

MEEDINGS

OF THE

Council of the Governor of Fort Saint George,

DIGITIZED

FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

FOR

1869.

WITH INDEX.

VOL. VIII.

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1870.

TO
PROCEEDINGS
OF THE
Council of the Governor of Fort Saint George
FOR THE PURPOSE OF MAKING
LAWS AND REGULATIONS.
FOR THE YEAR 1869.

TC

PROCEEDINGS

OF THE

Council of the Governor of Fort Saint George

FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

FOR THE YEAR 1869.

A

Page.

ACT IV OF 1842. See *Boat Act Amendment Bill*.

ACTS, assented to by the Governor General.

<i>No. I</i>	<i>of 1869.—Neilgherry Commissioner's Municipal Powers Act...</i>	<i>...</i>	<i>...</i>	<i>36</i>
<i>„ II</i>	<i>of 1869.—Madras Repealing Act...</i>	<i>...</i>	<i>...</i>	<i>47</i>
<i>„ III</i>	<i>of 1869.—Revenue Officers' Powers Act...</i>	<i>...</i>	<i>...</i>	<i>ib.</i>
<i>„ IV</i>	<i>of 1869.—Boat Act Amendment Act...</i>	<i>...</i>	<i>...</i>	<i>ib.</i>
<i>„ V</i>	<i>of 1869.—Jails Act...</i>	<i>...</i>	<i>...</i>	<i>60</i>
<i>„ VI</i>	<i>of 1869.—Madras Equitable Assurance Society's Act...</i>	<i>...</i>	<i>...</i>	<i>ib.</i>

ADJOURNMENTS, See *Council*.

ALLEGIANCE, oath of, by Hon'ble T. Clarke...	...	...	...	...	...	...	17
by Hon'ble W. R. Arbuthnot...	...	...	...	...	...	...	47

AMENDMENTS adopted... .. 2, 11, 38, 40, 41, 42, 43, 50, 55

ARBUTHNOT, HON'BLE A. J.

Boat Act Amendment Bill...	...	...	...	...	...	...	...	13
Canal Tolls Bill...	...	...	...	...	...	...	...	12
Neilgherry Commissioner's Municipal Powers Bill	...	...	...	...	...	...	...	2, 3
Salt Excise Bill...	...	...	...	...	...	...	29, 32, 34, 38,	39
Towns' Improvement Bill	...	...	...	...	...	...	...	51

ARBUTHNOT, HON'BLE A. J., appointed to Select Committee...	...	...	...	...	61
--	-----	-----	-----	-----	----

ARBUTHNOT, HON'BLE W. R.

Allegiance, oath of		..	..	..	..	..	..	..
Boat Act Amendment Bill	..	..	..	..	..	..	..	19, 23
Revenue Officers' Powers Bill...	..	..	..	..	..	..	..	41,* 42, 44
Salt Excise Bill...	..	..	..	..	..	..	..	32

ARBUTHNOT, HON'BLE W. R., appointed to Select Committee 4, 5, 62

L

LOCH, HON'BLE. J. C.	
Boat Act Amendment Bill...	3, 4
LOCH, HON'BLE J. C., appointed to Select Committee	
LYSTER, MR. J. C.	
Vide <i>Petitions</i> .	

M

MIR HOOMAYOON JAH BAHADUR, HON'BLE.	
Canal Tolls Bill...	11
Salt Excise Bill...	30
MOPLAH OUTRAGES ACT CONTINUANCE BILL.	
Motion for leave to introduce...	56
Introduced and passed...	61

N

NEILGHERRY COMMISSIONER'S MUNICIPAL POWERS BILL.	
Select Committee's Report presented	2
Bill considered...	ib.
Amendments proposed adopted ..	ib.
Bill passed...	3
Assented to by the Governor General...	35
NORTON, HON'BLE. J. B.	
Boat Act Amendment Bill.	13, 23
Canal Tolls Bill...	12
Madras Equitable Assurance Society's Bill	4, 53
Madras Repealing Bill...	1, 12
Revenue Officers' Powers Bill...	37, 38, 41
Salt Excise Bill...	30, 34
NORTON, HON'BLE. J. B., appointed to select Committee...	5, 16, 61

O

OATH OF ALLEGIANCE.—See *Allegiance*.

P

PETITIONS.	
From Mr. Job Solomon, Proprietor of Masulah Boats and Lighters, relating to the Boat Act Amendment Bill, referred to the Honorable Member in charge of the Bill...	10
From do. do. on the subject of the Boat Act Amendment Bill, considered in Council...	17, 18
From J. C. Lyster, R. C. Ross and 35 other Boatowners of Madras on the subject of the Madras Boat Act Amendment Bill, considered in Council...	17, 18

	23
	10
	50
	45
	38, 39
., appointed to Select Committee...	5, 6, 16
., HIS EXCELLENCY THE	
Boat Act Amendment Bill...	27
Revenue Officers' Powers Bill...	41
Salt Excise Bill...	32

R

RAMIENGAR, HON'BLE. V.	
Jails Bill...	7, 16, 48
Revenue Officers' Powers Bill...	45
Salt Excise Bill	28, 43
RAMIENGAR, HON'BLE V., appointed to Select Committee	5, 6, 16, 61, 62
REPEALING (MADRAS) BILL.	
As amended by the Select Committee, considered...	1
Bill passed...	12
Assented to by the Governor General	47
REVENUE OFFICERS' POWERS BILL.	
Motion for leave to introduce...	7
Introduced and referred to Select Committee...	15, 16
Select Committee's Report presented...	40
Amendments proposed and adopted...	41
Bill passed...	46
Assented to by the Governor General...	47
SALT EXCISE BILL.	
Motion for leave to introduce...	5
Introduced and referred to Select Committee...	6
Select Committee's Report presented	24
Bill considered ..	35
Amendments proposed and adopted ..	38, 40
Bill passed...	43

L				
C.				
Bill...				
Boat Act Amendment Bill	... Committee	...	...	...
Canal Tolls Bill...	...	...	...	...
Canals and Ferry Bill	...	...	...	...
District Moonsiffs' Bill	...	...	...	...
Equitable Assurance Societys' Bill...	...	...	...	...
Jails Bill...	...	...	...	...
Madras Repealing Bill.	...	...	...	...
Neilgherry Commissioner's Municipal Powers Bill.	...	...	...	...
Revenue Officers' Powers Bill...	...	...	...	...
Salt Excise Bill	...	...	...	...

TOWNS' IMPROVEMENT BILL.
Motion for leave to introduce...

Council met at the Council Chamber in Fort Saint George on Friday,
the 15th day of January 1869.

PRESENT :

His Excellency the Governor of Madras—*Presiding*.
The Hon'ble H. D. Phillips.
The Hon'ble A. J. Arbuthnot. .
The Hon'ble J. B. Norton.
The Hon'ble T. Clarke.
The Hon'ble W. R. Arbuthnot.
The Hon'ble J. C. Loch.
The Hon'ble R. S. Ellis, C. B.
The Hon'ble V. Ramiengar.
The Hon'ble G. N. Gajapathi Rau.

MADRAS REPEALING BILL.

The Hon'ble J. B. Norton, in moving that the Bill "for repealing certain enactments which have ceased to be in force or have become unnecessary," as amended by the Select Committee, be taken into consideration, said, that the former report of the Committee was already before the Council. Since then, the Bill had been recommitted, and the Members of the Committee had gone carefully over it, and had specially considered a suggestion from Mr. Stokes, the Assistant Secretary to the Government of India in the Legislative Department, as to the expediency of including in the present Bill Acts of the Legislative Council which affected Madras, and which, themselves, merely repealed former Acts. The Bill had been originally confined to the repeal of Regulations, but there was no reason why it should be so limited. It now included the Acts referred to. He believed that, in its present state, it was as nearly perfect as the care of the Committee could make it. If any defects should be discovered hereafter, the Bill would rather be found to err on the side of retaining, than of expunging too much. Far greater public inconvenience was likely to arise from the latter, than the former mistake. No harm was done by retaining in the Statute Book an obsolete Regulation, or part of a

L

position of J. C.

Mr. Master, the Different Bill... 3, 4...
of Regulations to be repealed, Select Committee...
would, therefore, move that that addition be
read and amended accordingly.

The Motion was put and agreed to.

NEILGHERRY COMMISSIONER'S MUNICIPAL POWERS BILL.

The Hon'ble A. J. ARBUTHNOT, in presenting the Report of the Select Committee on the Bill "to enable the Commissioner of the Neilgherry Hills to hold the office and perform the duties of President of the Municipal Commissioners for all towns situated within that District," said, that the very few alterations in the Bill which the Select Committee had deemed it necessary to suggest were stated in their report, and he would therefore simply move that the Bill be read a second time. There was, however, one slight amendment, which he would move when the Section to which it applied was read.

The Motion having been agreed to, and Sections 1 and 2 of the Bill having been read,

The Hon'ble H. D. PHILLIPS observed that the word "Madras" had been omitted before the words "Act X of 1865."

The Hon'ble A. J. ARBUTHNOT thereupon moved that the word "Madras" should be inserted before the words "Act X of 1865," wherever they occurred in the Bill, and also that in Section 2 the words "Sections 131, 132, 146 and 147 of" should be omitted. In making this motion, he remarked that it had been brought to his notice that there were other Sections in Madras Act X of 1865 under which actions might be instituted by Municipal Commissioners, and that, therefore, it would be better to omit from Section 2 of the present Bill all mention of particular Sections of Act X of 1865, and simply to enact that all actions brought by or against the Commissioners, with reference to the provisions of the Towns' Improvement Act, should be instituted in the Civil Court of Coimbatore.

The Motion was put and agreed to.

The Hon'ble A. J. ARBUTHNOT then applied to the President to suspend the Standing Orders, in view to the immediate passing of the Bill. In making this application, he observed that the Bill was a very simple one, but that it was very desirable that it should be passed speedily.

SALT

of the Society. All the Bills hitherto... the Standing Orders...
Bills on which no outlay had been incurred...
desirable, as he had before... moved that the Bill as amended be passed.
moved by the... was put and agreed to.

BOAT ACT AMENDMENT BILL.

The Hon'ble J. C. LOCH, in introducing the Bill "to amend Act IV of 1842 (for the better management of boats and catamarans)," said that its object had been sufficiently set out in the statement of Objects and Reasons. It was now only necessary to explain the reason which led to its introduction.

Early in last year, so much difficulty had been found in hiring boats, that the Chamber of Commerce addressed the Government to appoint a Committee to consider the subject. That Committee had been appointed, and had made a report, which had been circulated to the Members of Council. This was not the first time that attention had been called to the subject. In 1862, an Act had been passed by this Council, which provided, amongst other things, for an increase in the rates of hire. That Act had not become law, as the Supreme Government thought that the punishments, which it had imposed, were at variance with the Penal Code. Things continued as they were until 1867, when the difficulties increased to such an extent as to lead to the appointment of a Committee. Government approved of the recommendation of the Committee as to increasing the rates of hire, and directed that a Bill should be brought in to effect that object. The present Bill did not fix any specific rates, but empowered Government from time to time to alter the rates already existing. He thought that there could be no question as to the propriety of changing the rates which were now in force. They were fixed in 1842, at a time when the prices of all necessities of life and also the rates of wages were considerably lower than they were at present. He wished to draw attention to one recommendation of the Committee, as to whether it might not hereafter be desirable to establish a Boat Office. He was aware that Mr. Franklin, the late Superintendent of Marine, disapproved of this suggestion, and had stated his reasons for so doing in a Minute attached to the report of the Committee. He himself was of opinion that there was a much more simple way out of the difficulties they now felt, and that the restoration of the Pier would do far more than any legislative enactment to put the boat service of the port once more on a satisfactory footing. The recent introduction of large Cargo boats had, when the Pier was uninjured, almost driven the Masulah boats from employment between the shipping and the Pier. His object in noticing the suggestion was merely to urge on Government the great importance of repairing the Pier as speedily as possible.

He moved
Committee consisting
with instructions to report within

L

The Motion was put and agreed to. ... 3, 4.

MADRAS EQUITABLE ASSURANCE

The Hon'ble J. B. NORTON, in introducing the Bill "for regulation of the Madras Equitable Assurance Society," said, that the statement of Objects and Reasons had been drawn up as fully and, at the same time, as succinctly as possible, with a view not only to the information of the Council, but of all persons who were interested in the Society; and that he thought it unnecessary to take up the public time by any lengthened remarks, in addition to the explanation of the Bill which was contained in that statement and also in the observations which he had made when he obtained leave to introduce the Bill. Nor would he enter into any details as to its Sections. The Bill had been drawn up by an able parliamentary draftsman, in conjunction with Solicitors of high standing in London and with Mr. Boyson. The main objects to be attained by the several Sections of the Bill would be found stated in the conclusion of the Statement of Objects and Reasons. They were as follows:—

"(a).—All doubts as to the legality of the creation of the Reserve Fund will be removed.

(b).—The Guarantee Fund will be allowed gradually to die out, no further addition being made thereto.

(c).—The Premium and Reserve Funds will be amalgamated and constitute a General Fund, to which all receipts are to be credited, and from which all payments are to be made.

(d).—The distribution of profits will, in future, be made quinquennially after a proper valuation of the assets and liabilities, the present half-yearly division being abolished.

(e).—The Directors will be empowered to purchase Policies, also to grant Assurances at such rates of premiums as they may think fit, without necessarily being restricted to the tabular rates; they will also, subject to the confirmation of a General Meeting, have increased powers of investment.

(f).—The Directors, past and present, will be indemnified against any possible consequences of their past acts."

