidency Association with the greatest confidence that the measure introduced on this occasion is not so unreasonable as to defeat the object to be carried out. We think that on the contrary it will tend most strongly to carry out the

objects we have in view, to promote the interests and advantages we have in view. "The enforcement by law," says the Presidency Association, "of that necessary discipline calculated to ensure regularity of attendance and proper discharge of the duty of sweeping the streets and keeping them clean may be admitted; provided the law is not tyrannous in practice and one-sided in its obligations." Well, we say the law is not one-sided in its obligations, because this is a supplemental law to that affecting the mukádams as at present existing in the Penal Code. As to its being tyrannous, we have no reason to suppose the Magistrates of the City of Bombay, if a case was brought before them not requiring a severe penalty, would use it in a tyrannous manner, therefore it is a pure assumption to say that the law will be tyrannous. And no law is really tyrannous which a man accepts with his eyes open. So every man entering the Municipality will have the law before him, and the most that will be asked of him will be to give two months' notice. These are the principles which have weighed with the Government, and I do not think these considerations are met by what is stated in this memorial, and as to the expressions of public opinion, they are so balanced that to put any one of them in force would unreservedly be to incur deserved censure from the exponents of the other. So far as we have gone, we trust the Council will support Government in carrying this measure, and I trust also that when the measure is carried the Municipality will always bear in mind that it ought to be carried out with due tenderness to a very large mass of ignorant people by those through whom the Act may be brought to bear. Of course the interest of Government will remain if this Act is passed as it was before. Its interest and its duty will not be lessened; and I am sure I may speak for His Excellency, it is His Excellency's desire that no one in the whole community should suffer from the slightest tyranny or oppression. The object of Government, when the Bill was framed, was to do its duty to the Municipality of Bombay and kindred municipalities, and to go no further than was absolutely necessary to carry out the objects of the Bill.

The Honourable Mr. JAVERILAL UMIASHANKAR YAJNIK said:—At this stage of the Bill I do not wish to take up the time of the Council after the somewhat lengthened remarks I made on the last occasion. At the same time I do not wish to give a silent vote. I find from your Excellency's remarks at the last meeting that you hold very strong views on the right of labour to sell itself for the best price it can. I therefore venture to put in my last word on the point under discussion, at the same time apologising to your Excellency for what I have to say. Your Excellency was pleased to think that the amendments which I and my friend the Honourable Ráo Bahádur Ranadé proposed were more drastic than the revised Bill, but I may assure your Excellency that we proposed those amendments in the full belief that they would have a deterrent effect by making the strikes still scarcer. As to the causes of the late strikes I quite agree that it was a matter for the Corporation to have looked into, but since this was not done, there was reason to believe that the framers of the Bill would carefully consider the point. It seems to me, my Lord, that the weak point in the Bill is that it looks at labour disputes mainly from the point of view of the employer of labour, and does, in my humble opinion, scant justice to the claims of labour. In fact, it ignores altogether the employer's obligations and liabilities. It is thus only a one-sided measure. In this view of the matter it is satisfactory to know that your Excellency thinks that it is a drastic measure, but your Excellency is of opinion that this drastic character of the Bill is justified by the circumstances in the City of Bombay, and that any delay in its application would open the city to the gravest risk of pestilence. My Lord, I admit the force of this consideration. I admit the necessity of prompt action in a matter which affects the health and comfort of over 800,000 people in Bombay. But while admitting this, the point I submit for your consideration is whether there is anything in the circumstances of last year's strikes to warrant the imposition of fine and imprisonment for ordinary infractions of rules or verbal orders by ignorant men, liable to be easily misguided, or whether contented and cheerful service so needful for an efficient conservancy of the city would not be better promoted or secured by a less drastic measure, by lighter penalties for trivial individual offences not likely to endanger public health and safety, reserving the more severe punishment of imprisonment for serious acts of combinations. In making this last remark, I do not forget what the honourable mover of the Bill said on the last occasion and what he has said just now. He said that the statutory provisions of the Penal Code would forbid the Legislature from dealing criminally with combinations. So then practically it comes to this, that what the Penal Code would not sanction is proposed to be done by means of special legislation, giving statutory powers of dealing more severely with individuals for, and in the name of trivial offences hitherto

