COUNCIL OF THE GOVERNOR GENERAL OF INDIA

VOL. 12

APRIL - DEC.

BOOK NO 2

1873

P. L.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 *Vic., cap.* 67.

The Council met at Simla on Thursday, the 7th August 1873.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*
His Excellency the Commander-in-Chief, G. C. B., G. C. S. I.
The Hon'ble Sir Richard Temple, K. C. S. I.
The Hon'ble B. H. Ellis.
Major-General the Hon'ble Sir H. W. Norman, K. C. B.
The Hon'ble A. Hobhouse, Q. C.
The Hon'ble E. C. Bayley, C. S. I.

OBSOLETE ENACTMENTS BILL.

The Hon'ble MR. HOBHOUSE moved that the Final Report of the Select Committee on the Bill to repeal certain obsolete enactments, be taken into consideration. He said that it would be necessary to make some observations in regard to the measure before the Report was taken into consideration by the Council; because this was one of those Bills of which the importance depended on the details. The enacting part of the Bill admitted of little discussion; what was important was that which was contained in the schedule which had been the subject of consideration, re-consideration, and great labour by those of the Select Committee who had worked upon it. The subject-matter of the Bill was described sufficiently in the preamble. It was specified to be enactments which had ceased to be in force otherwise than by express and specific repeal, or had, by lapse of time and change of circumstances, become unnecessary, or which merely repealed prior enactments. All these we proposed to repeal, and it would be necessary to explain the principles upon which we had dealt with this matter.

In the first place, we had received suggestions from divers quarters that we should take the opportunity, in passing this Bill, to remove from the Statute-book several laws which the writers alleged to have been found inconvenient. It was, however, quite clear that to do so would be to act entirely contrary to the principles of such a measure as this. The object here was to relieve from the

Statute-book all matters which had become dead, or unnecessary, by lapse of time and change of circumstances, and there were two objects to be kept in view; one was to make the enactments clear and more intelligible than they at present were, and the other was to abbreviate the mass of matter for the purpose of publishing a new edition of the enactments in force in India. Therefore, if the law was causing inconvenience, that it was proved to be a living law. Its inconvenience was a question which must be dealt with on its own merits, and in another proceeding; we here only endeavoured to relieve the Statute-book of dead laws and unmeaning matter.

That was one of the principles kept in mind in framing the schedule. Another was, that if any doubt had been felt whether an enactment was or was not doing work, we had given the enactment the benefit of the doubt, and we had not put it into the schedule. We had thought it better to leave upon the Statute-book all those laws in regard to which there was any doubt, than to strike out any the loss of which might hereafter prove inconvenient.

The schedule was a very long one, and showed a very considerable number of enactments which were dealt with in one way or another. The whole number, unless MR. HOBHOUSE had erred in his calculation, was three hundred and twenty-five; and he ought to mention here that we had commenced on a much smaller scale. When the Secretary, Mr. Stokes, originally framed the schedule, he had not ventured to touch the Bombay Regulations, and there were only eighty-eight enactments dealt with; that number had swollen to its present dimensions, and it had done so by the exertions of gentlemen, who, as we had taken care to mention in the Report, had given much valuable assistance, and of whom MR. HOBHOUSE also thought it right to make mention in this Council. Those gentlemen had taken great trouble and pains to assist us in the matter; and, in the first place, he would refer to the assistance received from Mr. Raymond West, who was then Judicial Commissioner of Sindh, and had since been deservedly promoted to the High Court of Bombay; and secondly, to that received from the Judge and Assistant Judge of Ratnagiri, Mr. Birdwood and Mr. Parsons. Those gentlemen had sent us a long list of Bombay enactments which they desired to be excised from the Statute-book. Some of them might have been dealt with by the Bombay legislature; others could not, and, therefore, it was thought advisable to deal with them altogether by the Council of the Governor General. Those gentlemen were, at the present moment, MR. HOBHOUSE believed, employing themselves with the task of arranging, with a view to republication, the whole of the purely Bombay Statute-book. We had also received much valuable assistance from Mr. Beaufort of the Bengal Legislative Council, and from Mr. Field, Civil Judge of Chittagong, who had sent us some very elaborate papers on the subject.

When Mr. Hobhouse mentioned three hundred and twenty-five as the number of enactments dealt with, that no doubt seemed very large, but considerable deductions must be made from its apparent magnitude. Any body who would cast his eye down the schedule would see that a great number of Statutes had been either entirely repealed, or repealed so far as they had been unrepealed before, that was to say, they were completely swept out of the Statute-book. Unless he erred, there were ninety-one enactments which we had completely got rid of in that way. There were also a large number of sections or groups of sections wholly repealed. Among these, there was a quantity of schedules of Acts previously repealed, and of the sections which repealed the Acts contained in those schedules. There was besides a considerable number of excisions, which amounted altogether, perhaps, to one hundred, which only excluded a few words from a section. With regard to these matters there was a considerable difference of opinion, and we had received from most respectable quarters some objections as to the manner of dealing with the repealing Acts, and with the excisions of a few words from a section. In order to place the Council in possession of those objections, and the manner in which we had dealt with them, he would refer to the ablest of the papers that we had received on the subject, which was a communication from the late Mr. Housman, Recorder of Rangoon.

He might mention that that gentleman, who had lately died, had made several communications to us on this subject and others, communications which were marked by great ability, and always contained trenchant and fearless criticisms on our work. Now, nothing could be so great a comfort to a man engaged in any work as to have that work ably criticised. If you agreed with the criticism your work was improved. If you disagreed, you had the confidence given by knowing that an able man had put the case against you as strongly as it could be put. What Mr. Housman said was that—

"so far as it (the Act) repeals enactments which are really obsolete, and are not now required to be read in connection with, or in explanation of, other enactments, its effect when passed will be altogether beneficial; but, so far as it touches Acts, the main provisions of which are in active force, and repeals here and there a section, or a few words in a section, and a schedule or the like, the Act seems to me to be not only useless but pernicious.

"In the first place, useless because the labour of the practitioner will not be diminished for he must, in almost every case, retain a knowledge of what the law was under the repealed enactment in order to construe the provisions that remain. If the enactment remains unrepealed and stands part of the Act, it saves further reference. Its presence in no way distracts his attention, for, if it does not form part of what he is looking for, it receives no further notice. So far, then, the repeal of such portions of Acts in daily use as have become dead letters is of no practical utility.

"But the repeal of such enactments as I have mentioned may be positively pernicious, when the obsolete enactments are not to be altogether removed as trees dead at the roots, but

are to be exercised as dead branches from a living tree. In such cases the attention of the practitioner, studying a revised edition of the Statute, is at once drawn to the absence of the section repealed, and he requires to learn whether something may not be latent in its repeal which may affect his case. Thus he is led to dive deeper into books and complications of words, and, perhaps, in the end, he finds some error or some argument to occupy the Court and waste the public time."

He then proceeded to illustrate his meaning by some instances.

Now, Mr. Housman's criticism applied to several different subjects, and MR. HOBHOUSE proposed to show the Council how far it affected each. Take, first, the schedules comprising the various repealed Acts.

Mr. Housman, indeed, did not expressly object to the repeal of repealing Acts, but others did on grounds apparently the same as those taken by him. The objection is that we still shall have on the face of the Statute-book notice that something or other has been repealed, and so the practitioner would be set a-hunting through various editions to find out exactly how the law stood, and how it used to stand. Well, but as long as the Statute-book remained unrevised all the repealing Acts would, though themselves repealed, appear on its face together with the matter repealed by them; and with a properly noted book the practitioner could find his way to the existing state of the law just as easily whether the repealing Acts are, or are not repealed. On the other hand, when the revised edition comes out, the repealed and the repealing matter will all disappear together; and then there will be nothing on the face of the book which can lead the practitioner to suppose that it is his duty to hunt up some extraneous matter before he can safely advise his client, or argue his case if he be a Counsel, or give judgment if he be a Judge.