He would only expressly call attention to the last Section of the Bill, which provided that all costs incidental to the passing of the Act should be paid out of

SALT

of the Society. All the Bills hitherto Bills on which no outlay had been incurred, desirable, as he had before stated, that every Bill of the Governor should be referred by the proposed interposition of the Legislature, and have an opportunity of being heard before the Council. The Council would probably not pass the Bill without ascertaining that it met with the approval of all, or a great majority of those concerned; for that purpose, it would be necessary that ample time should be allowed, and that the fullest publicity should be given to the Bill. He would therefore name no time for reporting. It was desirable that the Directors should place, in the hands of all share-holders, a copy of the Bill and of the statement of Objects and Reasons; and that the intention to pass the Act should be published in the *Gazettes* of all the Presidency Towns and in the *London Gazette* and *Times*. If time was given to every one to come and oppose the Bill, and it was found that no objections were made, then it might be safely assumed that the measure received general assent. If, upon the other hand, objections were made, the parties making them might be heard in person or by Counsel, and the Council would have the opportunity of weighing those objections.

He could himself see no objection, except that which might arise from a selfish interest, leading an individual to grasp at a personal advantage for himself in preference to joining in that common course which would conduce to the benefit of all. He understood that though the Society did not effect policies on the lives of Natives, yet that there were many Natives interested as holders of policies effected on the lives of Europeans. It would, therefore, be expedient that one of the Native Members of the Council should be upon the Committee.

He moved that the Bill be referred to a Select Committee consisting of the Hon'ble Messrs. W. R. Arbuthnot, H. D. Phillips, V. Ramiengar and himself.

The Motion was put and agreed to.

SALT EXCISE BILL.

The Hon'ble T. CLARKE, in moving for leave to introduce a Bill "to enable the Government to levy a duty by way of excise on salt manufactured in such Districts of the Presidency of Fort Saint George as the Government may think proper," said, the subject of the Bill had already been under the notice of the Council. The present Bill was identical in its principle, and almost identical in its provisions, with that which had been carried through the Council in 1867. It was therefore unnecessary for him to enter upon the same ground as that which he had travelled over before. The Governor General withheld his assent on the ground that he objected to the arbitration clauses. His Excellency's reasons for the

He moved that the arbitration clauses should be introduced, which had been placed in a Committee consisting of the Hon'ble Messrs. Phillips, Ellis, V. Ramiengar, and himself, with instructions to report with instructions to report which compensation should be awarded to the entitled Motion was put added, and that an appeal should be given to the Revenue Board.

The present Bill omitted the arbitration clauses, and a new clause had been introduced, which it was hoped would satisfy His Excellency. It had not been thought desirable to carry out his other recommendations as to laying down rules defining the amount of compensation. It had been found impossible to frame any such rules, as the rights of holders of salt-pans were so various and intricate. It was, therefore, thought better to refer any one who was dissatisfied with the decision of the Collector, to a Civil suit. As to allowing an appeal to the Board of Revenue, the Members of that Board thought that their position and constitution rendered it difficult for them to sit as an appellate authority upon matters of compensation.

The Motion was put and agreed to.

He then applied for the suspension of the Standing Orders, in view to the Bill being at once introduced. He said that the Magistrate of Malabar had written to the Board referring to a ruling of the High Court, which laid down that under Regulation II of 1807 it was not illegal for any one to make salt, provided it was sold to Government. This was found to produce an amount of smuggling and illicit manufacture, which it was desirable to check as speedily as possible. The present Bill provided that no one should manufacture salt without previously obtaining a license from the Collector.

His Excellency the PRESIDENT having declared the Standing Orders suspended,

The Hon'ble T. CLARKE moved that the Bill be read a first time and referred to a Select Committee consisting of the Hon'ble Messrs. Phillips, Ellis, V. Ramiengar, and himself.

The Motion was put and agreed to.

REVENUE OFFICERS' POWERS BILL.

The Hon'ble T. CLARKE, in moving for leave to introduce a Bill "to empower Revenue Officers to summon parties to attend at their Outcherries for the settlement of matters connected with Revenue administration," said, that in former years, when the prestige of Revenue officers was greater and the people were more unsophisticated, a mere requisition from a Revenue officer was sufficient to secure the attendance of parties whose evidence was required in matters pending before him; but the increase of wealth and the spread of intelligence made it more diffi-

duce parties to attend when the Revenue Officers had accordingly issued summons. Sections 12 and 13 contained provisions which gave no power to do so. Hence, the nature and extent of the punishment in revenue settlements, in claims to lands, in talim from Madras, in relinquishment of land, in the registration of pattahs, and in other details of Revenue administration. The present Bill would enable a Revenue officer, in such cases, to summon parties to attend.

The Motion was put and agreed to.

JAILS BILL.

The Hon'ble V. RAMIENGAR, in moving for leave to introduce a Bill "for the regulation of Jails within the Presidency of Fort Saint George and for the enforcement of discipline therein," said, that in April last the Inspector General of Jails submitted, for the consideration of Government, the advisability of introducing a local Act to provide for the punishment of persons conveying, or attempting to convey, intoxicating liquors, or drugs, or forbidden articles of any description, such as weapons and tools, into the Jails in the Provinces of this Presidency, or to convicts employed outside the prison walls. He, at the same time, brought to the notice of the Government the difficulty experienced by the Superintendent of the Penitentiary at Madras in maintaining discipline in that prison, in the absence of power to award corporal punishment. The Superintendent thought that there was no Jail with which he was acquainted, where the power to flog was more needed; and he said that the same prisoners came into it time after time; that they were nearly all known to each other inside; and outside, their friends were constantly trying to help them; that there was, therefore, among these "old offenders" in Jail, a perfect fraternity for evil; and that flogging was the only punishment which they dreaded. At the time the Superintendent wrote, there were 530 prisoners in the Penitentiary, Europeans and Natives; and, under the working of the new Police Act, he thought the number was likely to increase steadily for some time. For these reasons, the Inspector General suggested the propriety of authorizing the punishment of whipping within the Madras Penitentiary. The Superintendent of Mofussil Jails had the power of flogging under Madras Regulation X of 1832, which enactment, however, had no operation within the High Court limits. Another defect which the Inspector General subsequently brought to the notice of the Government was, the inadequacy of the existing law as regards punishment in cases of escape by convicts, more especially when they were under sentence of imprisonment for life or for any long period. He pointed out that, as regards a man imprisoned for life, there was, in point of fact, no punishment for escape; and that, in the case of men under long sentence, the operation of an addi-

He moved
 Committee consisting
 with instructions to report with
 tence. Motion was put and
 at escape than to any
 salt. He, therefore, submitted that it was desirable
 that the offence of escape should be made punishable by corporal punishment;
 either by adding it to the offences enumerated in Section 2 of the Whipping Act
 No. VI of 1864, or by investing Superintendents of Jails with the same powers as
 they possessed under the provisions of Regulation X of 1832, with respect to
 attempts to escape. The present Bill sought to remedy these defects, and it was
 thought desirable to take this opportunity to repeal the existing Regulations, and to
 embody all the required provisions in a single Act applicable alike to the Presi-
 dency and Mofussil Jails.

Sections 2 and 3 of the Bill empowered the Governor in Council to appoint the
 necessary inspecting and superintending agency, and to make rules from time to
 time for the management of Jails.

The Council were doubtless aware that the increased attention now paid to the
 extension and improvement of Jail accommodation was entailing upon Government
 a large annual expenditure, but that expenditure must necessarily be spread over a
 series of years, and considerable time must elapse before the requisite accommoda-
 tion could be said to be available; but, meanwhile, it might be necessary to provide
 for the temporary shelter of prisoners when a Jail became over-crowded: or again,
 in a country so liable as India to the outbreak of epidemic diseases, it might at
 any time become necessary to separate infected from healthy prisoners, and the
 only means of meeting such emergencies was to hut or encamp prisoners at a con-
 venient distance from the Jail; and as it was obviously necessary that such gangs or
 parties as were so separated should be subject to the same rules and discipline as the
 prisoners in the regular Jail, Section 7 declared that such place of temporary shelter
 shall be deemed to be a Jail within the meaning of this Act.

It would be impossible, without very largely adding to the expenditure now
 incurred on Jails, to provide separate places of confinement for Civil prisoners in
 each District. The more economical course, therefore, was to confine them in any
 part of a Civil Jail which might be pronounced fit for the reception of Civil pri-
 soners. Section 10, accordingly, provided for the Governor in Council declaring
 any part of a Criminal Jail to be a place of confinement for Civil prisoners.

Further, in going over the present Jail Rules, it had been found that Civil prisoners
 in Mofussil Jails, guilty of breaches of Jail discipline, were liable to corporal punish-
 ment. This was manifestly an oversight, and although the power thus given to the
 Jail Superintendents had not been, nor was likely to be, exercised, it seemed

Section 11 empowered
 jury, certain offences again.
 At specification of the offences and of the nature and extent of the punishment.
 These Sections had been taken almost *verbatim* from Madras Regulation X of
 1832. Among the offences made punishable by these Sections had been included
 that of escape, to meet the suggestion of the Inspector General of Jails already
 referred to. It might be a question whether the provision by which escape was
 sought to be made punishable with whipping, was not contrary to the policy of the
 Penal Code; but the point would be carefully considered in Committee.

He would refer only to two more Sections, viz., 17 and 18, which were in-
 tended to meet the other two suggestions of the Inspector General of Jails re-
 garding the punishment of persons conveying or attempting to convey forbidden
 articles to prisoners in or out of Jail.

These were the main provisions of the Bill. They would undergo careful
 consideration in Committee, and, before the Bill is re-presented to the Council, the
 Select Committee would have the advantage of obtaining the opinion of the In-
 spector General of Jails, and of bringing his special experience in the Department
 to bear upon the measure.

The Motion was put and agreed to.

The Council then adjourned to Friday, the 29th day of January 1869.

MADRAS,
 The 15th January 1869.

JOHN D. MAYNE,
 Asst. Secretary to Government,
 Legislative Department.



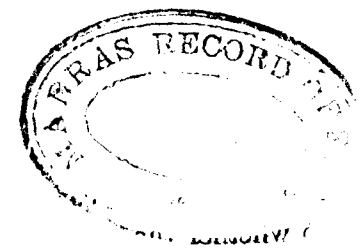


Abstract of the Proceedings of the Council of the Governor of Fort Saint George, assembled for the purpose of making Laws and Regulations, under the provisions of the Act of Parliament, 24 and 25 Victoria, Cap. 67.

The Council met at the Council Chamber in Fort St. George on Friday the 29th day of January 1869.

PRESENT:

His Excellency the Governor of Madras—*Presiding*.
His Excellency the Commander-in-Chief.
The Hon'ble H. D. Phillips.
The Hon'ble A. J. Arbuthnot.
The Hon'ble J. B. Norton.
The Hon'ble T. Clarke.
The Hon'ble W. R. Arbuthnot.
The Hon'ble Mir Hoomayoon Jah Bahadur.
The Hon'ble J. C. Loch.
The Hon'ble R. S. Ellis, C.B.
The Hon'ble V. Ramiengar.
The Hon'ble G. N. Gajapathi Row.



The Assistant Secretary read a Petition from Mr. Job Solomon, of Madras, Proprietor of Masulah Boats and Lighters, representing that the provisions of the Bill No. 1 of 1869 "to amend Act IV of 1842, (*for the better management of boats and catamarans in the Madras Roads*)" are contrary to the principles of free trade, and praying that the Bill may not be passed; that the boat tariff now in force may be abolished; and that Sections 12, 13 and 14 of Act IV of 1842 may be repealed.

The Petition was handed over to the Hon'ble J. C. Loch, the Member in charge of the Bill to which it related, with a view to its being referred to when the subject of the Bill was brought by him before the Council.

CANAL TOLLS BILL.

The Hon'ble H. D. PHILLIPS, in presenting the Report of the Select Committee on the Bill "to enable the Government to prescribe rules for regulating the navigation of rivers, canals and other inland waters, for the management of ferries, and for the levying of tolls and license fees," said that there had been considerable delay in the submission of the Report. The circumstances which caused that delay had been represented at a recent Meeting of the Council, and were unavoidable.

He believed that the delay had caused no detriment to public or private interests. In the District to which the proposed law would be applied, rules were in operation, under which fees had been levied upon canals. There might, perhaps, be a doubt as to the strict legality of this course; but as the fees were paid by persons who used canals which were the property of Government, no real objection could exist. A new Committee upon the Bill had been appointed in April last, and with their aid the Bill had been carefully revised; and the Report which they prepared drew attention to certain parts of the amended Bill. A few verbal alterations had been made in the Preamble and Sections 1, 2 and 5; and at the end of Section 8 words had been added to provide for the sale of only so much of the articles seized on non-payment of dues as might suffice to discharge what was actually to be paid by the defaulter. Section 10 was intended to demonstrate to the native public, that the object of levying fees was not to swell the imperial revenue, but to keep the canals and ferries in proper repair. The Committee had assumed that Government would support this innovation. Section 11 was also new; it followed the example of some recent enactments, and was intended to point out that officers of Government might be sued in respect of injury caused in carrying out the proposed Act. The question had been raised as to whether the party aggrieved should be limited to bringing an action in the Court of the Civil Judge, but it had been thought better to impose no such restriction, but to adopt the precedent of the Civil Procedure Code, which allows any person aggrieved by an officer of Government to bring his suit in any Court which he prefers.

He applied to HIS EXCELLENCY the President for the suspension of the Standing Orders, in view to the Bill, as amended by the Select Committee, being taken into consideration.