liable to civil penalties only. This course was held to be justified by what your Excellency was pleased to say that there is not a superfluity of men for this kind of work in Bombay, and that the employer of labour cannot turn to another direction if his labour was withdrawn. And your Excellency referred to the fact that in England there are generally men prepared to turn their hands to almost any new work. With regard to the bearing of this remark on the point under discussion I say—and I speak with the greatest deference to your Excellency—that I am afraid even in England there would hardly be found men ready to take up the dirty and filthy work which the halálkhore system requires the men in Bombay to do. An English working man's feelings on this subject may be better conceived from what Mr. Baldwin Latham, the eminent sanitary authority that visited Bombay in March last, says in his report on the sanitation of Bombay. Talking of our halálkhore system he says (page 62): "I cannot speak too strongly against such a disgusting and insanitary system; under it you have the daily accumulation of dangerous organic matter near or in very close proximity to the habitation, then the collection and carrying of this matter by men and women who ought to be engaged in more noble occupation; and, again, you have the cartage of the material through the streets to the disgust of the sensitive public; and, lastly, the repulsive operations of men entering the tanks that receive the fœces and mixing them with water. Now, all this vile business can be at once dispensed with if every house is connected with the sewers and those solid matters are distributed in detail over the whole system of sewers instead of being admitted wholesale at particular points of the system; and by the abolition of this system a very large sum of money would be annually saved, which is now expended in the collection of the fœces only of the population." My Lord, I am sure no English working man would be willing to undertake such nasty work. I believe I am not wrong when I say that neither in England nor on the Continent of Europe is there anything analogous to or resembling our halálkhore system in this country. Even in India too, no other class of workmen would come forward to do this work. Fortunately, or unfortunately, we have in India a special class of men and women, singled out as it were by society as from father to son for this specific, disgusting, though, from a sanitary point of view, very indispensable work. And as long as the proposed scientific drainage and sewerage system in Bombay does not take the place of the present halálkhore system, I hold that the services of these men must be absolutely indispensable. Meanwhile, if these halálkhores, individuals among whom, especially young boys, have become already susceptible to educational influences, through missionary efforts, should come to know of their present lot and get despondent, or, through the stringent working of a very stringent law, leave the service of the municipality one by one, where, I ask, would the city be? What would become of the public health of Bombay? This is, to my mind, the more vital point in connection with this Bill. Honourable members at this board may, perhaps, think lightly of this. They may not attach the importance I attach to it, but I need hardly assure your Excellency that it weighs heavily upon my mind. It is my chief and serious fear. Your Excellency knows from the amendments I moved at the last meeting for dealing with strikes that I am not an apologist of strikes; but I find that even thoughtful employers of labour in England, after having calmly and dispassionately looked into the merits of this question of labour disputes, have come to the conclusion that these strikes are not wholly without their uses and not without their reasonableness. These strikes at this moment are exercising societies and public men in England, Scotland, Europe, Australia, and America; but we have not yet heard of penal legislation about them. The late Mr. John Bright was, as a cotton manufacturer, a large employer of labour, as your Excellency so well knows. Well, in a speech delivered at Manchester on April 12, 1860, Mr. Bright said:—"Now it has never been proved that strikes are bad; a strike is the reserved power in the hands of the working man. I would tell working men never to surrender their right to combine with their fellowmen in support of their interests." Earl Granville also, another extensive employer of labour, in a speech delivered in the House of Lords on August 2, 1859, said:—"It is imposible to put an end to strikes, even though it were desirable to do so. They are the last resource of workmen, just as a Chancery suit is among litigants, and as war is the *ultimo ratio* of nations. The fear of them exercises a wholesome influence on masters." In like manner, I say that the strike of last year was the last resource the poor scavengers had against the *zulum* or oppression of wholesale blackmail practised on them by their mukádams, and when the Municipal Commissioner was applied to by them for protection from this, the protection they receive from him is in the form of this Bill. Is it to be wondered at if they should look upon it as making