Another case was when a repeal was effected, but not entirely, but subject to some exception, or with only a partial operation. That was the case in one of the instances which Mr. Housman mentioned, namely, the Evidence Act of 1872. That Act repealed some Statutes, and it also repealed all prior rules of evidence; but it contained a provision that such repeal should not interfere with any positive enactment which was not thereby expressly repealed. That provision, no doubt, would put the practitioner to the necessity of hunting somewhere to find out what was repealed, and, therefore, in such a case as that we thought the Recorder of Rangoon was quite right, and had adopted his advice. There were two or three other cases of the same character, such as the Limitation Act and the Burma Courts' Act, which we had cut out of the schedule and left in the Statute-book. Then there was another class of excisions, which was the omission of a few words from a section. That omission might be for two purposes:

It might be for the purpose of cutting out some words which had become senseless owing to change of circumstances, and, if senseless, calculated to distract attention, or it might be for the purpose of simple abbreviation. He would just give an instance where we had struck out a very few words on the simple ground that the meaning was not clear, if the words remained in. In Act VII of 1839, an Act which referred to Madras Tahsildars, we struck out the first ten words of section two. These ten words were—"And it is hereafter enacted, that from the said day"—something or other should take place. Now in MR. HOBHOUSE'S edition of the Statutes it was utterly impossible to find what the 'said day' was, because it was contained in section one of the Act, and section one had been repealed by a repealing Act. It was omitted from his edition, and he could not discover what the 'said day' was. It was obvious that when the Statute-book got into that state, it was very much clearer and less puzzling to have such words struck out altogether. We had, therefore, in the schedule struck out from the Statute-book all those words which, under change of circumstances, had become meaningless by reference to things, which had ceased to exist. For example, we find Courts and Officers such as the Courts of Adalat or Sadr Amins spoken of when their places had been taken by more modern substitutes, and the particular functions for which they were mentioned was gone. He would next advert to the more doubtful case, where words were struck out for mere purposes of abbreviation, and that was a case on which differences of opinion might fairly exist. What we did, was to consult our Secretary who had in hand his great work of revising the Statute-book. Nobody could certainly form so good an opinion on the subject as the man who would have to put the whole thing together when the alterations had been made. It was Mr. Stokes' opinion that we had better retain those parts of the schedule which effected simple abbreviations in the Statute-book. The same thing had been done before by prior repealing Acts. This course would have on the whole the effect of bringing the language into the form most approved in modern times; it would make it more clear; it would make it, by the united force of those repealing Acts, considerably shorter, and he thought we might fairly follow that opinion in retaining the schedule as it was. There were the principles on which the schedule had been framed, and MR. HOBHOUSE would now sum them up. We had decided that the Statutes must be entirely obsolete and dead before we could reject them; where there was a doubt about them, we had retained them. In the Statute-book we had repealed all repealing Acts, excepting where the repeal was made with some qualification. Where that qualification existed, we had thought it better to continue the repealing Act on the face of the schedule. We had pruned away all words that had been brought to our attention calculated to mislead or distract the counsel or Judge, and we had also effected some excisions for the purpose of abbreviation.

MR. HOBHOUSE thanked Mr. Stokes for reminding him that he ought to have mentioned, in particular, a colleague, Mr. Chapman, who gave great attention and bestowed great care on this Bill when he was at Calcutta. Mr. Inglis and Mr. Dalyell were both on the Committee, and represented the views of the Governments of the North-Western Provinces and Madras. If the Council would look at the schedule they would see the enormous quantity of work which had been done in reference to Bombay. The greater part of the schedule was made up of enactments relating to Bombay, and that was the work, in the first place, of Mr. West, Mr. Birdwood and Mr. Parsons, and, in the second place, of Mr. Chapman, who went through it in detail and with great labour when he was at Calcutta.

The Hon'ble MR. ELLIS said that he must confess that the paper of Mr. Housman had very considerable sympathy from him, and his doubts had only been partially dispelled by what had fallen from the Hon'ble Member in charge of the Bill. In dealing with the first class of obsolete enactments affected by this Bill, that of whole Statutes which were now being removed from the Statute-book, the work was one of unquestionable utility, and the thanks of the public were due for what had been done in this matter by the gentlemen who had had the consideration of the Bill. But the objections taken by the late Mr. Housman, MR. ELLIS thought, had a great deal of force. In reference to one class of cases, his objections were admitted, and their Hon'ble colleague had acceded to his views. But in respect to the others in which his advice was not followed, he (MR. ELLIS) thought there was this to be said, that the whole utility of this Act depended upon the completion of the great work to which the Hon'ble Mr. Hobhouse had alluded; and it would be a matter of considerable regret if that work should remain incompleted, while those alterations in the Statute-book which, without that work, were calculated rather to puzzle people than to assist them, were being carried out now. It was, therefore, to be hoped that the learned Secretary would have the leisure, as he had the ability, to complete speedily the work on which he was engaged; otherwise he (MR. ELLIS) anticipated that great obstruction would be thrown in the way of those who had to deal with the laws, instead of assistance being afforded them. With regard to the question of the excision of sections,—one of the points raised by Mr. Housman,—he would mention that in the Bombay Local Funds' Bill, for example, there was a clause which legalised all that had been done in the way of levying local cesses, before the Act came into operation. That clause was to be removed. It was quite true that no one could now bring an action owing to the limitation of time, but he thought that for the history of legislation, and for the benefit of those who wished to consult the law in difficult cases, or to ascertain the course of legislation, it would be better that such clauses should be retained. There were other instances in

which mere words had been cut out as being senseless or puzzling, but he would remind the Council that it was this very repealing of enactments that caused the puzzle. He (MR. ELLIS) hoped no such results would follow in the present case, but he must confess to having his doubts. He, however, did not wish to oppose the consideration or passing of this otherwise valuable measure. He would repeat that he shared some of Mr. Housman's doubts, and he could only look to the early fulfilment of the learned Secretary's intentions, as the remedy for preventing any mischief arising from what was now being done.

The Hon'ble MR. HOBHOUSE said that he was not the least surprised that the pertinent remarks of Mr. Housman, which were put in an able and clear way, carried much conviction with them. He did not understand, however, how far his Hon'ble friend, Mr. Ellis, carried his doubts; whether he applied them to simple repealing Acts, or whether he applied them to those expressions which did actually create ambiguity and doubt, or whether he applied them only to those passages which were cut out for the purpose of abbreviation. With regard to the two former classes, MR. HOBHOUSE was clearly of opinion that the schedule was rightly framed, but with regard to the latter class, he did not express a very clear opinion, and he deferred to the judgment of the man who had the work in hand. There was no doubt that every alteration of this kind destroyed the historical continuity of legislation, but the object of the revised edition of the Statute-book was to give to the Judges and Counsel in India a practical work which should tell them what the existing law was, and which, in the enormous bulk of cases, would be a safe guide to them. It was only in a very few cases necessary to trace the history of legislation; when that necessity arose, it would doubtless require the consultation of books other than the existing Statute-book.

MR. HOBHOUSE believed that nothing could be more valuable, as part of the history of India, than the Regulations and the preambles which were affixed to them. He never rose from the perusal of one of those Regulations without feeling that he knew more of the history of India than he did before. Still, the inconvenience of having the Statute-book filled with a quantity of matter which was not now law, would be much felt by the practitioner, and would scarcely be counterbalanced by any degree of instruction which he might receive from the historical character of the contents. We had, therefore, confined ourselves to the single practical object of bringing actual law into as compact a form as possible.

His Excellency THE PRESIDENT said:—"I wish to say, that this measure is the result of a very careful consideration of the subject by the Legislative Council,

when it met at Calcutta in the winter; that it was referred to a Select Committee upon which Mr. Chapman, Mr. Dalyell, and Mr. Inglis respectively represented the views of the Governments of Bombay, Madras, and of the North-Western Provinces; and that that part of the Bill which relates to Bengal was carefully gone through by the Hon'ble Mr. Beaufort, who is one of the highest authorities upon the law of Bengal. Therefore, what we are doing now is simply bringing to a conclusion the labours of the Council at Calcutta, assisted by Hon'ble Members not now present.