The PRESIDENT having declared the Standing Orders suspended,

The Bill was read Section by Section.

The Hon'ble H. D. PHILLIPS proposed the following amendments, which were adopted, viz:—

In Section 2, to insert the word "once" before the word "published."

In Section 3, to omit the words "canals or other inland waters, or the rivers" in lines 6 and 7; and to insert the word "any" after the word "or" in line 7.

In Section 10, to substitute the words "a local fund" for the words "forming part of the local funds" in line 4.

The Hon'ble M^{rs} HUMAYOON JAH BAHADUR said, with reference to Section 3, that it did not appear clear whether Government would have the power to exempt from

the payment of tolls any particular species of boat which it might be desirable should be so exempted.

The Hon'ble J. B. NORTON observed that the power to make rules and bye-laws carried with it, by implication, the power to modify those rules and to introduce any exception to their operation. To prevent any doubt, however, he moved the insertion, in Section 1, of the words "from time to time" after the words "Governor of Fort Saint George in Council."

The Motion was put and agreed to.

The Hon'ble A. J. ARBUTHNOT moved to amend the Preamble and Section 3, by the omission of the word "all," which occurs therein, before the words "ferries" and "boats."

The Motion was put and agreed to.

HIS EXCELLENCY the PRESIDENT moved to amend Section 10, by altering the words "repairs and maintenance" in line 6, to the words "repair, maintenance and extension."

The Motion was put and agreed to.

The Hon'ble H. D. PHILLIPS then applied to His Excellency the President for the suspension of the Standing Orders, in view to the immediate passing of the Bill.

HIS EXCELLENCY the PRESIDENT having declared the Standing Orders suspended,

The Hon'ble H. D. PHILLIPS moved that the Bill as amended be passed.

The Motion was put and agreed to.

MADRAS REPEALING BILL.

The Hon'ble J. B. NORTON moved that the Bill "for repealing certain enactments which have ceased to be in force or have become unnecessary," as amended by the Council at their last meeting, be passed.

The Motion was put and agreed to.

BOAT ACT AMENDMENT BILL.

The Hon'ble J. C. LOCH, in presenting the Report of the Select Committee on the Bill "to amend Act IV. of 1842 (for the better management of boats and catamarans in the Madras Roads)," said that the Committee had recommended that the Bill should be passed unaltered. He then referred to the Petition against the Bill, which had been read by the Assistant Secretary, and said that the Petitioner appeared to be under a misapprehension as to the object of the present Bill. He seemed to suppose that it was intended to reduce the rates of boat hire. There

was, however, no such intention. The Bill merely enabled the Government from time to time to fix such rates of boat hire as they thought proper. The Committee previously appointed by Government had submitted an amended Schedule of rates, which were in fact an advance upon those at present in force; and he (Mr. Loch) had no doubt, if the Bill were passed, these would be adopted by the Executive Government. Most of the remarks in the Petition did not, it appeared to him, apply to the Bill now before the Council, but to Act IV of 1842 which it was not at present proposed to alter in any way, except to the extent of enabling Government to fix the rates of boat hire from time to time, as might appear to them to be necessary.

The Hon'ble J. B. Norton said that he thought it would be better to take a little more time before passing the Bill. The Council had already received one petition against it, and several letters upon the subject had appeared in the newspapers. Very little time had been given to those who were interested in the Bill, for the consideration of its provisions; and there was no object in hurrying it on. He would, therefore, propose the adjournment of any further consideration of the Bill till the next Meeting of the Council.

The Hon'ble A. J. ARBUTHNOT, in seconding the proposal, observed that the Bill was one which concerned local interests, and it seemed that it was only now beginning to excite the attention of the persons who were affected by it. He wished, at the same time, to refer to the remarks which had been made by his Honorable friend, Mr. Loch, at a former Meeting as to carrying out the repairs of the Pier. He (Mr. Arbuthnot) understood him on that occasion to say—though his remarks to that effect had not been reported either in the official report or in that which appeared in the newspapers—that there was an impression on the part of the mercantile community that unnecessary delay had taken place in carrying on the repairs of the Pier, and especially in removing the wreck. When his Honorable friend made this remark, he (Mr. Arbuthnot) was not prepared with any detailed information on the subject, and therefore did not make any reply. At the time, however, the remark was made, he felt certain, from what he knew of the history of the case, that the Executive Government was not to blame in the matter. Since the last Meeting, he had taken the trouble of looking into the Proceedings of Government, and found that the history of the case was as follows:—The accident occurred on the 6th of June. On the 11th June, a Committee was appointed by Government to devise measures for restoring the communication by some temporary expedient. On the 18th of June, the Committee reported that this was impossible. On the 19th of June, Government telegraphed to the Secretary of State, requesting that materials for repairing the Pier should be sent out from England, and also a competent Engineer to superintend the works. On the 23rd of June, a letter was sent to the same effect. On the 8th of July, a telegram was received from the Secretary of State, inti-

imating that an Engineer had been appointed. On the 11th of July, this Engineer started from England, and he arrived in August. On the 27th October, he sent in a full memorandum of the necessary repairs. Early in the present month, the ship arrived, conveying the materials. These had not yet been landed, but they would be very shortly; and as soon as they were landed, the repairs would be commenced.

He (Mr. Arbuthnot) trusted that he had shown, not only that there had been no delay in this respect, but that the Government had evinced considerable promptitude in forwarding the restoration of the Pier.

In the other matter to which the Honorable Member had referred, viz. the delay in removing the wreck, the case was somewhat different. He regretted to say that the work had been found impracticable. All efforts to get rid of the wreck had failed. Nine thousand pounds of gunpowder had been expended, and a hundred and fifty hours had been employed in these attempts, but during the whole of the time only one pile had been removed. The failure had not been caused by any want of skill or energy on the part of the Master Attendant and the other Officers concerned. He understood from Colonel Orr, who, as the Council were aware, was a very practical and competent Engineer, and whose opinion was probably more valuable than that of any other person in the Presidency, that the piles and wreck were so imbedded in sand that it was absolutely impossible to remove them, or, at all events, without incurring an excessive expense altogether incommensurate with the object to be gained. The same conclusion had been arrived at by the Engineer sent out from England. The latter had submitted a plan by which the gap would be left open, but the separated portions of the Pier would be re-united by divided segments on either side of the wreck. Under these circumstances, he (Mr. Arbuthnot) hoped that it would be evident to his Honorable friend and to the Council that there was no ground for the impression that there had been any unnecessary delay in the matter on the part of any of the Departments of Government, or that the failure to remove the wreck was attributable to causes which were in any sense avoidable.

Mr. ARBUTHNOT, however, hoped that it would be distinctly understood by his Honorable friend and by the other Members of the Council that, in submitting the explanation which he had just offered, he did not mean to complain of the course taken by the Hon'ble Member in bringing the matter to the notice of the Council. On the contrary, he thought that the Honorable Member was entitled to the thanks of the Council for the course taken by him, as having been the first non-official Member of the Council who had taken advantage of his position, to bring to the notice of the Executive Government an impression prevailing out of doors as to delay or remissness in measures carried on by Government. The constitution of this Council, and the rules under which

it performs its functions, did not permit it to exercise that vigilant criticism of the proceedings of the Executive Government, which, in other countries, is exercised by the legislative, over the executive, body; and therefore he thought it was the more desirable, whenever any Member of Council had an opportunity of doing so in connexion with a Bill pending before the Council, that he should bring to the notice of the Executive Government any matter in which he had reason to believe that there was laches, error, or delay on the part of any department or branch of the administration in the discharge of its duties. In making such observations, he considered that a Member of Council would only be performing his bounden duty to the Government. For himself, he was thankful to the Honorable Member for the opportunity which had been afforded him of making this explanation, which, he trusted, would show that the impression which had been referred to by his Honorable friend was not based upon valid grounds.

The Hon'ble J. C. LOCH said that his Honorable friend had described, with perfect accuracy, the purport of the remarks made by him at the last Meeting of the Council, with one single exception; and that was, that he had not stated it to be impression of the mercantile community alone, but one entertained by the general public—whether well-founded or not, he was not prepared to say—that all had not been done to remove the wreck of the *St. Bernard*. He had not wished to convey that the Government had been backward in getting out materials, for he was of opinion that they had acted with much promptitude in the matter and done all that lay in their power to have the Pier put into working order once more. He could not regret, however, having referred to the subject, as it had brought forth so satisfactory an explanation. At the same time, he regretted to learn that it was the opinion of the Engineers that the wreck could not be got rid of.

As to the adjournment, he had no objection to consent to it, as some Members appeared to think that further time should be given for the consideration of the Bill; but he might remark that the letters which had been referred to did not so much apply to the present Bill as to the old Boat Act. Some of the writers seem to object not so much to this legislation as to any legislation upon the subject.

The further consideration of the Bill was then postponed till the next Meeting of the Council.

REVENUE OFFICERS' POWERS BILL.

The Hon'ble T. CLARKE, in introducing the Bill "to empower Revenue Officers to summon parties to attend at their Cutcheries for the settlement of matters connected with Revenue Administration," said that on a former occasion he had mentioned the inconveniences which the Bill was intended to remedy. Its

provisions were simple, and had been taken from the Criminal Procedure Code. It would enable Revenue Officers to summon before them persons whose presence they might require, and who would then be bound under penalties to attend and give information. On the other hand, Officers who abused these powers would themselves be liable to penalties. He believed that the Bill would be found useful in facilitating the disposal of public business. He moved that it be read a first time and referred to a Select Committee, consisting of the Hon'ble Messrs Phillips, Ellis, Ramiengar, and himself.

The Motion was put and agreed to.

JAILS BILL.

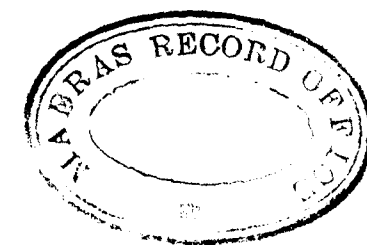
The Hon'ble V. RAMIENGAR introduced the Bill "for the regulation of Jails within the Presidency of Fort Saint George, and for the enforcement of discipline therein," and moved that it be read a first time and referred to a Select Committee, consisting of the Hon'ble Messrs. Norton, Ellis, Gajapathy Row, and himself, with instructions to report in one month.

The Motion was put and agreed to.

The Council then adjourned to Friday the 19th day of February 1869.

MADRAS,
The 29th January 1869.

JOHN D. MAYNE,
Asst. Secretary to Government,
Legislative Department.



Abstract of the Proceedings of the Council of the Governor of Fort Saint George, assembled for the purpose of making Laws and Regulations, under the provisions of the Act of Parliament, 24 and 25 Victoria, Cap. 67.

The Council met at the Council Chamber in Fort St. George on Friday, the 19th day of February 1869.

PRESENT :

His Excellency the Governor of Madras—*Presiding*.

His Excellency the Commander-in-Chief.

The Hon'ble H. D. Phillips.

The Hon'ble A. J. Arbuthnot.

The Hon'ble J. B. Norton.

The Hon'ble W. R. Arbuthnot.

The Hon'ble Mir Hoomayoon Jah Bahadur.

The Hon'ble J. C. Loch.

The Hon'ble R. S. Ellis, C.B.

The Hon'ble V. Ramiengar.

The Hon'ble G. N. Gajapathy Row.

The Hon'ble T. Clarke.

The Hon'ble THOMAS CLARKE took the usual oaths and his seat as an Additional Member of the Council, on re-appointment.

The Assistant Secretary reported that the Act "to enable the Government to prescribe rules for regulating the navigation of rivers, canals and other inland waters, for the management of ferries, and for the levying of tolls and license fees," and the Act "for repealing certain enactments which have ceased to be in force or have become unnecessary," which were passed by the Council on the 29th January 1869, received the assent of the Right Honorable the Governor on the 12th February 1869, and have been transmitted for the sanction of His Excellency the Viceroy and Governor General.

The Assistant Secretary read the following petitions :—

(1).—Petition from Job Solomon, of Madras, Boat-owner, submitting observations explanatory of his first petition on the subject of the Boat Act Amendment Bill.

(2).—Petition from J. C. Lyster, R. C. Ross and 35 other boat-owners of Madras, praying that Section 12 of Act IV of 1842 may be either repealed, or so

amended as to require only that boat-owners or their agents shall be present at their offices or other places on the beach within easy reach of the Boat Office; that a boat tariff may be fixed according to a scale submitted by them; that boat licenses may be made renewable once in three years, instead of every year, as at present; and that the license fee under Section 2 of the Act be raised from one to three Rupees.

BOAT ACT AMENDMENT BILL.

The Hon'ble J. C. LOCH, in moving that the Bill "to amend Act IV of 1842, (*for the better management of boats and catamarans in the Madras Roads*)," may be taken into consideration, said, that at the last meeting the consideration of the Bill had been postponed, in order to prevent any suggestion that the Bill had been passed without allowing time to enable any objections from parties interested to be laid before the Council, and in order that it might receive full discussion. Since then, two petitions had been presented to the Council, and several letters had appeared in the newspapers. The majority of the writers of those letters objected to certain Sections in Act IV of 1842, which it was not now proposed to amend. Most of them did not object to allowing Government to fix the rates of boat hire. Some, however, wrote in the same spirit as Mr. Solomon, who spoke of free trade in boats, forgetting apparently that the Legislature was bound to protect the interests of those who employ boats, as well as of those who own them. Mr. Solomon complained that he (Mr. LOCH) had misrepresented the purport of his first petition; and he admitted that he had to some extent misunderstood it, and had supposed that Mr. Solomon imagined that the Bill was intended to fix a reduced rate of fares, whereas what Mr. Solomon really objected to, was the fixing of any tariff at all by Government. No doubt, however, the intention of the proposed Act was to reduce the fares from the very high rates which at present prevailed; and he trusted that it would have this effect. Mr. Solomon went on to state that certain influences, official and non-official, had been at work, to produce a petition to Government from certain boat-owners, asking for a fixed tariff of boat hire. He adduced, however, no evidence to show that such had been the case; and he (Mr. LOCH) was not aware to what influences the petitioner alluded.