oppression and injustice doubly sure? This Bill, my Lord, will be, I repeat, an engine of oppression in the hands of those lowly-paid mukádams, their immediate superiors. One would not be surprised—and I for one would not be surprised—if the practical working of the Bill should lead to making strikes more frequent. All I wish is that in dealing with private employers of labour like the Municipal Corporation of Bombay the framers of the Bill should have shown a more sympathetic feeling for workmen in framing the punitory clauses of the Bill. Such a feeling would have been akin to the feeling which is known to have moved the Government of India to appoint a Factory Commission. This Commission, after inquiring into the conditions and requirements of factory labour and obtaining evidence of mill-hands as to the limits imposed on them in respect of their work, has just concluded its labours and gone elsewhere for enquiry. Thus, legislation in the case of factory labour would, in Bombay at least, have the merit of having been proceeded with after the results of the enquiry by the Commission had been placed before the Government of India. It was, at least, to be wished that a similar method had been pursued and evidence obtained at first hands. But what is to be said of a Bill which ignores the recorded official evidence and experience as to the causes of the strikes, and proceeds chiefly on the recommendations of the Municipal Commissioner? For these reasons, your Excellency, I regret I cannot give my adhesion to the Bill in its present form, in which I consider it is one-sided coercive legislation.

The Honourable Ráo Bahádur RANADE said:—I have only a few remarks to make by way of addition to what the Honourable Mr. Javerilal has said. In the first place I wish it to be distinctly understood that those who object to the Bill do not object to the principle of it, but only to the large extensions of that principle in various directions. The Bill seems to me to press heavily in three directions, it seeks to bring all Municipalities within its scope, it extends the scope of the acts to which its punishments are meted out, and it enlarges the list of the classes of workmen to whom these punishments are to be meted out. In this threefold direction the Bill is an extension of existing Indian legislation, and it is in regard to this extension of the scope of the Bill that the objections have been chiefly directed. Nobody questions the right of the Bombay Municipality to try and protect itself against combinations; but to meet this difficulty there was only the punishment of fine warranted by the old law, which law has admittedly worked well for the last twenty years. The punishments have now been made very much heavier, and so far as I can understand it this extension has not been fully justified. The honourable mover on the last occasion compared the Police Acts and the Articles of war to this measure, and said that these special laws furnished by analogy the reason why in the case of municipal servants some strong measures would not be entirely out of place. I must humbly submit that neither the Police Act nor the Articles of war are analogous to the present legislation for the following among other reasons. In the case of the Police force, as also in the case of the army the employer is Government, and though Government has a perfect right to dismiss a servant without assigning a cause, it never dispenses with the services of a Policeman unless he himself forfeits the claim to be so employed by his own negligence or disobedience. The employment for all practical purposes is permanent employment solely dependent on the employé's good behaviour. Not only does he hold his post during good behaviour, but he has regular promotion and sick leave and privilege leave on full or half pay and there is also a provision made for him in his old age, so that Government service is a permanent service with mutual obligations binding on both the employer and employé. There is a reciprocity of obligations and Government may well, in the case of its military and police forces, subject them to terms of this sort, but in the present case the Municipal servants can claim no protection for their own interests. The Calcutta Act is the only precedent in point, but even that Act applies only to the *mehtars*, and it has not been made to embrace the workmen to whom it is proposed to apply this enactment. The Municipality does not undertake to guarantee employment to its servants during their good behaviour, and pay them at such and such a rate as long as they are able to do such and such service, and provide them with pensions in old age. While the servants cannot leave service without notice the Municipality has power to dismiss its servants without notice. The unfair character of these provisions led the Bombay Presidency Association to send in their memorial characterising the Bill as a one-sided measure. That is the view I take of this Bill and that is why I think the analogy of terms imposed by the legislature on the military and police servants does not hold good in this case of private and municipal employes. For these reasons this measure will be characterised as an employer's measure which does not compel the Municipality to protect the interests of the servants in