"There is no doubt, as the Hon'ble Mr. Ellis has said, that if an amended edition of the Indian Statute-book is published, omitting all that portion of the law which has been repealed by subsequent legislation, it will not have the same historical value as a complete edition of the Acts and Regulations as originally passed. But, as I understand it, efforts have recently been made in India, as also in England, not for any historical purpose, but with the practical aim of reducing the mass of law which has, and must have, a tendency to increase year by year, within a moderate compass, so as that those who have to obey the law, and those who have to administer it, may have the actual state of the law clearly before them.

"In this point of view, it seems to me that the work is made more complete by removing, not only from the Statute-book any enactment which has become obsolete, but also by removing such parts of enactments as may have become obsolete.

"Therefore, I think the object of bringing the law into as complete a shape, and into as small a compass as possible, is better met by the course taken by this Bill, namely, dealing not only with whole enactments but also with parts of enactments, than it would be if only whole enactments had been dealt with, and obsolete portions of enactments left untouched. In respect to the historical interest of old laws, the complete Statutes, Acts and Regulations can always be consulted by any one who wishes to refer to them. I think the Council are very much indebted to my Hon'ble friend, Mr. Hobhouse, and to those who have assisted him in this work, because the advantage of placing the law in a clear shape is very great."

The Motion was put and agreed to.

The Hon'ble Mr. Hobhouse then moved that the Bill as re-amended be passed.

The Motion was put and agreed to

BURMA TIMBER BILL.

The Hon'ble MR. HOBHOUSE also moved that the Final Report of the Select Committee on the Bill to amend the law relating to Timber floated down the rivers of British Burma, be taken into consideration. He had only a few words to say in explanation to the Council of the small alterations effected by the Select Committee in this measure. It would be in the recollection of Hon'ble Members that the object of this Bill principally was to legalize the imposition of an *ad valorem* duty on timber, and to consolidate the law on the subject.

The present rules were imposed under certain rules made under the powers, or supposed powers, given by the Forest Act. Doubts arose whether those rules were legal at all, and an Act was passed in the year 1869, for the purpose of legalizing those rules, but that Act gave no power, such as the Forest Act did, of altering the rules from time to time. Now, the mode of charging the duty provided by these rules was a charge of so much per cubic foot, and it was found very inconvenient to levy the duty in that way, and, in point of fact, the Local Government and the Timber owners came to an agreement by which the timber owner paid an *ad valorem* duty instead of a charge per cubic foot.

It was desirable to put this mode of taxation upon a distinct legal footing, and, therefore, what the present Bill did was to enable the Government to charge the duty by measurement as now, or *ad valorem* as the parties and the Government both thought best. The maximum rate of duty was kept very nearly to the same amount as at present; in fact it was exactly the same when the duty was by measurement, and if it was an *ad valorem* duty. The maximum would be a small fraction in excess of the present duty by measurement. That was the nature of the Bill as it was introduced; only it then referred to all the rivers in British Burma. We did not want to alter the law on this point, and, therefore, in Committee we altered the language and adopted the same language which was used at present, and instead of dealing with all the rivers of British Burma, we had empowered the Chief Commissioner to levy the duties in any of the rivers of the Pegu, Martaban and Tenasserim Provinces. Whether that made any practical difference, MR. HOBHOUSE was not aware, but in this Bill we had described the area of taxation precisely as it was described in the existing Acts. The only other alteration effected was this: besides the foreign timber, there was a quantity of timber, the produce of Government forests, upon which no duty was levied; but certain royalties were paid which were settled by contract with those who felled the timber. The Forest Act gave certain powers for regulating the floating and carriage of timber upon all rivers in British Burma, and the Local

Government now desired to have all their rules respecting floating timber in a single Act. We had, therefore, taken out of the existing Forest Act the powers of making rules for the regulation of floating timber on rivers. We had slightly amplified those rules in section six in this Bill, and we now conceived that all the law relating to floating timber would be found in this one Act.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE then moved that in section one, clause third of the Bill, instead of the words "passing thereof," the words and figures "seventh day of September 1873" be substituted

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that in section five, line 1, the word "heretofore" be omitted, and that after the word "levied" the words "before this Act comes into force" be inserted. Also that in the eighth line of the same clause the words "the passing of" be omitted, and that after the words "this Act" in the ninth line, the words "comes into force" be inserted.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE then moved that the Bill as re-amended with the further amendments agreed to, be passed.

The Motion was put and agreed to.

NORTH-WESTERN PROVINCES AND OUDH MUNICIPAL BILL.

The Hon'ble MR. HOBHOUSE also moved that the Report of the Select Committee on the Bill to make better provision for the appointment of Municipal Committees in the North-Western Provinces and Oudh, and for other purposes, be taken into consideration. He said we had had so many different Bills on this subject of Municipal Committees, those namely for the Panjab, for the Central Provinces, for British Burma, that it was not always easy to keep one's head clear as to the exact position of any one of the measures. Perhaps he ought to state to the Council what the position of the present Bill was, though it had been stated before. With regard to the North-Western Provinces, the first Act on this subject was passed in 1850. But that Act provided for the establishment of Municipal Committees only in those cases in which the inhabitants of towns desired them. It was found that the Act did not work widely enough, and in the year 1868 was passed the Act which we were now superseding. That Act enabled the Local Government to erect Municipalities on its own authority whenever it thought fit. It had been at work since the year 1868; it had worked to the

satisfaction of the authorities concerned; and although we were now inserting into it some small amendments which had approved themselves to the Council in other cases, yet if the North-Western Provinces alone were concerned, Mr. HOBHOUSE did not suppose we should require any amended Act at all. As regards Oudh, the case was different. Oudh was one of those countries to which the Executive Government had power to apply the Act which was passed for the purpose of the Panjab, but they had only power to apply it for a term of five years. The Act had been applied to many places in Oudh, and the terms of five years, were either just expired, or rapidly expiring, and it was, therefore, necessary to meet the wants of those places. It was also found that Oudh, in its geographical, political, and social circumstances, was more closely ranked with the North-Western Provinces than it was with the Panjab, and the Oudh Government wished that the same Act might apply to themselves and the North-Western Provinces. Therefore, a new Act being necessary, it was convenient to include in the proposed Act such amendments as further experience and further discussion in the meantime had shown to be desirable. As regarded the North-Western Provinces, the present Bill contained little alteration in principle. The chief alteration was that it imposed certain delays between the intentions and the acts of the authorities, both in the matter of applying the Act to any district, and introducing into it any Municipality at all, and also in the matter of taxation.

There was another alteration which was one of detail, but it related to rather an important subject, which Mr. HOBHOUSE thought he ought to mention before the Council proceeded to pass the Bill.

He had expressly mentioned it with respect to the Panjab measure, but it had better be mentioned again with regard to the present measure, before the Council took the report into consideration. In the debates which took place upon Act VI of 1868, which we were now superseding, a great deal of anxiety was expressed lest the rates levied under the powers about to be conferred upon Municipalities should be spent in a reckless and profuse way, and it was said that a quantity of money would be spent in providing gardens for Europeans, and so forth. However, by that Act (VI of 1868), Municipal Committees had power to spend money upon any kind of local improvement. These words were very broad, and it was almost impossible to say what might not come under the term "local improvement." When we were considering the Act for the Panjab, his Hon'ble friend, General Norman, brought that circumstance to the attention of the Council, and gave notice that in Committee he would move to alter the words. The Committee thought he was right, and instead of using the words 'local improvement,' we thought we ought to put in something which pointed more to the utility of the work. The same alteration was imported into the present Bill when it was prepared. We, therefore, put in the words 'general utility' instead of 'local

improvement.' Now, it was quite impossible to be very precise in these matters, and if we were to attempt to be so, we should probably find ourselves hampering the Committees in some unexpected way or other. We thought, therefore, that by introducing the condition of utility into the works which the Committees were empowered to perform, we should be going as far as we could well go; we should be giving notice that it was not legal to spend money raised by rating or taxing Municipalities for the purpose of mere luxury or ornament. The Council would probably like to know how an alteration of that kind was likely to operate, and for that purpose he would refer to a report made by the Government of the North-Western Provinces upon the working of those Municipal Committees. This report was for the year 1871-72. It gave us a tabular statement of the sums that had been collected, and the sums which had been expended, and he found that about 76 per cent. was spent on such matters as police, conservancy, original works, the nature of which he would explain presently. The rest was spent upon such matters as roads, water, education, dispensaries, and a rather large item of nearly 8 per cent. headed "miscellaneous." The works and repairs were thus described:—

"In original works and repairs the Committees have done well, and this is perhaps the most successful part in their administration. The principle, steadily inculcated by the Lieutenant-Governor personally and in the reviews of the Budgets and Expenditure Reports, that the people shall have tangible proof that they get a valuable return for the taxes they pay,' in the shape, of better roads, more light and air in their crowded thoroughfares, proper drains, schools, dispensaries, markets and slaughter-houses, is bearing good fruit. Nearly thirty-eight per cent. of the total expenditure was on local improvements of this sort, which give the Committees the best of all claims to the confidence of their fellow-citizens."