Another petition had been received from Messrs. Ross and Lyster and others, who complained that the petitioners had not been consulted by the Boat Committee; that they were never invited to be present at any of its sittings; and that they had been kept in complete ignorance of its proceedings, although some of the petitioners had specially requested to be supplied with the results of the Boat Committee's deliberations. It was true that Mr. Lyster had applied for the result of the Committee's investigations, and he had been told that they could not be communi-

cated to him until they had been submitted to Government. But he (Mr. LOCH) had read with much surprise the other portion of the petitioners' complaint. The fact was, that Mr. Lyster, who was a large boat-owner, did attend before the Committee, and was examined by them; and several of the recommendations of the Committee had been suggested by the answers which he gave.

The petitioners append a Schedule of rates, which they recommend should be adopted. These were, in some instances, in excess of those recommended by the Boat Committee; in other instances, lower. The present Bill contained no Schedule of rates: it only enabled the Government to establish a Schedule. It would be competent to Government to fix such rates as they thought best—either those recommended by the Committee, or those suggested by the petitioners.

The petitioners further suggested that licenses should be renewed once in three years, instead of every year, as at present. To do this, it would be necessary to alter Act IV of 1842. Such a change would, no doubt, give the boat-owners increased power over their crews, who were at present only bound to them for a period of one year; but he doubted whether the change would be an improvement.

The petitioners also complained of Section 12 of Act IV of 1842, which requires that, when not doing actual service for hire, owners of boats should, by themselves or their agents, be present at the Boat Office from 5 A.M. to 6 P.M. every day. This would be an inconvenience, if the owners were compelled to attend; but, in fact, only their Conicopillays did attend, and the rule itself was not strictly enforced. If an agent of the boat-owner was known to be in the neighbourhood of the Office, this was considered to be sufficient.

He thought that the Bill was a step in the right direction. It was admitted that the present rates were not adequate. Unless at a favorable time of year, when there were many ships on the roads, and when they lay near the shore, a boat's crew could not earn as much in one day as could be obtained by ordinary coolies. The result was, that they had an excuse for demanding more than the legal fare, and employers of boats did, in fact, pay higher rates. If the Act was passed, and a new and more liberal Schedule of rates were issued, it would be easier to compel boat-owners to do the work which was required, and to accept the legal rates of hire.

The Hon'ble W. R. ARBUTHNOT said that he had had a good deal to do with Madras boats, and that he quite approved of the Bill and of the remarks made by Mr. Loch. He had agreed to the proposal to defer the consideration of the Bill, in deference to the wishes of persons interested in it. He had not himself been one of the Boat Committee appointed by Government; but he did not think that any case had been made out against the gentlemen who had served upon it, or that there was any foundation for the suggestion that the present Bill was being pass-

ed with undue haste or precipitation. It was remarked in the petitions that the subject had not been sufficiently ventilated, but no one who had resided in Madras during the past year could have failed to perceive that the subject had been very much discussed. Every newspaper had contained letters on the subject from Captains of ships, boat owners and employers of boats; and he might observe that the views of the boat-owners were found frequently to differ from each other on the question. Mr. Franklin, Mr. Dalrymple and Mr. Loch, all of whom were largely experienced in matters connected with boats (Messrs. Franklin and Dalrymple, especially, being store-houses of information on the subject), had sat upon the Committee, and had had constant opportunities of taking counsel with the boat-owners. The subject had, however, been kept constantly and prominently before the public for a series of years; and the report of the Boat Committee, and the proceedings of Government before the report, were well known.

Before 1842, there was a Boat Office through which boats were engaged, and the crews were paid by the Head of the Office. He (Mr. ARBUTHNOT) did not know by whom the change of system was initiated, or the exact circumstances which had led to it. No doubt, the Government records would supply the information, if it were wanted; but he found that in 1840, when it became known that a change was proposed, the mercantile community presented a petition against it to Lord Ellenborough, who was then Governor General of India. In 1842, no answer having been returned to that petition, he found that a letter was addressed to Lord Ellenborough by the Chairman of the Chamber of Commerce, urging strong reasons against the measure. The reply was, that it had already been passed into law. From that time until 1858, the system introduced by Act IV of 1842 had been a constant source of complaint and annoyance; and continual communications had passed between the Government and the non-official community, with a view to its amendment, until in 1858 the Government instructed their Law Officers to prepare an Act to remedy these grievances. This was done by the Government Solicitor, Mr. Boyson, and the Advocate General. The subject was examined with the greatest care by those Officers, in communication with the Chamber of Commerce and the boat-owners; and an Act was drafted, but never sent up to Calcutta. He did not know the reason for its not being sent up. Probably, it might have been because it became known that Local Councils were about to be established, and the Act was therefore kept back for the purpose of being passed in Madras. The first measure of the present Council was, accordingly, the Boat Bill of 1862, introduced by the late Mr. Morehead. The subject was then again gone into with great care: amendments were introduced by the Select Committee, and the Bill was passed; but it was disallowed by the Viceroy, on the ground that it contained penalties inconsistent with the provisions of the Penal Code.

He mentioned these facts to show that the subject had been frequently before the public, and that it was incorrect to say that it had not been fully ventilated. The boat-owners might perhaps say that what was suitable in 1862 was not so now; but there was not much change in the condition, so far as he could perceive. The surf was the same, the Masulah boat was the same; and the only difference between the two periods was, that in 1862 the Pier had just been completed, whereas now there was a gap in it. The Act of 1862 re-enacted a considerable portion of the law of 1842, but with improvements. For instance, the cat-o-nine-tails, as being a milder instrument of punishment, was substituted for the rattan. One of the Sections effected that which was the sole aim and object of the present Bill: it left it to the Executive Government to fix and vary the rates of hire; the only difference was, that it fixed a tariff to start from, leaving it optional to the Government to vary it from time to time. The present Bill provided no tariff, but enabled the Government to settle the rates, as circumstances might require. He thought it was desirable that they should have this power, instead of requiring to introduce an Act on every occasion when it might become desirable to alter the rates. Although absence of change had been the characteristic of the past seven years, it was to be hoped it would not be so of the future. The formation of a Boat harbour, for instance, might operate to change, to some extent, the mode of doing business and the rates of boat hire which would be suitable.

As to the petitions before the Council, these had been fully dealt with by Mr. Loch. Mr. Solomon was for doing away with all restrictions, while the second petition was really not a petition opposed to the principle of this Bill. Appended to it was a Schedule of rates, which the petitioners recommend for adoption; and there was no reason why Government should not take that Schedule into consideration, when determining what rates were to be sanctioned. The Boat Committee had recommended a somewhat different Schedule; and, *prima facie*, he thought their Schedule was a better one, since it was fixed with reference to the interests of all, both owners, crews, and employers of boats. Mr. Solomon had objected in his petition that the measure would have no effect in correcting present difficulties, inasmuch as the rates now paid for cargo boats varied from Rs. 3 to 6 per trip, whilst the rates proposed to be given were only a trifle over those sanctioned by Act IV of 1842. Admitting that the Bill might not put an end to the extortions that had been practised, he agreed with Mr. Loch that its tendency was in the right direction. The men were now under-paid, if they only got what was allowed by Act IV of 1842. By a recognition of their claim to a fair day's hire, they would, it might be hoped, be found more amenable to reason and to discipline—a principle which was found to be true in the case of persons more exalted than boatmen.

Having mentioned the subject of a Boat harbour, he would beg permission to avail himself of the invitation which had been lately offered to the non-official Members by his Hon'ble friend Mr. A. Arbuthnot, and which had had the concurrence, he believed, of his Lordship and the other Members of the Council, viz., that they should consider themselves at liberty to bring to notice any matter of interest in connection with a Bill before the Council, although not strictly in furtherance of the actual legislative enactment. In looking over some of the records of the Chamber of Commerce, he had noticed a letter from a late Collector of Sea Customs, Mr. Underwood, dated 1854 or 1855, calling the attention of the Government to a proposal by Captain Taylor of the Ship "Trafalgar" for a jetty, or pier, for the Madras Roadstead. The same individual, who was now in command of another ship, the "Renown", had come forward with a scheme for a Boat harbour; and it was a general feeling of the mercantile community that some such measure was very much needed, and ought to be carried out, if practicable. Such a scheme need not militate against the adoption of the larger scheme for a Ship-harbour, which was now under consideration. But the latter project could not be completed for many years; and there was no reason why justice should not be done to the present generation, as well as to their sons and grandsons. He understood that the chief difficulty that was apprehended was, as to the question of silt. He could remember, however, when the sea came up to the edge of the road and when strenuous efforts were necessary to re-claim land along the shore. It was not too much to expect that if engineering efforts were now to be exerted in the contrary direction, they might be crowned with equal success. It had been proposed to meet the difficulty with regard to silt, should it arise, by means of an iron mouth to be carried out into sufficiently deep water. He hoped the Government would not dismiss the subject without some scientific enquiry and, if need be, experiment.

Reverting to what he had said on the subject of the Boat Pay Office, he had not intended to recommend its re-establishment. The Boat Committee had suggested this as an alternative remedy, in the event of the present Bill failing to produce the desired effect. He agreed in this, and was satisfied with the Bill as it stood at present. A fair trial should, at any rate, be given to it.

HIS EXCELLENCY the PRESIDENT said that he did not deem it necessary to make any observations on the Bill, but he wished to make a few remarks upon the question of the Boat harbour, which had been naturally and properly brought before the Council by the last speaker. The only scheme for that purpose was one by Captain Taylor, who had presented a plan and design to Government. It contained, as far as he remembered, three principal features; first, an extension of the T at the end of the pier; secondly, a floating apparatus exterior to it, to pro-

duce still water; and thirdly, an excavation parallel to the shore, into which boats would run. This had been referred to Colonel Orr, who saw objections to the two last features. The floating apparatus would be a source of danger, for, in case of any accident to it, by collision or the violence of the weather, the materials might be broken up and driven among the piles of the jetty, where they would cause great damage. Colonel Orr also thought that it would be impossible to keep the aperture of the harbour open against the heavy sand drift which was constantly impelled by the currents along the shore. These arguments appeared to him (the PRESIDENT) to be valid. The papers had been circulated demi-officially to the Members of the Executive Council, and, as he had heard no more of the subject, he supposed that the Council was not favorably impressed with the project. The subject, however, was one which deserved the consideration of Government and of the mercantile community. It was not incompatible with the larger measure of a Ship harbour. He thought that the Chamber of Commerce might take the matter up and address the Government. In this way, a basis might be laid for further enquiry and action.

The Hon'ble W. R. ARBUTHNOT thanked His Excellency the PRESIDENT for his suggestion. He said that none of the Members of the Chamber of Commerce were engineers; but knowing the general interest with which the subject was regarded, he believed that they would be glad to address Government upon the subject, place a proposal before them, and ask for a professional opinion upon it.

The Hon'ble H. D. PHILLIPS said, that the Members of the Executive Council had considered Captain Taylor's plan, which was referred for the opinion of Colonel Orr, the professional adviser of the Government, who, by reasons assigned, had satisfied the Government that Captain Taylor's plan was not practicable.

The Hon'ble J. B. NORTON said that he had intended to record a silent vote in favor of the Bill. At the last meeting he had suggested that the final consideration should be postponed—not that he personally felt any doubt upon the subject, but because a petition had come in late. There was no particular reason for haste in urging on the Bill; and he had thought it well to give time, so that the Council might see if any further objections or arguments would be urged against it.

The Council had now before them two fresh petitions; one from thirty-seven boat-owners, and another from Mr. Job Solomon. The latter impugned the former petition, as being got up under some secret influence. Of the existence of such influence he offered no proof; but, in any case, the Council would have to consider whether the reasons urged in that petition carried the mind of the Council with them. Assuming such influence to exist, still the thirty-seven petitioners, who were all boat-owners, might be supposed to know what was best for their own interests.

Therefore, there were thirty-seven, against one, in favor of the principle of the Bill, which was to raise the rate of wages, and not to leave the rate of boat hire to what Mr. Solomon called free trade.

He (Mr. NORTON) was a free trader, and if he thought the principle of the Bill interfered with free trade, he would think twice before passing it. The Government of India could not be conducted on the principle of *laissez-faire* and *laissez aller*. All the doctrines of political economy were not applicable to this country, as recent events had shown. He did not go altogether along with the founders of that science, as to the selfishness of human nature being the only foundation of the science, to the exclusion of all other human motives; and though it might be a Utopian view, he believed that, sooner or later, the earlier doctrines of Adam Smith and Mill would be tempered by those of Carlyle and Ruskin, and that the duties as well as the rights of property would be taken into fuller account in the construction of the science of Political Economy. But it was not necessary to discuss principles, for he did not consider that this Bill interfered in any way with the principles of free trade. It was no greater infringement of those principles to fix the rates of hire on boats in Madras, than to fix the rates of cab hire in London. Both stood exactly on the same footing.

He believed that the best principle which could be adopted was to lay down a tariff, which should be fixed from time to time by the Executive Government, and which should give a fair remuneration to labor, with reference to the badly increased price of provisions and the ordinary rate of wages. He believed that the principle of this Bill would be found to work well in practice for the boat-owner, the boatmen, the shipping and mercantile interests, and the general public.