their employ, and give them encouragement to continue in its service during good behaviour, by giving them something to look forward to at the end of their term of service. As to the observations made by the honourable mover about what has been said by the newspapers on the subject, I have been carefully watching what has appeared in the Press, and, with one or two exceptions, I think the general consensus of opinion is that the Municipality has been too much favoured by the provisions of the Bill at the sacrifice of the interests of its poor servants. That is the view which both the English and Native press have taken, so far as I have been able to follow it. The Municipal servants are truly a wage-earning class. There is no provision for them if they become ill, and on the contrary they may be left to find out other work for themselves at a moment's notice. There is no obligation imposed on the masters; the Municipal servants are worse off than merchants, seamen, emigrants, artizans, and workmen employed for fixed terms or paid in advance. This stringent Act will only strengthen the hands of the Municipal Executive, *i.e.*, the hands of the mukádams, who will have the management of these people, men possibly of their own caste, but who have not in this matter the same interest as those of the persons whom they control. It is for these reasons I think the Bill one-sided, and although it has now passed beyond the stage in which a discussion about its principles is allowed, all I can do is to express my humble opinion that there are grave reasons to apprehend that instead of improving matters, they will only be made worse, not only to the detriment of the employés but in the interests of the employer himself.

The Honourable the Advocate General (Mr. MACPHERSON) said:—As I have not hitherto had an opportunity of addressing the Council on this Bill, I ask permission to do so very briefly now. Although I am temporarily an officer of Government, I have had nothing whatever, directly or indirectly, to do with the Bill. Therefore what I say may, I think, be deemed to be unbiassed, and prompted only by the deep interest which, as an old resident in Bombay, I take in that city, its well being, and municipal government. I at once say that this Bill struck me in the first place as a new departure,—a departure in the direction of special penal legislation which was in the abstract objectionable, and which could only be justified by supreme necessity or something very much akin to it. One would almost suppose from the speeches of the two honourable members who have just spoken, that the object of the Bill was the amelioration of the condition of halálkhores or to provide them with pensions on retirement in old age. The object of the Bill is, of coutrse, nothing of the kind. The object of the Bill, as I understand it, is to protect the public of Bombay in a way that is absolutely necessary. You have the City of Bombay with nearly a million inhabitants, liable at any juncture, on the co-operation of a body of the most ignorant classes, to be plunged into the very direst calamity. It would be no mere inconvenience, but an insanitary danger. The more ignorant those people are the more liable they are to be misled, and the more necessity there is therefore for the public to be protected. At the same time, since they are ignorant, it is necessary to see that their liberty is interfered with no more than it is necessary. Coming to the Bill one has to consider whether there is any parallel or precedent for it; and one looks in vain for any parallel; for no class like those halálkhores is to be found in European cities; but so long as they are here we have to deal with them. Then the question is, is this Bill the most perfect under the circumstances? Is it an enactment the least objectionable under the circumstances? The objections to it appear to be twofold, first, that it is liable to be applied oppressively. But so is every penal enactment that ever was passed, and it does not seem to me that this Bill is more open to the objection of being oppressive and tyrannous than any other penal Bill yet enacted. There never was a penal section that was not open to abuse. The security against such abuse in a competent and honest Magistrate, and this Council, I apprehend, legislates on the assumption that British magistrates are competent and honest and not on the contrary assumption, therefore I am quite unable to see any force whatever in that objection. The second objection is that the Bill is one which punishes individuals and leaves combinations untouched. That objection has been duly considered and weighed by the Select Committee. The Select Committee was formed of individuals who had amongst them trained and practical minds; they applied themselves to this point, and gave it every consideration, and came to the conclusion that effect could not be given to the objection. It seems to me that far more deference is due to the result of the deliberations of a body of that kind than to the comparatively amateur opinions of men who have not had the same opportunity to weigh the matter as Members of the Committee had. I certainly think that by providing for combinations only, the Bill

would be practically useless. What is required is not so much to punish as to prevent strikes, and to prevent them you must have this Bill which reaches at once the first individual who does anything which approaches an attempt to create a strike. If it were possible it would be well to provide punishments for combinations only; but to do so would defeat the object of the Bill, which is to stifle combinations by punishing the earliest act tending to a combination, and so the Bill as it is, is the best available preventive of the mischief which it is the desire of the legislature to prevent. Therefore I have not the slightest hesitation in voting in favour of the Bill.