Then the Report adds: "In many Municipalities something has also been done towards ornamentation, public gardens, etc." With regard to the amount spent upon such matters as ornamentation, public gardens, etc.,—that is dealt with under the head of 'Miscellaneous Expenditure,'—it seemed that there was not a great deal of money spent in this way when we compared the total expenditure upon such objects with the total expenditure of the Municipalities. In particular Municipalities, however, there had been some large sums expended in this way. What the North-Western Provinces Government said on the subject was this:—

"The large expenditure under Miscelleaneous, requires some explanation, amounting as it does to Rs. 1,38,710, or more than 7½ per cent. of the total expenditure. The growth of charges of this nature is very jealously watched, and every endeavour is made to reduce them to a minimum. * * * * * * * *

The debit against Agra includes grants to the Cantonment Fund for Police of Rs. 9,000, to the Riddell Museum (since withdrawn) of Rs. 2,400. * * * *

At Bareilly Rs. 1,349 were spent on gardens, * * * *

The Allahabad Committee contributed Rs. 8,000 to the construction of the Alfred Park."

MR. HOBHOUSE did not pretend to say that such an object as a museum or a garden might not, under certain circumstances, be objects of general public utility, but the circumstances would perhaps be exceptional, and he thought this change in the words of the Act, and the public announcement of it, would be a warning to Committees that they must be careful to see that they did not spend public rates on any works which were merely ornamental or merely for the enjoyment of the higher classes. It was quite clear that the vigilance of Sir William Muir was strongly directed to this object, for he said:

"The growth of charges of this nature is very jealously watched, and every endeavour is made to reduce them to a minimum;"

and MR. HOBHOUSE thought that the alteration proposed would tend to strengthen his hands on this point.

Major-General the Hon'ble SIR H. W. NORMAN thought that the alteration in the Bill to which the Hon'ble Mr. Hobhouse had referred, by which funds should only be expended on works of public utility, was both necessary and desirable. He (GENERAL NORMAN) did not mean to say that parks and gardens were not useful works in their way, but he did not think it was right generally that the poorer class of the people of this country, should be taxed for such objects. In regard to the Alfred Park at Allahabad, which had just been mentioned, and for the construction of which the Municipality had contributed Rs. 8,000, he very much doubted whether the greater part of the tax-payers from among whom that amount had been raised would derive the benefit from the work.

The Hon'ble MR. ELLIS said that he must beg to dissent from the views advocated by his Hon'ble friend on the right (Major-General Norman). For his own part he (MR. ELLIS) was of opinion that a park or public garden was of unquestionable utility, and he believed such parks and gardens had a highly civilizing effect upon the mass of Natives resident in towns. He for one could not join in this crusade against public gardens, and had he to administer the Bill, as now drawn, he should say that there was no objection whatever to public parks and gardens being made at a reasonable and moderate cost, from Municipal funds, under the terms of the Bill as it now stood. He would say, moreover, that such parks and gardens often had an excellent sanitary effect upon the towns to which they were attached. A jungle, or a wilderness in the vicinity of towns, was often converted into a healthy and pleasant spot, and he need only refer to one instance with which his Hon'ble friend, Sir Richard Temple, was well acquainted, namely, the glacis of the wall surrounding Lahore. That was a marked instance of what could be done by the expenditure of local money in effecting a very great sanitary

improvement. Therefore, he (MR. ELLIS) could not agree to the sweeping denunciations which were lately coming into fashion as regards these public parks and gardens. Of course, if a park or garden was devised solely for the amusement of Europeans, or the higher classes of the Native community, such a work could not fairly be charged to Municipal funds; but a public garden or people's park, open to all classes, and of which crowds of Natives always gladly availed themselves, was a work that it was reasonable and proper to spend local funds upon.

The Hon'ble SIR RICHARD TEMPLE said that he entirely agreed with what had fallen from his Hon'ble friend, Mr. Ellis. He (SIR R. TEMPLE) thought it quite impossible to exclude public gardens or parks under any definition, except one that would exclude places which were necessary for the civilization of the public, for public improvement in every possible way, for the instruction of the people in agriculture, arboriculture, and other similarly important matters. Surely his Hon'ble colleague (General Norman) must know very well where the park was to which reference had been made. He (SIR R. TEMPLE) might explain that it occupied that space of ground which was formerly the site of the temporary barracks; it was to the north-west of the site of Government House, and included some very unhealthy places. Altogether it was a very considerable improvement, and he believed that it was frequented by every class of the community. Certainly in no place like Allahabad could the upper classes be called unimportant: and such classes contributing directly and indirectly to the municipal resources might be entitled to some improvements being made for their benefit.

There were many European families at Allahabad, brought together by the concentration of a large number of departments, and there was also a large number of the upper class of Europeans with their Native dependants and servants. SIR RICHARD TEMPLE, therefore, did not think that the North-Western Provinces Government was in any way to blame for allowing the Municipality to contribute Rs. 8,000 for such a purpose. He considered the park a great public improvement.

His Excellency the COMMANDER-IN-CHIEF said that he entirely agreed with what had been said by his Hon'ble friends, Mr. Ellis and Sir Richard Temple. He could not conceive why a public garden situated close to a populous city should be considered otherwise than as a work of general utility. He was aware that the population of Calcutta had been desirous for the last ten years, or more, of having a public garden in that part of Calcutta which was remote from the Maidan, and His Excellency was of opinion that the ill-ventilated and unhealthy

suburbs of Calcutta, more than any other place that he knew, required a people's park. He could not, conceive a work of greater public utility than one of this nature. As regards the appreciation of the Natives for such works, he remembered being very much struck, when he first arrived in India, by what he saw at Delhi. A large number of the population, the poorer as well as the middle class, were in the habit of assembling in a garden situated in the city, which was thrown open for their amusement by the Begam Somru. People who had pet birds, brought them out and hung their cages upon the trees, and it was a very remarkable and a very favourite place of resort. His Excellency believed that there were no people who appreciated gardens more than the Natives of India. With all their apparent want of sentiment they appreciated the beauties of nature, and this fact was exemplified in many ways. Wherever, for instance, there was a way side resting place, or a Hindu temple, there you found a graceful cluster of trees, or some tasteful ornamentation of a similar kind about it, which rather surprised you as evincing a feeling which perhaps you had not at first sight attributed to the people. In regard to the Alfred Park, that was a very useful work, and one likely to do a great deal of good to the people. His Excellency, therefore, would be extremely sorry to think that the municipal rules should exclude such places as public parks and gardens. Of course they should have their place, and be considered in relation to other urgent works; that must entirely depend upon the judgment and good sense of the Committees who had to deal with them; but in good time, and in their proper place, His Excellency could not conceive anything in its way could be more beneficial.