The Motion was put and agreed to.

The Bill was then read and passed without amendment.

SALT EXCISE BILL.

The Hon'ble T. CLARKE, in presenting the "Report of the Select Committee on the Bill to enable the Government to levy a duty, by way of excise, on salt manufactured in such Districts of the Presidency of Fort Saint George as the Government may think proper," said that the Bill had undergone several alterations at the hands of the Select Committee. These were mostly merely verbal, and the Sections which they affected were enumerated in the Report.

An important change had been introduced in Section 6. The manufacturers of salt naturally tried to produce as much salt as they could, and often more salt was produced at a particular place than could be sold. It was found that the interests of Government could not be protected, unless at least 5,000 Indian Maunds

SALT EXCISE.

were sold annually at any particular station. If a less amount was sold, the profit to Government would not pay for the cost of supervision.

Section 16 related to salt imported by land; and a provision had been added that, after it had once passed through the Custom House on payment of duty, it should be liable to no further interference on the part of the Government Officers.

Section 20 gave a Police Officer power to enter and search for contraband salt. The Committee had altered that Section, so as to make it clear that an entry without warrant was only to be permitted where there were reasonable grounds for believing that the salt would be removed, if the delay necessary for obtaining a warrant took place.

The Committee had been unable to agree as to the provision which should be substituted for the arbitration clauses, which had been disallowed by the Governor General in the recent Bill. Two gentlemen, who had been placed in an accidental minority by the casting vote of the Chairman, had recorded their dissent to the report of the Committee in reference to Section 10 of the amended Bill, and had given their reasons for urging a re-consideration of the former veto. Their arguments were deserving of the highest consideration. It appeared, however, to Mr. Phillips and himself that the advantages which arbitration might give to parties did not so greatly outweigh those which they possessed in the ordinary Courts, as to justify delay in carrying out the Bill. The Magistrate of Malabar urged the necessity for an immediate modification of the law, and he (Mr. CLARKE) would be sorry to see any delay in bringing the provisions of the Act into operation on the Western Coast. No doubt, the procedure by arbitration was more simple and cost less than that in a Court of law; but the delays and annoyances in getting a decision before arbitration were almost as great as those incurred in Civil Courts, and the class of persons from whom arbitrators must be selected would be more open to fear and favor, or to the suspicion of them, than the judges. He had, therefore, preferred the remedy in a Civil Court to that which was contended for by the minority.

The Hon'ble R. S. ELLIS, C. B., said, that he wished to offer a few observations upon the Bill as now amended. It would be in the recollection of the Council that the Bill on the same subject—the salt excise—which was at the end of 1857 sent up to the Government of India, contained clauses allowing compensation by means of arbitration. These clauses had been objected to by the Governor General, and were the cause of the Bill being vetoed. They had followed almost *verbatim* the similar clauses of Act VI of 1857, which applied to cases where land was taken for public purposes. When Mr. Clarke had introduced the former Bill, he had described the nature of those clauses in the following words:—

Sections 8 to 24 were introduced for the purpose of regulating the mode of affording compensation to land-holders, when they were required to suspend or close salt works already in

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operation. Provisions for this purpose were already contained in Regulation I of 1805. Practically, however, these provisions had become a dead letter, from the obscurity with which they were worded. Of late years, it had become usual, when manufacturers applied for an extension of their salt works, to couple the permission with an express condition that they should forego all claims to compensation in the event of the permission being subsequently re-called. This, however, applied only to a small portion of the salt pans. Works of this description extended widely over the country and formed a valuable property. If Government, for their own convenience, required the proprietor to close his works, he was fairly entitled to a full compensation for compliance. Accordingly, the bill, as re-modelled, provided that claims for compensation should, in the first place, be laid before the Collector. If he failed to satisfy the claimant, the matter was then to be referred to arbitration. The procedure for this purpose had been borrowed from Act VI. of 1857 (*for the acquisition of land for public purposes*). The rules which it contained for constituting arbitrators and regulating their proceedings had been tried and found to work satisfactorily, and had been embodied, with only the necessary alterations, in the amended Bill.

He (Mr. ELLIS) confessed that, after the Council had unanimously passed a Bill containing those clauses, he had felt much disappointment at finding that the Viceroy had exercised his right of veto. The reasons given by the Viceroy were briefly stated in his Minute. He said:—

I have withheld my assent from the Madras Salt Excise Bill, because I object to the arbitration clauses. These clauses were inserted in Committee and are copied from Act VI of 1857, relative to lands taken for public purposes. But Act VI deals with a state of things very different from that to which the arbitration clauses in this Bill are applicable. When private property in lands and houses is taken for a public purpose, the full value of such property must be awarded, and it is difficult to secure this, without affording the parties the option of resorting to impartial referees. But the case of a trader who is restrained for reasons of fiscal policy from carrying on a particular trade in a particular place, cannot be compared to the case of a man who is deprived of his house or land. We have had recent experience of the inconvenience and loss to the State, arising from the abuse of arbitration made under Act VI; and it certainly is not desirable to extend that remedy to cases connected with the collection of the revenue.

While vetoing the Bill, the Governor General directed, or rather recommended, the Madras Government to re-enact it with the omission of the arbitration clauses, and the substitution of a clause or clauses defining the rules by which compensation was to be awarded to persons entitled to such compensation. Instead of arbitration, the Governor General suggested that the claimant, if dissatisfied with the Collector's award of compensation, should have an appeal from the Collector to the Board of Revenue. The Select Committee who had been entrusted by the Council with the Bill, had found it impossible to carry out these recommendations. They were unanimous in stating—

That it would be difficult to frame any general rules for awarding compensation to the owners of closed salt pans, which would meet every case that might possibly arise. The rights of the salt manufacturers are so varied and complicated, that to embrace them all in any set of

rules, would not only unnecessarily extend this Act to a most inconvenient length, but the Committee doubt whether they could frame any rules which would embrace every case. The Committee likewise concur with the Board of Revenue in considering that their position and constitution are not such as to facilitate the exercise by them of judicial functions in cases of this kind; and that, as it will be by their order that works will be suppressed, the parties whose interests are concerned cannot be expected to regard them as impartial judges.

The Hon'ble V. Ramiengar and he (Mr. ELLIS) had found themselves compelled to dissent from the conclusion arrived at by the majority of the Committee that, as it had been found impossible to give effect to the recommendations of the Viceroy, the only alternative course was to refer parties aggrieved by the Collector's award, to the Civil Courts. His Hon'ble friend and he were strongly of opinion that in the case of owners of salt works, as in the case of owners of real property, when such property is required for a public purpose, the compensation should be determined by arbitration, and without the expense, delay, and annoyance of a civil suit. The Council had heard a great deal lately of the fondness for litigation entertained by the Natives of India, and this supposed passion had been made a reason for raising a large revenue by means of stamps upon proceedings in law. But the Hon'ble V. Ramiengar, who knew well the feeling of his countrymen, had assured him—and he entirely believed this statement—that the notion of the extravagant liking for litigation, attributed to the Natives, had no foundation in fact. At any rate, they had a natural preference for liberty of action, and they would be very averse to have an opportunity afforded them for the indulgence of their litigious feelings, by being first summarily dispossessed of their property, and then forced into a Court of Law. He objected to the position of the salt owners being taken to be such as was described by the Viceroy. Salt pans were bought, sold and mortgaged, just like any other property. Capital was expended in their purchase and improvement; and when they were closed, the property of the owner was taken away, just as much as if it was a house or farm. He could not remove as a trader could, who had nothing to do but to carry on his business in some other place. To close the salt pan was to ruin the property on which the owner's capital had been expended. The Viceroy, in his Minute, had referred to the inconveniences and loss to the State arising from the abuse of arbitration under Act VI of 1857. The Council were not in a position to judge what had been the result of the application of that Act in other parts of India. He (Mr. ELLIS) had heard that in some places it had worked badly. Waste lands had sometimes been bought up at low prices, and subsequently, when the land was wanted for railways or other public works, Government had had to buy back their own property at high rates; but this rather reflected on the negligence of the officials than on the provisions of the Act. He considered, however, that if Act VI of 1857 had been found insufficient to guard the interests of the

State, it would be a more logical course to amend the Act under which private property was taken for public purposes, than to exclude from its operation a particular class of cases in which private rights in real property were compulsorily made to yield to public interests.

If he had been able to make an impression upon the Members of Council, and had succeeded in convincing them that it would be an anomaly, attended with much hardship, to force claimants for compensation, on account of the closing of salt works, into our Courts, he trusted they would concur with him that the best course to be adopted would be, to submit, in an official channel, the reasons of this Council for thinking that the position of salt owners in this Presidency had been misapprehended by the Viceroy, and that there were sufficient grounds for a re-consideration of the veto on the Salt Excise Bill passed by this Council in 1867. He would, therefore, ask for a suspension of the Standing Orders, in order to move the following amendment:—

That the consideration of the Salt Excise Bill, now before the Council, be postponed, until a respectful representation can be laid before the Viceroy and Governor General, for a review of the grounds of objection, contained in the Minute of the late Viceroy dated the 18th April 1868, to the compensation clauses contained in the Salt Excise Bill passed by his Council in November 1867, and which Bill was vetoed by the late Viceroy and Governor General.

The Hon'ble V. RAMIENGAR seconded the amendment, and said that the question was, whether salt-owners whose pans had been closed should be referred to arbitration or to the established Courts. The Select Committee were agreed that the position and constitution of the Board of Revenue were not such as to facilitate the exercise of judicial functions; and that, as an appellate authority, they were not likely to command the confidence of parties whose interests were concerned. He was of opinion that a reference to the Civil Court would be equivalent to a denial of justice; it caused delay, vexation, and expense, especially when regard was had to the provisions of the present Stamp Act. Act VI of 1857, the Act for the acquisition of land for public purposes, had been at work for nearly twelve years, and the arbitration clauses in it had not been found, as far as he was aware to work badly, at least in this Presidency. The arbitrators might not always be free from the influences of fear or favor, still the people were accustomed to Panchayets, and a reference to them would be a far less expensive and far more expeditious mode of adjusting claims to compensation, than driving the aggrieved parties to seek redress in the established Courts of Law.

The Hon'ble H. D. PHILLIPS said that the difficulty which had been felt by the Committee was one arising from the peculiar position of Government in regard to its salt revenue. So long as salt was a Government monopoly, it would occasionally be necessary to close the pans where a sufficient quantity had not been produced and

sold in a given period. When this was done, the Collector set to work liberally and to the best of his ability, equitably to determine what compensation was due to the party whose working pan had been closed. It would then rest with the claimant to accept or refuse the compensation which would be offered to him by the Collector representing the Government. If he refused the compensation offered, he had the option of going to one of the ordinary Civil Courts—even to the Court of lowest jurisdiction. The Government, as shown in the Bill, was willing to submit to their Courts of Law any differences which may arise between themselves and the meanest ryot. He would ask the Council to decide whether this was not as good a plan of settling the claim as by means of any three or five persons who might be selected as arbitrators. Act VI of 1857 gave no option of going to a Court of Law. It said, in effect, we, the Government, require and will have the land; you must go before arbitrators to determine the rate of compensation.

It was argued that the Act was not known to work unfairly to Government. If it could be ascertained in all cases before what tribunal a party would wish to go for the settlement of compensation claims, the Council should find that they would prefer going before a competent, independent, and impartial judge. The question was then, simply, whether it was better for a claimant to go up with his claim before three arbitrators, or before an upright Judge presiding over a formally constituted Court. He was in favor of the latter course.

The Hon'ble A. J. ARBUTHNOT was disposed to agree in the objections advanced by the two dissentient Members of the Select Committee, against the course advocated by the collective Committee on the point to which the amendment moved by his Hon'ble friend Mr. Ellis had reference. It appeared to him that his Hon'ble friend had adduced valid grounds for considering that it was preferable to apply to the particular property which was dealt with by this Bill, the same rules as were applied to any other description of property, of which Government might deem it necessary to take possession. He agreed in the remarks of the dissenting Members on the general question. He did not think it right to subject persons who might consider themselves aggrieved by the course taken by Government under the particular Section now under notice, to the delay and expense of establishing their rights by a regular suit. The object of Act VI of 1857 was to provide an inexpensive and prompt method of obtaining compensation for persons whose property was taken for the benefit of the State. In principle, he could see no valid reason for departing from that course as to the particular species of property now under consideration. It appeared to him that the language used by the late Viceroy in assigning his reasons for vetoing the former Bill showed that the exact nature of this property had not been definitely understood. The Viceroy certainly did not

intend to refer parties to a civil suit, but considered that a simpler tribunal might be found in the Board of Revenue.

While, however he concurred with his Honorable friend Mr. Ellis and with the Hon'ble V. Ramiengar, on the general question, Mr. ARBUTHNOT was disposed to question the expediency of taking the course suggested in the amendment moved by Mr. Ellis. He would suggest, for the consideration of his Hon'ble friend, whether it would not better that the Council should proceed with the Bill, and that when they came to Section 10, an amendment should be moved in accordance with the views that had been expressed by the dissenting Members of the Select Committee, in order to the re-introduction of the arbitration clauses into the Bill. He thought that, under the circumstances, the adoption of this course was not and could not be deemed to be disrespectful either to the late Governor General or to the Government of India; for it was clear that there had been a misapprehension as to the position of the owners of salt works, and that there had been no intention to drive them to the only alternative remedy which the Committee had been able to devise. The Governor General did not contemplate a civil suit. He did contemplate a remedy which he considered would be more satisfactory than that laid down by Act VI of 1857 and equally prompt, but which was pronounced to be impracticable. Therefore, he (Mr. ARBUTHNOT) thought that they might without impropriety proceed to pass the Bill; and that if the Council agreed with the dissenting Members, they might re-introduce the clauses objected to by the Governor General, and when the Bill was submitted for the assent of the present Viceroy, it might be accompanied by an explanatory letter containing a full statement of the reasons which had led the Council to re-introduce the arbitration clauses. He would suggest to his Hon'ble friend the expediency of withdrawing the amendment which he had moved, of allowing the Bill to proceed, and of moving, when they came to Section 10, the re-introduction of the arbitration clauses.