His Excellency the PRESIDENT said:—I should not have had any remarks to make; but as the Honourable Mr. Javerilal has referred to a remark of mine on the occasion of the second reading of the Bill, perhaps I may offer a reply to it. The Honourable Mr. Javerilal has asked me whether a contented and cheerful service would not be better promoted by a less drastic Bill. I do not think the question is a valid one. It really depends on whether the Municipal Corporation treat their servants liberally or not, and if they do it is extremely improbable they will be left without servants; and I imagine the contrast the Honourable Ráo Bahádur Ranade has drawn between the liberal treatment of their servants by Government and the opposite is applicable in this case. The Corporation will no doubt take the advice the Honourable Ráo Bahádur Ranade has been good enough to offer. The Honourable Mr. Javerilal quoted from one of Mr. John Bright's eloquent speeches in which he implored labouring men never to give up their power of striking and also expressed his own opinion that it would be impossible ever to suppress the possibility of strikes. I gather from what Mr. Javerilal has remarked that he agrees with Mr. John Bright's views. Under these circumstances I cannot help expressing my surprise at Mr. Javerilal moving the amendments he did aiming at the strikes. I think it was Mr. Javerilal who moved for the punishment of five or more persons who attempted such an offence. And yet Mr. Javerilal concurs with Mr. John Bright who implored the labouring men never to give up their power of striking, Mr. Javerilal suggested that the same consideration has not been given by this Government to the halálkhores by appointing a committee to consider the circumstances of their case, as has been done by the Government of India in the case of the mill hands. There was a committee which inquired into the case of the halálkhores, and the result of their deliberations was that legislation of a drastic kind was necessary. But as a matter of fact the answer to any argument of that kind is the argument which has been put forward in Ráo Bahádur Ranade's own words when he admitted that drastic treatment of this kind is absolutely necessary even although he considered it going too far, and that the Bombay Presidency Association thought it is one-sided. Well, now I have just to remark on that point, that I quite understand the argument, and it is this, that the provision of the terms of giving notice is not reciprocal; that whereas the Corporation imposes two months upon the employés, on the other hand the employé is not able to claim the same terms from his employer supposing he wishes to leave. Well, I should have thought if that was the view of those gentlemen who moved amendments to the Bill when it was in committee, that it would have been for them to have moved amendments of that character making the terms of notice reciprocal. But I understand from Ráo Bahádur Ranade's speech that he acknowledges himself that legislation of this kind is not desirable in a case of this kind. But I claim that I have gone as far as anyone could have gone in giving to the present employés of the Municipal Corporation an advantage which was entirely overlooked by the two gentlemen who have chiefly opposed this Bill, and that was by inducing the honourable mover of this Bill, Sir Raymond West, to insert a sub-section (2) to clause 3 which says "the provisions of clauses (*a*) and (*b*) of sub-section (1) shall not apply to persons at the date of the passing of this Act in the employment of the Corporation or of a Municipality until the lapse of two months from such date." It was Government that inserted that clause, and the gentlemen who chiefly opposed this Bill never thought of it. There was nothing in their amendments approaching the degree of liberality which the Government has extended to people now in the employment of the Corporation; so that I am not prepared to admit, so far as Government is concerned, the charge of illiberality brought against it is made out. It was only for very exceptional reasons that a measure of this kind was thought desirable; and when I came to consider the Bill, I found it was impossible for me to disapprove of it. The discussion appears to me to have gone into every question that can possibly be raised on the terms of the Bill, and I am glad at any rate to observe, from the speeches of the honourable members who chiefly opposed the Bill, and from the petition that has been presented to us by the Bombay Presidency

Association, that it is acknowledged by those who object to the Bill that the principle of it is necessary and that there should be some punishment hanging over the heads of these persons to compel them to give due notice before leaving their service, because otherwise the City of Bombay might run a very grave risk of getting into a serious insanitary condition. If this is acknowledged, then I think Government may rest content that it has endeavoured to carry out what is now acknowledged to be a necessity.

The Bill was then read a third time and passed, the Honourable Mr. Javerilal and the Honourable Ráo Bahádur Ranade dissenting.

Bill read a third time and passed.

His Excellency the PRESIDENT then adjourned the Council.

By order of His Excellency the Right Honourable the Governor,

A. C. LOGAN,
Secretary to the Council of the Governor of Bombay
for making Laws and Regulations.

Poona, 20th October 1890.

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PART V.

PROCEEDINGS

OF THE

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