The Hon'ble MR. BAYLEY said that he had little to add to what had been already said by the three Hon'ble Members who had spoken before him, with whose views he entirely concurred. In confirmation of what His Excellency the Commander-in-Chief had said, he would observe that the very first enjoyment which a Native allowed himself when he became wealthy was to plant a garden in whatever part of the country he might happen to reside for his own enjoyment. The difference between what the municipalities were doing, and what the Natives did for themselves, was that the gardens made by the former were open to all classes of the public, to the poor as well as to the rich.

Until His Excellency the Commander-in-Chief's speech, MR. BAYLEY was not aware that any native public garden had existed in Delhi before the mutiny. It was a curious and interesting fact, but the whole of the present public gardens at Delhi were, MR. BAYLEY believed, in existence as private gardens before the mutiny. The only difference was that, having come into the possession

of Government, they had been somewhat improved and thrown open to the entire population of the place. He had no hesitation in saying that the people of Delhi enjoyed these gardens extremely, and that they afforded a means not only of healthful exercise and pleasant relaxation, but a mode of spending idle time, which, but for them, would often be spent in a far less profitable manner.

With regard to the Alfred Park at Allahabad, it was, he believed, situated in the nearest available place to the native city. It was impossible to have got land anywhere else within reasonable distance of the city, and what had been a most unsightly piece of ground had been converted into a resort of much beauty, which was popular both with the European and Native public.

As regards museums, MR. BAYLEY was not prepared to defend generally expenditure on this head. He was not in favour of the maintenance of museums, small local museums; but with regard to the Riddell Museum at Agra, there were special reasons which he thought might be held to warrant the action of the Municipality. The museum was placed in a very valuable building, one which, to MR. BAYLEY'S knowledge, had cost the owner a very large sum of money.

That gentleman had presented it to the public for the maintenance of a museum, and it had been accepted on that condition. MR. BAYLEY believed that the Government of the North-Western Provinces had for some time contributed to the maintenance of the museum from the public funds, and, therefore, he did not think the Municipality could justly be blamed for following the same course. Moreover, Agra was a place of considerable antiquity, and possessing many interesting historical associations. There were also several places of great interest and early age in its neighbourhood, and the Agra Museum had been of use as a repository for remains of value, which might otherwise have been neglected and lost.

MR. BAYLEY did not, however, wish to question the Lieutenant-Governor's action in disallowing the contribution from the Municipality, he only referred to this particular instance to show that even some of the items of expenditure upon which the Hon'ble Member in charge of the Bill had animadverted as apparently extravagant, might be capable of reasonable explanation.

His Excellency THE PRESIDENT said :—" The Bill which we are now considering is framed entirely upon the lines of those Bills which were considered in Calcutta in the winter, and upon which there was considerable discussion.

"With respect to the observations made to-day, as I understand my Hon'ble friend, Mr. Hobhouse, he did not contend that under no circumstances should a public park or garden be considered a work of "general utility;" he desired to point out that the works on which the funds of Municipalities can, for the future, legally be expended are defined as being works of "general utility," and that the Lieutenant-Governor of the North-Western Provinces, who would have to administer the law, might object to, and prevent, any works which he did not consider to come fairly and properly within that definition. It is evident, as the Hon'ble Mr. Ellis has observed, that if a public garden or park is so situated as that it would be only of use to European residents or the richer classes, it could not be considered to be of "general utility," while, on the other hand, a public park or garden which is conveniently situated for, and accessible at all times to, the great mass of the population of a large city, would undoubtedly be a work of "general utility." The words must be construed with reference to particular cases as they arise.

"With respect to the particular instance given, namely, the Alfred Park at Allahabad, I do not presume to offer an opinion, not having so much acquaintance with the locality as is possessed by other Hon'ble Members. I am, however, perfectly content to leave the discretion in this matter to the Lieutenant-Governor of the North-Western Provinces, and I am glad to have this opportuinity of saying that in the administration of the former Act and of municipal affairs,and municipal taxation, Sir William Muir has taken the greatest pains, and has now, for two consecutive years, submitted reports, which the Government of India have received with great satisfaction.

"It has been the desire of Sir William Muir that Municipal Committees should have a real share in the administration of municipal funds; that they should not simply endorse the views of their European Chairman, but that they should offer their opinions unreservedly, and that those opinions should be listened to with every proper attention.

"The tendency of recent legislation has been, as pointed out by the Hon'ble Mr. Hobhouse, to require further consideration to be given to new descriptions of taxation proposed to be introduced into Municipalities, and the amendments of the Act of 1868 that have been made in this Bill, have all been in that direction.

"I believe it to be most essential that measures of taxation should be carefully considered before they are introduced, especially in India, where the people can often usefully co-operate with the Government in advising as to the manner in which taxation can be imposed with the least oppression, and the least incon-

venience to the people; and in that view the Municipal Committees will, I am satisfied, be of great assistance to the Government. Sir William Muir, in his last report, mentioned a fact which the Government of India have noticed with satisfaction, namely, that the Municipal Committees of the North-Western Provinces have made a substantial commencement in using the power given to them to contribute funds for the aid of public education in their Municipalities, and I anticipate that this object is one in which the Municipalities all over India will be ready and willing to assist. There are many subjects with which the Committees have power to deal. The first duty imposed upon them is to maintain an efficient police, and their next duty is to keep the public street, roads, drains, tanks and water-courses of the Municipality, clean and in repair. It must depend upon the wealth of the Municipalities, and the funds available, how far they can deal with subsequent and optional objects, upon which they are allowed to expend money; that is to say, the watering and lighting of streets and roads; the construction and maintenance of works of general utility, conservancy, and the promotion of education. We must be prepared to find throughout India great differences in the wealth of Municipalities; some may be only able to meet the essential matters with which they have to deal, while others may be rich enough to incur optional expenditure.

"There is one other remark which I have to make upon the conduct of Municipalities in the North-Western Provinces under the administration of Sir William Muir, and that is, that from the first, Sir William Muir has taken special pains to prevent the octroi duty, which I believe to be a wise tax, and one that can be used with advantage in many parts of India, where towns are in the main confined by fixed boundaries, from becoming a transit duty. He has calculated the fair average rate of consumption of the different articles in each Municipality, and where it is found that the duty exceeds the proportion which it should bear to the internal consumption, he has taken measures to reduce it. In these, as in other matters connected with the administration of the North-Western Provinces, Sir William Muir deserves the cordial thanks of the Government of India."

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE then spoke to the motion of which notice had been given that the Bill as amended be passed. He said that as we were now passing a measure which we hoped would be law for a considerable number of years, he trusted the Council would bear with him while he attempted to "take stock" of the more important effects of this class of measures with reference to

what was foreboded in the year 1868, and to what was done then, and to the evidence we now had as to the mode in which the Act of 1868 was working.

In the year 1868 there were two great difficulties discussed by those who took part in the passing of the measure in question. One was that which had been adverted to by His Excellency the President—the octroi duty—and the other, which was one of still greater importance, was the popular character of Municipal Committees, and their powers of self-government.

With regard to the octroi duty, MR. HOBHOUSE thought every body concurred in expressing fear lest it should become a transit duty, and no doubt there was a great tendency in every small and self-governed locality to save their own pockets at the expense of their neighbours. Sir William Muir, in his report, pointed out that nearly 90 per cent. of the whole of the municipal taxation was levied from octroi duties, and that the people very much preferred that mode of taxation. It was also found to be, when it was imposed, very much more profitable than any other kind of taxation. The Lieutenant-Governor had, therefore, not any intention of checking it, except in so far as it might become a transit duty. The difficulty was how to hit the point at which a tax on commodities would fall on the consumers in the particular locality, and not on the purchasers at a distance. Neither the system of bonded warehouses nor that of refunds would work well. The former was found expensive and troublesome to the people. The latter were so fretty on each occasion that the tax-payer did not think it worth his while to go through the processes necessary to obtain the drawback. The Lieutenant-Governor, therefore, adopted the system of calculating the amount of consumption, carefully contrasting it with the amount of commodities imported into the towns. In that way Sir William Muir was very confident that if he had not entirely prevented the octroi from becoming a transit duty, at all events he had reduced the mischief to very small proportions.