The Hon'ble G. N. GAJAPATHI ROW expressed his concurrence.

The Hon'ble MIR HOOMAYOON JAH BAHADUR said that the position of salt-owners was the same as other proprietors, and he thought that the same indulgence should be extended to them.

The Hon'ble J. B. NORTON said that he was inclined to take the same view as Mr. Ellis. The Council must not forget that they stood in a delicate position. A Bill with clauses similar to those which Mr. A. Arbuthnot proposed to re-introduce, had already been vetoed. If a Bill exactly the same was again sent up, the proceeding might be thought disrespectful, or in the nature of an appeal from one Viceroy to his successor. The course proposed by Mr. Ellis was not open to such

an imputation. The Council would suspend legislation, until arguments which had not hitherto been heard had been fairly considered. He thought this was the more respectful of the two courses, and he was prepared to vote for it. If the Council, or a majority of the Council, agreed with the dissenting Members that it was better to refer the question of compensation to arbitrators than to a Court of Law, they had a right to request a consideration of arguments which had not been placed before the Viceroy who had vetoed the Bill. The Hon'ble Mr. Clarke had asked the Council to proceed with the Bill, on the ground of the inconvenience which would arise from delay. If the Bill were sent up again with the arbitration clauses, it would probably be again vetoed, and much delay would ensue. If the course proposed by Mr. Ellis were adopted, the Council would have the decision of the Viceroy before long, and would then be bound to act upon it.

He agreed with the dissenting Members in the principle of their dissent. If he apprehended the matter correctly, the proposal to send the salt-owner to a Court of Law did not emanate from the Viceroy. He had proposed that rules should be laid down for fixing the principle of compensation, and that the Board of Revenue should be constituted an appellate Court. It had been unanimously found by the Committee that these proposals could not be carried into effect. Rules could not be framed which would govern all cases. The Board of Revenue would not be a fit tribunal for appeal, since the action under which the salt works were closed would have emanated from them, and they would be, as it were, acting as a Judge in their own cause.

The question was, whether the Council was of opinion that the owners of salt works ought to be driven to a Civil Court, it being admittedly impossible to frame rules which should determine the rate of compensation, and inexpedient to leave the matter to the Board of Revenue as a Court of appeal. He could draw no fair distinction between the interests of owners of salt pans and of any other interests connected in the land. He believed that if a suit were brought, a claimant would have to pay upon the valuation applicable to an interest in land. A stamp duty upon such a valuation would be very heavy. Arbitration was a species of tribunal which was simple, expeditious, and cheap. He was not prepared to say that arbitration had worked injuriously or oppressively here, under Act VI of 1857. He knew nothing of the other Presidencies; but he believed that the Act had worked well in this Presidency, where land had been required for railways or other public purposes. He was anxious to see Courts of Law open to all classes and, as far as possible, free from expense, and especially initiatory stamps; but it did not necessarily follow that he should wish to see all classes driven into them. Courts of Arbitration were something like the Swedish Courts of Conciliation, which Lord Brougham desired to see extended to England. He thought

that Arbitration was a better tribunal than a Civil Court, in cases of compensation; and he therefore desired to see that principle prevail in the present Bill. But he was afraid that if it was now put into the Bill, it would not prevail. It might be viewed as a protest against the act of the late Viceroy immediately after his departure.

The Hon'ble W. R. ARBUTHNOT said that he was in favor of the view taken by Mr. Ellis. He preferred a Panchayet to the ordinary Mofussil Courts, as being simpler and more in accordance with the genius of the people. He agreed with what had fallen from the Advocate General as to the course which ought now to be adopted. If there were any chance of the other line of action being regarded as an appeal from the late Viceroy to the present one, it would be best to avoid it.

HIS EXCELLENCY THE PRESIDENT said, that he agreed with the views expressed by the majority of the Council. The principle of arbitration was too valuable a one to be abandoned without a struggle. It was equitable, congenial to the generosity of the Government, and conformable to the habits of the people. It should, if possible, be defended and preserved. The immediate question was, which of the two expedients proposed was the best fitted for attaining this object. He preferred that which had been suggested by the Hon'ble Mr. Ellis. Representation appeared to him more advisable than re-enactment. The course recommended by the Hon'ble Mr. A. Arbuthnot was one from which he would not shrink under all circumstances, but he did not consider that the necessity was sufficiently pressing in the present case. He was also induced to recommend a suspension of action in this matter by information which had reached him, by which he was led to believe that the whole fiscal system concerning salt was under the consideration of the Secretary of State and the Supreme Council, and that an effort would probably be made to introduce a more equal and harmonious scheme of salt revenue throughout India.

The Hon'ble A. J. ARBUTHNOT said that he had no desire to press, in opposition to the views of his Lordship the President and of the majority of the Council, the suggestion which he had ventured to submit for their consideration; but he would like to make a few supplementary remarks with reference to what had fallen from his learned friend the Advocate General, and from some of the other Members. In the first place, it appeared to him that the representation which had been suggested by his Hon'ble friend Mr. Ellis, would be as much an appeal to the new Viceroy from the opinion of the late Viceroy, as the course which he had suggested, of re-enacting the arbitration clauses and submitting the Bill with a full explanation of the reasons for taking that step. He submitted that, in either case, there would be an appeal from the opinion of Sir John Lawrence to that of

the Earl of Mayo. Two reasons had led him to suggest the course which he had recommended. First, that, apparently, and within his own knowledge, as to one District, it was desirable to pass the Bill without delay. Some months ago he had received a letter from the Collector of Malabar, complaining of the delay that had already taken place; and he thought that by proceeding with the Bill in the way he suggested, the Council would materially abbreviate any further delay. Secondly, looking to the constitution of the Legislative Council, he thought that the course which he suggested was more regular than that proposed by his Hon'ble friend. The Act under which the Council performs its functions, prescribed certain subjects as to which the leave of the Governor General must be obtained before any legislative measure could be introduced with reference to them. As to all other subjects, they were competent to legislate, and it was expected that they should legislate, without previous reference to the Viceroy, or leave from him. He recollected a case which occurred some years ago, and which, though not exactly similar, was perhaps somewhat analogous to the case now under consideration. He referred to a Bill—if he remembered rightly, it was the Madras Pier Bill—which had been vetoed by the Earl of Elgin for reasons which were considered by this Government to be untenable. It was thought that the veto had been given under a misapprehension; and a representation to that effect was made, with a request that the veto might be reconsidered. The answer which they received was, that a Bill once vetoed could not be reconsidered; but that it was competent to the Council to re-enact it and to submit it a second time with explanation. That case, as he had already observed, was not quite similar to the present, inasmuch as there the object was to induce the Governor General to withdraw his veto, and possibly it might be determined that it had really no bearing on the question before them; but he had thought it right to mention it, and perhaps his learned friend the Advocate General would favor the Council with his opinion as to its bearing on the question before them. For himself, speaking without any previous reflection on the subject—for he had not been informed before he came into the room of the amendment which had been moved by his Hon'ble friend Mr. Ellis—he entertained some doubt whether the Council might not be told that a reference of the nature of that proposed was irregular, and not in conformity with the constitution of the Council. If, however, the majority of the Council held a contrary opinion, he had no desire to press the objection.

The Hon'ble R. S. ELLIS, C. B., said that, if the majority of the Council affirmed the principle of the dissenting Members, they were ready to place themselves in the hands of the Council, as to the course which should be adopted to give that principle effect. He should have liked to adopt the course suggested by Mr. A. Arbuthnot, but that he had thought that a re-enactment of the arbitration clauses might perhaps be considered disrespectful to the Viceroy.

HIS EXCELLENCY THE PRESIDENT said, that he adhered to his opinion that the course, as originally proposed by Mr. Ellis, was the better one. In the first place, it was less open to the imputation of disrespect to the Viceroy. True, it was an appeal from the decision of one Viceroy to that of his successor, but the form of appeal was less abrupt and combative than that of re-enacting a Bill which had been formally disallowed. In the next place, it would expose the dignity of this Government in a less degree. If the Viceroy still thought fit to disallow the arbitration clauses, it would be better for the Council that he should refuse assent to a request than that he should veto a Bill a second time.

The Hon'ble J. B. NORRON thought that the best course was at present to suspend the debate. In either way, the Council would be making an appeal, but they desired to appeal in such a way as would be more respectful. He thought that it was a better course to appeal in a preliminary way than to fly in the face of the Viceroy with a Bill almost identical with the last. As to the remark made by Mr. A. Arbuthnot that only one class of Bills required previous assent, that was usually so; but it might be a question whether that applied to cases like the present, where the Governor General had already vetoed a similar Bill. He had been much impressed, however, by the precedent of the Pier Bill which had been mentioned by Mr. A. Arbuthnot. The question had come upon him unexpectedly, as he had not been prepared for the course adopted by Mr. Ellis. He would therefore be glad of time to consider the point.

The Hon'ble A. J. ARBUTHNOT then moved to adjourn the debate on the Bill to the next meeting of the Council.

The Motion was put and agreed to.

The Council adjourned to Friday, the 26th day of February 1869, at 4 o'clock P.M.

MADRAS,
The 19th February 1869. }

JOHN D. MAYNE,
*Asst. Secretary to Government,
Legislative Department.*

Madras—Printed by H. MORGAN, at the Fort St. George Gazette Press.

Abstract of the Proceedings of the Council of the Governor of Fort Saint George, assembled for the purpose of making Laws and Regulations, under the provisions of the Act of Parliament, 24 and 25 Victoria, Cap. 67.

The Council met at the Council Chamber in Fort St. George on Friday, the 26th day of February 1869.

PRESENT :

His Excellency the Governor of Madras—*presiding*.
His Excellency the Commander-in-Chief.
The Hon'ble H. D. Phillips.
The Hon'ble A. J. Arbuthnot.
The Hon'ble J. B. Norton.
The Hon'ble W. R. Arbuthnot.
The Hon'ble Mir Hoomayoon Jah Bahadur.
The Hon'ble J. C. Loch.
The Hon'ble R. S. Ellis, C.B.
The Hon'ble V. Ramiengar.
• The Hon'ble G. N. Gajapathy Row.
The Hon'ble T. Clarke.



The PRESIDENT announced the assent of His Excellency the Viceroy and Governor General to the following Act:—

No. I of 1869.—“An Act to enable the Commissioner of the Neilgherry Hills to hold the office and perform the duties of President of the Municipal Commissioners for all towns situated within that District.”

The Assistant Secretary reported that the Bill “to amend Act IV of 1842 (for the better management of Boats and Catamarans in the Madras Roads)”, which was passed by the Council on the 19th February 1869, received the assent of the Right Honorable the Governor on the 23rd idem, and has been transmitted for the sanction of His Excellency the Viceroy and Governor General.

SALT EXCISE BILL.

The Hon'ble R. S. ELLIS, C. B., said that, since the last meeting of Council, he had been able to look into the case referred to by the Hon'ble Mr. A. Arbuthnot as bearing upon the propriety of forwarding a representation to the Viceroy, and

asking him to permit the introduction of the Arbitration Clauses in the Salt Excise Bill. At that meeting it had been stated by the Advocate General that probably it would be a more respectful course to adopt the amendment which he (Mr. ELLIS) had proposed, and to address the Viceroy, laying before him the exact position of owners of salt pans in this Presidency and the circumstances under which the Council thought that the Arbitration Clauses which had formally been disallowed should be adhered to in the present Bill. He had found, however, that in 1863 the Government of Bombay had addressed the Viceroy in reference to his disallowance of an Act "to amend Act IX of 1850." In reply, the Government of India had used the following language:—

"The duty of assenting to, or withholding assent from, Bills enacted by the Local Councils, is one of the most serious responsibilities which devolve on His Excellency the Viceroy and Governor General. The veto of His Excellency when once it is passed, is not revocable; and His Excellency is of opinion that it would not be becoming nor conducive to the public interest that His Excellency should discuss with the Local Government concerned the propriety of the course which His Excellency may have followed in the exercise of this function."

In the same year the Madras Government had addressed the Viceroy in reference to his disallowance of the Madras Pier and Boat Bills, and the Government of India had answered that representation in the following terms:—

"In reply, I am desired to point out to you that that the Governor General having once formally disallowed the Bills in question, it is impossible for him to revoke that disallowance. The Bills themselves have ceased to have any vitality, and cannot be revived except by re-introduction as new Bills into the Council of the Governor at Madras."

Looking at these papers, it seemed to him now that the more regular course would be, instead of making any preliminary representation to the Viceroy and Governor General upon the subject of the Bill, to proceed with the consideration of the Bill. If the Council were of opinion that the Arbitration Clauses should be inserted, they could be inserted at the proper place. The Bill would then be submitted, as a new Bill, for the sanction of the Viceroy. Of course, in forwarding it for his assent, a letter should be sent explaining the grounds upon which the Council have proceeded. It might be pointed out that the Council had doubted whether it was consistent with precedents to make any representation to the Viceroy asking him to sanction the re-introduction of the Clauses which had been formally disallowed.