The other point which MR. HOBHOUSE mentioned as being of great importance, was the composition of Municipal Committees. Now, with regard to that there was a very considerable struggle made in Council in the year 1868 to obtain a positive law that there should be popular election in all Municipalities. It was said that if Committees were appointed by Government, those Committees would be fictions and phantoms; that whatever the Government whispered the Committees would echo; that they would be sham institutions, and would merely hold up a veil between the despotic action of the Government and the people on whom it operated. Now that, to a certain extent, was admitted, that was to say, it was admitted that the Committees would be under the influence of Government; but it was answered that we could not improvise all at once independent persons

to sit upon Municipal Committees, and exercise the unwonted powers and responsibilities of self-government. MR. HOBHOUSE would take the liberty of referring to the language used by the Lieutenant-Governor of the North-Western Provinces of that date—Sir William Muir's predecessor. What he said was this :—

"There are towns in which the system of a popular election would not conduce to good government, either the number of citizens, who by their intelligence and public spirit are capable of serving, is so limited that there is little room for selection of a working Committee is to be had, or those whose influence must be respected would not act with persons chosen indifferently. Especially is it necessary, on the first introduction of a system, to conciliate those who are the leaders of society, and to use only the material which, by education and natural ability, is most fitted to perform the duties of the post. It is only to the care in attending to this that, in not a few instances, the success in the working of the Act is due. Very recently when the Act was introduced into the important town of Benares, the Lieutenant-Governor was anxious that at least a portion of the Committee should be elected by the citizens, and suggested this to the Committee of the leading residents appointed to draw up the rules, but the proposal did not meet with a favourable reception. Those native gentlemen who were unquestionably the most public spirited and intelligent in that large town thought that it would be unwise to introduce such a system until the Act had been in operation for some time, and its objects and the duties of the Committee were better understood. The Lieutenant-Governor convinced that they were themselves the best judges on this point, consented to the postponement. Ultimately, even if the present Act remains in force, the rules now in force there will be popularized as they have been elsewhere. Had the Act rigidly prescribed that only by election shall the Committee be chosen, it is not rash to assert that the result would often have been failure, not success. It is the interest of Government that the system shall work smoothly. There is no desire to force improvements rapidly on the people against their will. Undue haste would defeat the wishes of the Government, but as the people understand and appreciate the system of Municipal Government and are fitted intelligently to take their part in it, their privileges have been and will be enlarged. It is not to be expected that the citizens can, at one bound, pass from the position of utter powerlessness to the enjoyment of the fullest freedom as Commissioners or electors. Their power must be increased gradually. By exercising a little, they become fitted to exercise larger powers, and the Government, assured of their fitness, will not be slow to enlarge them."

That was the view which the Council of that day approved. As lord lawrence put it: "The people on the whole were really indifferent to the subject of municipal and local improvements: if left to themselves a great majority would prefer that there should be filth and insalubrity rather than that they should be taxed; but if the initiative was taken in a kindly and gentle way by the local officers; if the leading native citizens were consulted, and improvements were carried out by degrees, then His Excellency thought, particularly where the local Government took the initiative, the natives would gladly follow the lead and accept a system of Municipal Government, which, if left to themselves, they would really oppose."

The course on which our predecessors determined was to offer the rudiments of some popular institutions in the hope that the people might be found capable of self-government. Indeed in a country like this, it was a wonder that there should be any material for self-government; because that kind of government required more practice, more education, more public spirit, more self-denial, more consideration for the rights of others than any other kind of government. It was not so very easy even in other countries which had been favoured by long periods of peace, of orderly government and cultivation, to find material for self-government; but in this country which had been freshly conquered at intervals of about two centuries, which in the meantime had been torn by intestine wars which was divided into two great hostile religions, and these again sub-divided into sects and castes which held aloof from one another, it was utterly impossible to find materials for self-government in any abundance, and it was only a matter of astonishment that we could find them at all. Paper institutions were not of much value, for an institution which was to flourish must grow out of the circumstances and character of those who used it; if it was only brought from without it was much more likely to prove a sickly exotic and to cumber the ground, than to bring forth fruit. We had, however, to deal with a people who, at all events in their village communities, were not unaccustomed to manage their own affairs, and we might reasonably endeavour to give them some opportunity of doing the same thing on a larger scale. Therefore, the Government of the day determined to give them an opportunity, where circumstances were favourable, of managing their own affairs on a scale which was larger than any to which they had been, hitherto accustomed, but at the same time to so narrow the community that anybody could easily see for himself the effect on the community of what he was doing. Now, as said before, we were proceeding in the path of the Act of 1868; we were not making any alteration; we were not doing, as children do with flowers pulling up the plant to see how it was growing; we were only giving it some water and more manure. Were we right in doing this? That depended on the evidence of the way in which the Act was working, and for that evidence MR. HOBHOUSE would refer to the Report of Sir William Muir. With regard to the popular character of the Committees, he said this:—

"The re-organization of the Committees, so as to provide for the appointment of the non-official members by popular election, has made considerable progress during the year. In 1869-70 the non-official members were generally the nominees of the local officer; in 1870-71, 48 towns had the franchise in whole or in part, while in 1871-72 the figures stand as in the margin. The Lieutenant-Governor is in favour of giving the suffrage to all Municipalities, believing that the apathy and indifference which some undoubtedly display may, to a great extent, be removed

Number of towns in which non-official members are appointed wholly by popular election	42
Number of towns in which appointment is partly by election, partly by nomination	13
Number of towns in which appointment is solely by nomination	10

N. B.—Bharutgunj and Sirsa, from which the Act has been withdrawn, are excluded from the above table.

by tact and kindly treatment on the part of the District Officers, and by the Municipalities gradually acquiring the habit of exercising the powers contemplated by the law. The official members of a Committee are never more than one-third the total number. At the head-quarters of a district, they consist ordinarily of the Magistrate, a Joint or Assistant or Deputy Magistrate, the Civil Surgeon, the District Engineer, and the District Superintendent of Police and in towns not at head-quarters, the Government is represented by the Magistrate, the Magistrate in charge of the pergunnah, and the Tehseeldar. While, on the one hand, the official element is strong enough to secure a proper administration of the law and rules, on the other hand it is powerless in the meetings where questions are decided by majority of votes if the non-official members combine, as they are generally ready enough to do, when any measure is proposed not consonant with native or local feeling. Non-official interests are further protected by the rule which requires all important business to be transacted at a special meeting where the necessary quorum is half the total number of members, two-thirds of whom must be non-official."

And later on, he states :—

"A novel mode of popular election was this year proposed by the Barote Committee and sanctioned. Castes and trades here choose their representatives under rules of their own, and these form the electoral body from among whom members of Committee are chosen. If a representative dies or resigns, or if a vacancy occurs in any other way, his successor must be appointed at a general meeting of the caste or trade to which he belongs, and any caste or trade may be called on to re-consider its choice at a general meeting on a petition signed by twenty of its adult members."

In concluding his Report he says :—

"The experience of the past year confirms the Lieutenant-Governor in the opinions expressed in the concluding paragraph of the Annual Report for 1870-71, as to the success which has attended the introduction of Municipal Government into these Provinces. The people may be slow to appreciate the privileges of the suffrage, and apathy and indifference may too often characterize the members whom they may elect, but there are signs of an awakening interest which gives promise of better things to come, and which it is the business of the Government to foster to the utmost. Act VI of 1868 has brought a share in the local administration to every man's door. His Honour's interference with the action of the Town Councils is mainly confined to the prevention of improper taxation, the passing of bad bye-laws, and any tendency to undue expenditure. The educated portion of the community know that a real power is given to them, and this knowledge will soon spread to the masses."

MR. HOBHOUSE confessed that he, for one, was quite content that that knowledge should spread very slowly and very gradually. No doubt, if it was to be durable at all, it must be of very slow growth, for that was the condition of all sublunary things; but he thought that this report gave fair hope that there would be such growth. If, as Lord Lawrence and Sir William Muir advised our Native fellow-citizens, the members of those Municipalities were treated with tact and gentleness; and if they were not driven or brow-beaten; if, whenever they did oppose—as it seemed from the Report that they occasionally did—their opposition was carefully considered; if, when that opposition was founded on reasonable

grounds, it was acceded to with respect, and when not founded on reasonable grounds, it was rationally answered; if the Natives learnt that all the Government officers wanted was to have a full knowledge of the real needs and sentiments of the people whose welfare they were trying to promote; if they learnt that the Government valued truth a great deal more than acquiescence; if they learnt that power and responsibility always go hand in hand, and that the first requisite of self-government was to aim at justice and to have a due respect for the rights of others,—then MR. HOBHOUSE thought there was reasonable hope that in progress of time the Members of these Committees might play a useful part in the service of their country, and that they might render to the Government the greatest assistance which any Government is capable of receiving, that was, the assistance of the people themselves in a number of matters which concerned their daily lives and their daily welfare. It seemed, therefore, to him that we might proceed with confidence in the path laid down for us that the Bill as amended be passed.

As it appeared that the Bill had not yet been published in the *North-Western Provinces Gazette*, MR. HOBHOUSE asked leave to postpone his motion.

Leave was granted.

INSANE OFFICERS' EFFECTS BILL.

Major-General the Hon'ble SIR H. W. NORMAN introduced the Bill to provide for the security and application of the effects of officers and soldiers becoming insane on service, but not removed, put on half-pay, or discharged, and moved that it be referred to a Select Committee with instructions to report in one month.

He said he had already explained the necessity of this measure on moving for leave to introduce it,—a necessity which had been brought to the notice of His Excellency the Commander-in-Chief. He (GENERAL NORMAN) had only to add now that the provisions of the Bill were intended to extend to the whole of British India, and the dominions of Native Princes and States in alliance with Her Majesty.

The Motion was put and agreed to.

PRINCE OF ARKOT'S PRIVILEGES BILL.

The Hon'ble MR. HOBHOUSE introduced the Bill to continue certain privileges and immunities now enjoyed by Prince Azim Jah Bahadur, as Prince of Arcot, to his sons on succeeding to the title, and moved that it be referred to a Select Committee with instructions to report in two months.

When he moved for leave to introduce this Bill, he explained the circumstances which made it desirable. He had now to explain what the Bill contained. The Council would observe that it did not deprive anybody of any privilege which he now possessed. All the privileges which were given to the family of the late Nawab by Act XXXVII of 1858 were retained, but these privileges did not extend to the sons of present Prince of Arcot. We proposed to extend certain privileges to the Prince of Arcot for the time being, but the Act was to remain in force only so long as the title was held by the present Prince, or by one of his sons who were designated in the Letters Patent of the Crown. Therefore, the Act would only endure till the expiry of the generation after the present incumbent. Whether, by that time, the family would have so grown up into manhood as to be able to shake off the shackles imposed upon them, of course could not be prophesied. MR. HOBHOUSE only ventured to hope it would be so, and that it would not be necessary to enact another measure of this kind.

By section two, that one of the family, who was head of it for the time being, was protected from civil process, except with the previous consent of the Government of Madras. The Council would observe that that clause only applied to civil process. At present, the protection extended to the family by the Act of 1858, was from civil as well as from criminal process, but it was thought better that those who were now to receive protection should take their place as ordinary subjects in respect to criminal law, though they were not yet to take a similar place in respect to civil law.

The third section rendered the Prince of Arcot, for the time being, incapable of entering into any contract which might give rise to any precuniary obligation on his part. On that point there was some difference of opinion, and the Madras Government had expressed a doubt whether it was necessary to extend that provision to the Prince of Arcot. MR. HOBHOUSE must confess, that it seemed to him a necessary sequel to protecting a man from civil process. He could not conceive a position more embarrassing than that a man should be capable of entering into contracts; that those contracts should create a legal obligation, but that without the consent of Government that legal obligation could not be enforced in a Court of law. It placed everybody in a false position. The protected person himself would be inclined to enter recklessly into engagements because he knew that there was a power standing between him and his liability, which power was just as likely to be exercised as not. The creditors were induced to give accommodation because they hoped that by their importunity the Government would ultimately allow them to proceed at law, and of course they took good care to cover all risks by exacting the most exorbitant terms for any accommodation they might give. The Government on the other hand were exposed

to the importunity of those creditors who desired to proceed. The practical results, as we had seen, were that the protected person would run recklessly into debt; a number of claims would accumulate against him, and then the Government would be subjected to the most distressing importunities to settle those claims in some way or other. Only five or six years ago we had to settle large claims of this nature, and MR. HOBHOUSE ventured to prophesy that if we kept on protecting generation after generation, we should have the same scenes re-enacted, and we should ultimately have, after a great waste of time and energy, to settle debts again. Therefore, if the Council would be guided by MR. HOBHOUSE'S advice, they would insist that protection from civil process should be accompanied by the inability to make contracts imposing pecuniary liabilities.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill and Statement of Objects and Reasons be published in the *Fort St. George Gazette*, in English and in such other languages as the Madras Government thought proper.

The Motion was put and agreed to.

NATIVE PASSENGER SHIPS' CONSOLIDATION BILL.

The Hon'ble MR. HOBHOUSE also introduced the Bill to consolidate and amend the law relating to Native Passenger Ships and Coasting Steamers, and moved that it be referred to a Select Committee with instructions to report in three months.

He had mentioned on a late occasion that this was almost entirely a consolidation of the law. It had one special object in view, which was to relax the somewhat minute provisions of the existing law which were found to bear very hardly upon the best class of passenger vessels; and any Hon'ble Member of Council who would cast his eye down the pages of this Bill would see that it was very little else but a re-construction of existing Acts with a little re-arrangement, so as to weld them together rather more harmoniously than they stood in separate enactments. The second part of the Bill contained rules as to Native Passenger Ships, but those rules were considerably less minute than the rules which were contained in the present Acts. The third part contained rules as to Coasting Steamers, and those rules were also much less minute than those in the present Act. The fourth part spoke for itself. It was one of those gloomy melancholy chapters found at great length in most Bills which contained penalties; and the fifth part contained the only important alteration of the present law,

which enabled the Local Governments, from time to time, with the previous sanction of the Supreme Government, to make rules concerning the matters on which the new existing law itself made rules, such as the maximum number of passengers, the number of cubic feet of space to be allowed to the passengers, the mode in which provisions were to be supplied, medical arrangements, navigation, and so forth.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill and Statement of Objects and Reasons be published in the *Fort St. George Gazette*, *Bombay Government Gazette*, *Calcutta Gazette*, and *British Burma Gazette*, in English and in such other languages as the Local Government thought proper.

The Motion was put and agreed to.

BOMBAY REVENUE JURISDICTION BILL.

The Hon'ble MR. ELLIS moved for leave to introduce a Bill to limit the jurisdiction of the Civil Courts throughout the Bombay Presidency in matters relating to the land-revenue.

He said that the proposed Bill referred to the Bombay Presidency alone, and it would be asked why, under these circumstances, it was to be dealt with in this Council. The reason was that the two points which were embraced in the Bill could neither of them be dealt with by local legislation. One of the points involved the repeal of a portion of an Act passed in this Council, and the other affected the jurisdiction of the Bombay High Court, and, therefore, could not form matter for consideration in the Local Council. The first and minor point embraced in the Bill was this. When the Land Improvement Act of 1871 was being passed, it was thought proper to repeal certain former enactments having reference to the subject of *Takavi* advances, which were to be provided for in that Bill. Section 13 of Regulation XVII of 1827 of the Bombay Code provided the means of recovering such takavi advances, and to that extent was properly included in the schedule of the Regulations repealed by the new Bill. But it was unfortunately overlooked that the same section also provided for the recovery of arrears of ordinary revenue, and whilst provision was being made for the repeal of the portion relating to takavi, the whole section was repealed, thus taking away the legal means of the Bombay Government for recovering arrears of ordinary revenue. This was the inadvertence now to be remedied.