He would, therefore, withdraw the amendment of which he had given notice at the last meeting, and would propose that the further consideration of the Bill should be proceeded with, and that, in place of Section 10 of the present Bill, Sections 10 to 24 inclusive of the old Bill should be inserted.

The Hon'ble J. B. NORTON said that since the last meeting he had carefully considered what was the most advisable course to pursue. The only object of the Council was to adopt that mode of proceeding which should be at once most respectful to the Viceroy, most effectual in carrying out the opinion of the Council, and most regular. The Bill did not require the previous sanction of the Viceroy.

Although, however, the Council was at liberty to pass the Bill, it still remained a question whether it would be more respectful a second time to pass a Bill which contained the same clauses as those which had been previously disallowed, or to adopt the course of addressing the Viceroy, and asking him to re-consider the objections which he previously expressed to those clauses.

He had looked into the correspondence referred to by Mr. A. Arbuthnot on the last occasion. He thought that that precedent was not strictly in point. On that occasion a Bill had been vetoed; the Government requested a re-consideration of that veto, and suggested that the Viceroy should withdraw his disallowance, and that the very Bill which had been already vetoed should receive his sanction: it was pointed out, in reply, that the veto operated as a death-stroke to the Bill; and that a Bill, once disallowed, had no longer any vitality upon which an assent could operate. Here the case was different: the Viceroy was not asked to withdraw his disallowance of the former Bill, but to give a previous sanction to the introduction, into a new Bill, of certain clauses similar to those contained in the old Bill. He thought, however, that the correspondence of the Supreme Government with the Bombay Government in 1863, referred to by Mr. Ellis, showed that it was not open to the subordinate Councils to address the Governor General in the manner which had been proposed. The same answer would probably be received as had been given to the Bombay Government; and the Council would be told that the regular course was for them to bring in a fresh Bill and submit it for a fresh assent.

He would also point to the 41st Rule for regulating the business of this Council. It seemed to him to have a bearing upon the question. Under that Rule, perhaps, it was not open to a Member to bring before the Council the reasons which had induced a former Viceroy to withhold his assent to a Bill. He would suggest, therefore, that the better course after all would be to introduce the Arbitration Clauses into the Bill, and, after the Bill was passed, to send it up again to the Governor General. The Bill, when again submitted, would be accompanied by a full statement of the reasons that had led the Council to hope that these clauses might be passed into law. The proceedings of this day's Council and of the last day, would, no doubt, satisfy the superior authorities that nothing disrespectful was intended by the course which had been adopted.

He did not know whether the Mover was now prepared to go on with the Bill, or whether it would be necessary to re-commit it with a view to making the alterations that had been proposed.

The Hon'ble H. D. PHILLIPS said that he could perceive no use in re-committing the Bill to the old Committee. He still held by his former opinion and, though he had attended to all that had been said against the Bill, must continue to adhere to it in the Committee.

The Hon'ble A. J. ARBUTHNOT remarked that the position of the question at the present moment was, that Mr. Clarke had moved that the further consideration of the Bill should be proceeded with, and that Mr. Ellis had withdrawn the amendment which he had moved. The proper course would, therefore, be to proceed with the consideration of the Bill. It would then be open to Mr. Ellis or to any other Hon'ble Member to move for the introduction of the Arbitration Clauses, or for the re-commitment of the Bill. As those Clauses had already been prepared and considered in connexion with the former Bill, he saw no occasion for re-committing the Bill.

The Hon'ble T. CLARKE then moved that the further consideration of the Bill should be proceeded with.

Sections 1 to 5 were read and passed without alteration.

In Section 5, the Hon'ble A. J. ARBUTHNOT moved to substitute the words "an Officer of the Magistracy or Police or to a Revenue Officer of Government in such District," in place of the words "a Magisterial, Police or Revenue Officer of Government."

The Motion was put and agreed to.

Sections 6 to 9 inclusive were read and passed without alteration.

On Section 10 being read, the Hon'ble R. S. ELLIS moved to substitute, for it, Sections 10 to 24 inclusive, of the former Salt Excise Bill.

The Hon'ble J. B. NORTON seconded the amendment.

The Hon'ble H. D. PHILLIPS said that he did not know whether it was necessary to repeat the observations which he had made upon the subject at the last meeting. He still held the opinion which he had then expressed. Speaking as an old Collector and one who had charge of a Salt Department, he objected to this mode of providing compensation. He looked upon the Arbitration Clauses which were now proposed to be re-introduced as a small and rather complicated code of procedure; and so far as he could recollect, his experience in revenue cases was that, where arbitration was resorted to, there was a good deal of delay, and almost always an

appeal on the ground of corruption or misconduct on the part of the arbitrators. He would also remark that the Arbitration Clauses in the old Bill had not originated from Government. The Draft Bill contained no such provisions, which had been introduced by the first Select Committee. The course of proceeding laid down by the present Bill was just what the Government first approved of when the excise question was taken up.

The Hon'ble T. CLARKE was also opposed to the substitution of these Clauses. He said that the amount of compensation would always be very small. The Bill only referred to cases of salt pans producing less than 5,000 maunds, the annual profits of which amounted to about 160 Rs., and an annuity of that amount would only represent a sum of Rs. 3,000.

The Hon'ble R. S. ELLIS remarked that if the amount of compensation was small, it was the more improper to force a claimant to a civil suit to recover it.

The Hon'ble H. D. PHILLIPS said that the word "force" seemed to him to be rather a harsh term. The Collector made an offer such as he thought fair, and it was not, he submitted, to be supposed that an officer of that high position would knowingly take advantage of a poor man. A Collector had other and important duties entrusted to him, and he (Mr. PHILLIPS) could not see why he should be distrusted, or why it should be imagined that he would act with partiality for the benefit of Government in the rare cases likely to arise under the Act.

The Hon'ble A. J. ARBUTHNOT said that he thought that his Hon'ble friend Mr. Phillips was mistaken as to the real state of feeling of the Members of the Council. He felt sure that no such feeling of mistrust of the Collectors was entertained by those Members of the Council who were in favor of the amendment moved by Mr. Ellis. It was not supposed that offers made by the Collectors would be wanting in fairness or liberality to persons whose works were suppressed. His view, and that of those Members of the Council who agreed with him upon this subject, was that there was no valid reason why, in dealing with the property of the proprietor of salt pans which might be suppressed under the provisions of this Bill, they should depart from the principle already laid down by the Indian Legislature as applicable to all other cases where, in the interests of the State, the Government dispossessed a private individual of any property. It might be, as Mr. Clarke observed, that the property in question would be of comparatively trifling value; still the parties concerned might consider it of importance. On principle the same method of awarding compensation ought to be applied to their case as was observed where other descriptions of property were taken for public purposes.

The Council divided upon the amendment :—

Ayes 9.

Noes 2.

His Excellency the Commander-in-Chief.	The Hon'ble H. D. Phillips.
The Hon'ble A. J. Arbuthnot.	The Hon'ble T. Clarke.
The Hon'ble J. B. Norton.	
The Hon'ble R. S. Ellis. c. B.	
The Hon'ble J. C. Loch.	
The Hon'ble Mir Hoomayoon Jah Bahadur.	
The Hon'ble W. R. Arbuthnot.	
The Hon'ble V. Ramiengar.	
The Hon'ble G. N. Gajapathy Row.	

So the Motion was carried.

The new Sections were then read.

Sections 10 to 12 were passed without amendment.

On reading Section 13, the Hon'ble J. B. NORTON moved that the Section should be amended by omitting the word " same" in the last line.

The Motion was put and agreed to.

Sections 14 to 24 were passed without amendment.

Sections 11 to 20 of the present Bill were read and passed without amendment.

In Section 21, the Hon'ble G. N. GAJAPATHY ROW moved to insert, after the words " any Police Officer," in the 1st line, the following words:—" who shall vexatiously and unnecessarily enter into any house, boat or place without reasonable cause for him to believe that salt is being manufactured, or that contraband salt is kept or concealed in any such house, boat or place, or"

The Motion was put and agreed to.

The rest of the Bill was read and passed without amendment.

REVENUE OFFICERS' POWERS BILL.

The Hon'ble T. CLARKE, in presenting the Report of the Select Committee on the Bill " to empower Revenue Officers to summon parties to attend at their Cutcherries for the settlement of matters connected with revenue administration," and moving that the Bill as amended by the Committee may be taken into consideration, said that it was not necessary to take up the time of the Council by any lengthened remarks upon the Bill. The Select Committee had only made a few changes in the Bill as originally introduced. They had enlarged the powers granted to the Revenue Officers named in the Bill, and had authorized them to summon not only witnesses but all persons whose evidence might be necessary in cases pending

before them, and to require the production of documents in the possession or under the care of the persons so summoned. They had struck out the original Sections 4 and 5 from the Bill, as they only conferred a power which officers authorized to issue a summons already possessed. In lieu of those, they had substituted two sections, one allowing a person merely summoned to produce a document, to send it by the hand of a third party, and another, also taken from the Code of Criminal Procedure, allowing summoning officers to dispense with the personal attendance of the infirm and of those whose rank and sex entitled them to such immunity, and authorizing the summoning officer to depute a commission to take the evidence of such parties at their houses or other convenient places.

The Hon'ble W. R. ARBUTHNOT observed that the Bill contained no provision for paying parties who were required to attend as witnesses. He did not know whether the point had been considered in Committee, but thought it desirable there should be some such provision, if practicable. He believed it was the course in judicial matters that persons whose attendance was required should be allowed some remuneration by way of batta. It might often happen that indigent persons would be summoned from a distance at some expense to themselves, or kept waiting so as to incur considerable loss of time. His remarks were to be taken as suggestive, and were intended chiefly for the consideration of the Hon'ble Mr. Clarke and of the other Members of the Select Committee, whose experience of up-country matters was far larger than his own.

HIS EXCELLENCY the PRESIDENT said that the principle of affording indemnity to witnesses summoned by Revenue Officers recommended itself to every one, but it was a question in what authority the power to grant remuneration should be reposed. Again, if witnesses in revenue cases were given a legal right to have their expenses paid, the larger question will be opened up, of granting a similar right to witnesses in criminal cases. This subject had previously been under the consideration of the Executive Government; and he believed they had shrunk from arriving at any decision upon it, from an apprehension of the expense which would be entailed. Perhaps the better course would be, to proceed with the consideration of the Bill, but not finally to pass it until the next meeting of the Council. Mr. W. R. Arbuthnot might, in the meantime, consider whether any amendment for this purpose was desirable, and what form that amendment should take.

The consideration of the Bill was then proceeded with.

The Hon'ble T. CLARKE moved to amend Section 1 by inserting the words " Deputy Collectors," after the words " Assistant Collectors."

The Hon'ble J. B. NORTON moved to amend the same Section by inserting after the words " all persons" in the 5th line, the words " resident within the

District," and also by inserting, after the word "document" in the 10th line, the words "relevant to the matter under enquiry."

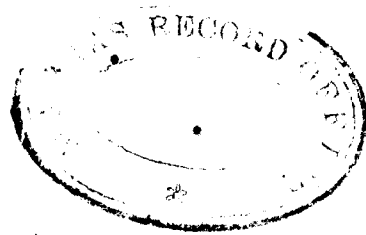
The Hon'ble W. R. Arbuthnot moved to amend the title of the Bill by substituting the word "persons" for "parties."

These amendments were assented to, and the other Sections were read and passed without amendment.

The Council then adjourned to Friday the 5th March 1869.

MADRAS,
The 26th February 1869. }

JOHN D. MAYNE,
*Asst. Secretary to Government,
Legislative Department.*



Abstract of the Proceedings of the Council of the Governor of Fort Saint George, assembled for the purpose of making Laws and Regulations, under the provisions of the Act of Parliament, 24 and 25 Victoria, Cap. 67.

THE Council met at the Council Chamber in Fort St. George on Friday, the 5th day of March 1869.

PRESENT :

His Excellency the Governor of Madras—*presiding*.
His Excellency the Commander-in-Chief.
The Hon'ble H. D. Phillips.
The Hon'ble A. J. Arbuthnot.
The Hon'ble W. R. Arbuthnot.
The Hon'ble Mir Hoomayoon Jah Bahadur.
The Hon'ble J. C. Loch.
The Hon'ble R. S. Ellis, C.B.
The Hon'ble V. Ramiengar.
The Hon'ble G. N. Gajapathy Rau.
The Hon'ble T. Clarke.

SALT EXCISE BILL.

The Hon'ble T. CLARKE moved the final consideration of the Bill "to enable the Government to levy a duty, by way of excise, on salt manufactured in such Districts of the Presidency of Fort Saint George, as the Government may think proper."

The Hon'ble V. RAMIENGAR moved to amend Section 35, by omitting, in line 6, the words "that salt is being manufactured or." He said that salt was not manufactured in a house or boat, and that Section 26 gave all salt officers free passage over all salt works.

The amendment was made accordingly, and the Bill was then passed without further amendment.

REVENUE OFFICERS' POWERS BILL.