The second point to be embraced in the Bill was of greater importance, for the effect would be to restrict the jurisdiction of the Civil Courts of the

Bombay Presidency in matters relating to the land-revenue. The necessity for the restriction arose in this way. Recently, several suits had been brought into the Civil Courts impugning the validity of assessments made by the Survey and Settlement Officers and confirmed by the Government. These suits had gone so far as to bring in question the amount of assessment, and the mode of making the assessment. MR. ELLIS would give a notable in tance which had occurred quite recently. A landholder objected to an assessment of Rs. 4, placed upon his field by the Settlement Officer. This case was on appeal finally decided by the High Court in favour of the plaintiff, and it was ruled that the assessment of the officers of the survey could not be maintained, because it contravened a local rule of the survey that not more than one-sixth of the gross proceeds should be imposed as the assessment on any field.

MR. ELLIS did not mention this case with the view to criticise the decision of the learned Judges. It was not his province to do so, but he mentioned it in order to show what the effect of the decision was, if that decision were to be acquiesced in. The result was that the ordinary principles which regulated the Bombay system of survey and assessment were entirely upset; for there was under that system no local or other rule which required one-sixth of the gross profits to be the limit in assessment. The result, then, of the decision of the High Court—if we acquiesced in it—was that the principles of our settlement throughout the country would have to be modified contrary to the opinion of those who were best able to judge. Such was the effect in this particular suit. In other cases, equally injurious effects might follow if the present practice were continued. For example, certain modes of assessment, and certain principles of assessment, might have been adopted by the State. Those modes and principles might not commend themselves to the learned Judges, and in cases practically involving broad political questions, and matters of State policy, the opinions of the Judges of the High Court might overrule the deliberate decision of the Government here or in England. There were other minor evil consequences which followed on the present system. He need hardly say that if, under the Ryotwarri system in Bombay, every man was allowed to question in a Court of Law the incidence of the assessment on his own fields, the number of cases which might arise was likely to be overwhelming. The suit to which MR. ELLIS had referred, one of Rs. 4 only, was an instance of the small amounts which might be brought into Court, and if cases of this kind were frequent, and the Survey Officers had to give evidence in each of them, the result would be that their time would be so fully occupied with such matters that they would be unable to attend to their duties, and the whole machinery of the Survey and Settlement Department would be disorganized. Moreover, it might be questioned whether

Judges learned in the law, however skilled they might be to decide the cases ordinarily brought before them, were best fitted to deal with matters requiring special and technical knowledge, and which had been settled and decided by officers who had been all their service trained in this special branch of knowledge. Again, supposing the Judges to possess that knowledge, it was beyond question that the practice of referring disputes to other tribunals had the effect of impairing that good feeling which usually existed, and which ought always to exist, between the Revenue Officers and the people of the country with whom those officers had to deal.

For all these reasons, therefore, MR. ELLIS thought it undesirable that the present system should remain in force, and the Bombay Government being of the same opinion had applied to the Government of India for legislation on the subject.

Now, the Bombay Regulations to which exception was taken, and which it was proposed to alter, went much further in admitting the jurisdiction of the Civil Courts than did the law, so far as MR. ELLIS was acquainted with it, in any other Province of India; and, moreover, in a considerable portion of the Bombay Presidency itself the law as it now stood denied to Civil Courts the congizance of revenue cases which in other parts of the same Presidency had hitherto been cognizable by the Civil Courts. The extent to which jurisdiction should be barred was a matter for discussion. It was now being discussed between the Government of India and the Bombay Government, and when finally settled, MR. ELLIS would explain what the details of the Bill would be. This could be better done at a further stage of the measure, if the motion he had now to make was accepted and leave was given to introduce the Bill. On this occasion it was only necessary to mention that the proposed Bill would be so drawn as not to affect suits instituted previous to the present date.

The Motion was put and agreed to.

EUROPEAN VAGRANCY BILL.

The Hon'ble MR. BAYLEY moved for leave to introduce a Bill to consolidate and amend the law relating to European Vagrancy.

He said that those Members of the Council who were present in the Executive Council when the original Bill—Act XXI of 1869—was introduced, would, he had no doubt, remember that the Government of that day approached the subject of European Vagrancy, he might say, with great reluctance and hesitation, and it was only eventually taken up because it had grown not merely into a great nuisance

and a great scandal, but had amounted almost to a political evil. Nevertheless, the difficulty of the subject and its novelty were so great that the provisions of the Bill were very long and carefully considered, and in its original shape the Bill was, although to a certain extent stringent, to be regarded as a cautious measure. It might indeed be said to have been experimental, and it was, therefore, not a matter for surprise that a gap was soon found in it; and in 1871 it was necessary to pass a short Bill to amend it. The Government of India had called upon all Local Governments to furnish them bi-annually with a report of the working of this Bill, in order to guard against abuses, and to point out any defects; and the result of this had now been that a few minor defects had been brought out which it was the object of the measure, which he would now ask leave to introduce, to remedy. One of the most serious of the defects was that the Governors of work-houses in which vagrants were detained had hitherto no power in any way to punish the vagrants themselves. If these in any way disobeyed the rules of the work-house, it was, under the original Bill, necessary that they should be brought before a Magistrate and regularly tried before the case could be practically dealt with. It had been found, therefore, that these men, who were ordinarily of an insubordinate class, were very difficult to keep in order. To a certain extent it might even be said that they were *quasi* criminals, who, before they had entered the work-house, had committed what might be termed an offence against the law. It was, therefore, originally suggested by the Government of Bombay to give to the masters of work-houses a certain power for maintaining order and discipline. The Government of Bombay were desirous of giving Governors of work-houses the power to punish even by flogging. The Government of India however, on mature consideration, had been unable to go so far as this, and the object of the Bill, therefore, was to limit their power to a certain amount of solitary confinement, reduction of diet and hard labour. Another flaw in the law was this: The Governor of a work-house was permitted to allow an inmate to go out in search of work for a certain time limited as the case might be; but the law provided no penalty if he exceeded his time or if he stayed out altogether. There was a penalty provided for those who escaped from the work-houses, but it had been a question whether staying away beyond the prescribed time could be legally construed as an escape. It was necessary to provide for this point in order to maintain some control over the vagrants, who were thus temporarily released, and this, therefore, was another amendment which it was proposed to introduce. The third point referred to the provision as to the Agents of ships by which British Sailors were landed and left in India, and which Agents became liable for the support of the men who thus became vagrants; but the question had arisen whether the same liability would attach with regard to Foreign European Sailors.

There were many of these cases, and a further point had also arisen as to British subjects so landed, in a case which recently occurred in Calcutta of a man who came from Australia to Madras in charge of horses, and then came on from Madras, without landing, to Calcutta. This case was held not to come within the Act as it now stands, and the people who landed him in Calcutta, and by whose action he became a vagrant, were not held responsible under the Act for the cost of his deportation.

Those were the main amendments which the new Bill would contain, and as the amending law would have made the third Bill on this subject, it was thought better to consolidate the whole into one Act. MR. BAYLEY might mention that another half-year's reports were now coming in from the Local Governments, and when the Bill was in a shape to pass, we should see that another half-year's experience of the working of the Bill had shown any further amendments to be necessary.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill to provide for the security and application of the effects of officers and soldiers becoming insane on service, but not removed, put on half-pay, or discharged,—The Hon'ble Mr. Hobhouse and the Mover.

On the Bill to continue certain privileges and immunities now enjoyed by Prince Azim Jah Bahadur, as Prince of Arcot, to his sons on succeeding to the title,—The Hon'ble Mr. Bayley and the Mover.

On the Bill to consolidate and amend the law relating to Native Passenger Ships and Coasting Steamers,—The Hon'ble Messrs. Ellis and Bayley and the Mover.

The Council then adjourned to Thursday, the 14th August 1873.

SIMLA,
The 7th August 1873.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Dept.

S. G. P. I.—No. 77 L. D.—21-7-11.