The Hon'ble T. CLARKE moved the final consideration of the Bill "to empower Revenue officers to summon persons to attend at their Cutcherries for the settlement of matters connected with revenue administration." He said that the Select

Committee had met to consider the proposal made on the last occasion by the Hon'ble Mr. Reiersen Arbuthnot, to the effect that express provision should be made in the Bill for payment of witnesses summoned in accordance with its powers. The Committee were, however, unanimously of opinion that it would be undesirable to introduce into the Bill any sections for that object. Payment of those expenses would entail a heavy charge, which would probably lead to further taxation. Any such result would be unpopular and, he thought, undesirable. The Criminal Procedure Code contained no provisions for the payment of witnesses summoned to attend before the Magistrate. He believed that the omission was due to financial considerations. He thought that administrative action would suit the object in view better than any legislation. A rule might be passed by the Government authorizing Revenue officers to pay the expenses of witnesses summoned under this Act, in cases of proved indigence, or where any special hardship had been incurred. Probably the Hon'ble Member would be satisfied with the understanding that Government would issue directions to that effect.

The Hon'ble W. R. ARBUTHNOT said that at the last meeting he had merely put it forward as a suggestion that occurred to himself, that witnesses should be compensated for the loss of time and the expense they incurred in giving evidence upon revenue matters. If, however, it was the intention of the Executive Government to give effect practically to that suggestion by administrative rules, the object he had in view would be sufficiently attained without express legislation. He would observe, however, that there were some precedents for the payment of witnesses in recent enactments. He had sent these to the Hon'ble Mr. Clarke for the information of the Select Committee; but unfortunately they had not reached him until the Committee concluded its sitting. The Acts he referred to were Bombay Act XIII of 1866 and Act XVII of 1868, which provided for summoning witnesses before the Legislative Council at Poona, and before the Commissioners appointed to enquire into the affairs of the Bank of Bombay. Each of these contained express provisions for the payment of witnesses, and he had thought that similar provisions might have been introduced into the present Act. He did not, however, wish to press the suggestion after hearing what had been said on the subject by the Hon'ble Mr. Clarke. He fully agreed with him that any further taxation was very undesirable.

He wished also to point out that the Bill appeared to contain no clauses such as were found in the Acts to which he had referred, empowering Revenue officers to compel obedience to their summonses, or to punish those persons who might decline to attend when wanted. This point had probably not escaped the attention of the Select Committee, and he presumed there were sufficient reasons for the omission.

The Hon'ble H. D. PHILLIPS said that it had appeared to the Select Committee that as witnesses summoned before the Magistracy received no batta or compensation, except what the Magistrates were competent to disburse under certain rules framed by Government, witnesses summoned before a Revenue officer might fairly be left in the same position.

As to the second point noticed by Mr. Reiersen Arbuthnot, he (Mr. PHILLIPS) might observe that the Bill had originally contained clauses such as he suggested were desirable. It had, however, been pointed out by the Assistant Secretary that such clauses were unnecessary. Chapter X of the Penal Code contained numerous provisions for punishing persons who disobeyed an order proceeding from a public servant, calling upon them to give evidence or to produce documents, where the public servant was legally competent, as such, to issue such an order. The present Act made Revenue officers legally competent to summon persons to give evidence or to produce documents. It followed, therefore, that disobedience to such an order would carry with it all the penalties prescribed by the Penal Code. These would be found amply sufficient to enforce compliance.

The Hon'ble G. N. GAJAPATHY RAU pointed out that the Civil Procedure Code fixed a limit of a hundred miles beyond which the personal attendance of witnesses ought not to be enforced. Section 2 of the present Bill gave power to summon all persons resident within the District, the extreme limits of which might be—and, in the case of Vizagapatam, for instance, actually were—more than 100 miles apart. He would, therefore, suggest that a limitation similar to that contained in the Civil Procedure Code might be introduced into the present Act.

The Hon'ble R. S. ELLIS, C. B., said that the Hon'ble Member appeared to have overlooked the object of the Bill, which was to facilitate settlements between Revenue officers and ryots, to dispose of applications for land, and to adjust disputes upon matters of irrigation. It was almost impossible that such a case as that suggested by Mr. Gajapathy Rau should ever arise in practice, unless perhaps where the party who was summoned had designedly removed to a distance to avoid personal attendance.

The Hon'ble V. RAMIENGAR was also of opinion that any such amendment would be undesirable. As Revenue officers would require the attendance of persons chiefly for purposes connected with the revenue settlement, evidence taken by commission would be of little or no value. He thought that no practical inconvenience would arise from the Section as it now stood. Matters under investigation by a Collector would be referred to a Tahsildar or Divisional officer, who would be near the residence of the parties summoned.

The Hon'ble G. N. GAJAPATHY RAU withdrew his suggestion.

The Bill was then passed without amendment.

The Council adjourned to Friday, the 19th March 1869.

MADRAS,	}	JOHN D. MAYNE,
The 5th March 1869.		Asst. Secretary to Government, Legislative Department.

Abstract of the Proceedings of the Council of the Governor of Fort Saint George, assembled for the purpose of making Laws and Regulations, under the provisions of the Act of Parliament, 24 and 25 Victoria, Cap. 67.

The Council met at the Council Chamber in Fort Saint George on Friday, the 4th day of June 1869.

PRESENT :

His Excellency the Governor of Madras—*Presiding*.
 The Hon'ble H. D. Phillips.
 The Hon'ble A. J. Arbuthnot.
 The Hon'ble Mir Hoomayoon Jah Bahadur.
 The Hon'ble J. C. Loch.
 The Hon'ble R. S. Ellis, C.B.
 The Hon'ble V. Ramiengar.
 The Hon'ble G. N. Gajapathy Rau.
 The Hon'ble T. Clarke.
 The Hon'ble W. R. Arbuthnot.

The Hon'ble WILLIAM RIERSON ARBUTHNOT took the usual oaths and his seat as an Additional Member of the Council, on re-appointment.

The President announced the assent of His Excellency the Viceroy and Governor General to the following Acts:—

No. II of 1869.—“ An Act for repealing certain enactments which have ceased to be in force or have become unnecessary.”

No. III of 1869.—“ An Act to empower Revenue Officers to summon persons to attend at their Cutcheries for the settlement of matters connected with Revenue administration.”

No. IV of 1869.—“ An Act to amend Act IV of 1842, (*for the better management of Boats and Catamarans in the Madras Roads*).”

The Assistant Secretary reported that the Act “ to enable the Government to levy a duty, by way of excise, on salt manufactured in such Districts of the Presidency of Fort Saint George as the Government may think proper,” which was

passed by the Council on the 5th March 1869, received the assent of the Right Honorable the Governor on the 10th idem, and has been transmitted for the sanction of His Excellency the Viceroy and Governor General.

JAILS BILL.

The Hon'ble V. RAMENGAR, in presenting the Report of the Select Committee on the Bill "for the regulation of Jails within the Presidency of Fort Saint George, and for the enforcement of discipline therein," and moving that the Bill, as amended by the Committee, be taken into consideration, said that considerable modifications had been made by the Select Committee, and that he would briefly explain them.

Section 5 of the original Bill provided that no prisoner should be discharged except in the presence of the Superintendent of Jail. This had been struck out by the Committee, because the Inspector General of Jails had brought to notice that at certain stations Assistant Magistrates were the Superintendents, and that, as these officers were not always present at their head quarters, inconvenience would result from the proposed provision.

Section 6 of the original Bill had also been omitted. It vested in the Superintendent of Jails the power of ordering the immediate release of any prisoner suffering from disease likely to cause death. The Committee, however, were of opinion that the power of releasing prisoners before the expiration of their sentences should vest in the Government.

Section 3 gave the Government power to make rules for the management of Jails; but, as some interval of time must elapse before those rules could be framed and issued, alterations had been made in section 9, in clause III of section 10 and in section 12, which would admit of the rules now in force being observed in the meantime.

The concluding part of clause IV of section 12 of the original Bill rendered punishable "generally any culpable behaviour towards Jailors or public officers" which might not constitute an offence such as should be prosecuted before the "Criminal Courts." This clause being too wide and vague, and, in fact, unnecessary, had been struck out by the Select Committee.

Clause III of section 13 of the original Bill provided for the infliction of flogging and solitary confinement for the offences specified in the 3rd, 4th, and 5th clauses of the immediately preceding section. At the suggestion of the Inspector General of Jails, the Select Committee had added restriction of diet as another punishment, which had been found by experience to be effective. For the punishment of solitary

confinement contained in the same clause as it originally stood, the Committee had substituted separate confinement not exceeding seven days for each offence, as they were of opinion that solitary confinement ought not to be resorted to for mere breach of Jail discipline, and that, in the case of minor offenders and civil prisoners, at least, it would certainly be a punishment of uncalled-for severity.

Clause IV of section 11 provided that corporal punishment should be inflicted only where the Medical Officer of the Jail certified that the prisoner could bear it without danger to his general health. For greater security, it was thought advisable to provide that the Medical Officer should state this opinion in writing.

Section 14 of the original Bill was another section which had been entirely struck out. It provided that prisoners who had been sentenced to rigorous imprisonment should be confined in irons in those cases only in which the Superintendent of the Jail considered that course to be necessary for the safe custody of the prisoners. As, however, it was the practice in our Jails to impose fetters, as a rule, on all prisoners sentenced to rigorous imprisonment, and, as it was desirable that it should be so in the present state of several of the Jails, the Committee were unwilling that confinement in irons should be made exceptional.

Section 19 of the present Bill was an addition made in Committee which required explanation. Under section 7 of Act XXIV of 1855, which was an Act to substitute penal servitude for transportation in the case of European and American convicts, it had been held that the Madras Regulation X of 1832 applied to such persons; but, as that Regulation will have been repealed by the present Bill becoming law, it was necessary that this Bill should take the place of the Madras Regulation in respect of its application to the classes of convicts falling under Act XXIV of 1855. But there were two sections of the Bill, viz., 14 and 15, which contained penal provisions which did not form part of Regulation X of 1832, and, as it would be obviously inexpedient to leave European British subjects and Americans who might offend against those sections at a distant Mofussil station to be brought before and dealt with by the High Court, it was thought advisable to provide that all the penal provisions of the Act should apply to all persons of whatever nationality.

In conclusion, it was necessary to explain the delay that had occurred in presenting the report of the Select Committee and the revised Bill. Sections 10 and 11 of the Bill permitted the summary infliction by the Superintendent of Jails of corporal punishment for various offences, some of which—those for instance, defined in clause 3, and most of those defined in clauses IV and V of section 10—were already punishable under the Indian Penal Code, but not with whipping. Some of the provisions of the Bill being thus in conflict with those of the

Indian Penal Code, it became necessary, under clause 4 of section 43 of the Indian Councils Act, to obtain the consent of His Excellency the Viceroy and Governor General to the introduction of the Bill in this Council. That consent had been sought and obtained, and, inasmuch as this cured any defect in the introduction of the Bill in the first instance without such sanction, it was now competent to the Council to proceed with the Bill as if no reference had been necessary or had taken place.

The Motion was put and agreed to.

The Bill was then read section by section.

On reading section 1, the Hon'ble V. RAMIENGAR moved to amend it by inserting the words "section 8 of Act XXIII of 1840 and," after the word "Code" in the 3rd line.

The Motion was put and agreed to.

On section 5 being read, the Hon'ble H. D. PHILLIPS remarked that it would be proper to allow a Superintendent of the Jail some discretion in applying the provisions of that section. If an epidemic broke out in the Jail of Chicacole or Berhampore, it would be a long time before the Government could give any order for the temporary shelter and safe custody of the prisoners. The Hon'ble Mr. ELLIS observed that this discretion would no doubt be given by the rules which the Governor in Council was empowered to pass under Section 3. Upon the suggestion of the Hon'ble V. RAMIENGAR, the section was amended by substituting for the word "order" in line 11, the words "by any special or general order direct."

On section 12 being read, the Hon'ble H. D. PHILLIPS said that copies of the Jail rules ought to be exhibited in the vernacular language. The section was accordingly amended by adding after the word "rules" in line 13, the words "in English and in the vernacular language of the District in which the Jail is situated."

A similar addition was made after the word "notice" in line 5 of section 17.

The Hon'ble H. D. PHILLIPS moved to amend section 18 by substituting the word "person" for "officer" in line 3, and the section was amended accordingly.

The other Sections were passed without amendment.

The Hon'ble V. RAMIENGAR then applied to His Excellency the President to suspend the Standing Orders, with a view to the Bill being passed at once.

HIS EXCELLENCY THE PRESIDENT declared the Standing Orders suspended.

The Hon'ble V. RAMIENGAR moved that the Bill as amended be passed.

The Motion was put and agreed to.

TOWNS' IMPROVEMENT BILL.

The Hon'ble A. J. ARBUTHNOT, in moving for leave to introduce a Bill "to repeal (Madras) Act X of 1865 (the Towns' Improvement Act, 1865), and to make better provision for the police, conservancy and improvement of towns in the Presidency of Fort Saint George, for the promotion of primary education therein, and for other objects of public utility calculated to promote the public health, comfort or convenience of the inhabitants of the said towns," said that the Assistant Secretary, in reading the notice of motion, had added the word "police," which was not to be found in the notice as printed. That addition had been made at his (Mr. Arbuthnot's) request, and he had been about to request that he would also omit the word "primary" before "education." It would be necessary to explain the reasons for the Bill, as the Bill itself was not yet prepared, and would not be introduced for some little time. His object in taking this course was to avoid the necessity of asking for a suspension of the Standing Orders when the Bill was introduced. The Council was aware that the present Municipal Act had been in operation less than four years. At an early period, it became manifest that the Bill contained several defects which would require sooner or later to be remedied. The first point was with regard to the constitution of Municipal Commissions. It was found that the provisions on this head were too stringent. Government had not power to appoint upon the Commission persons whose presence would be most desirable. For instance, with the exception of the Magistrate of the District and of the Executive Engineer, who were ex-officio Members, the Government was unable to appoint a European or Native Officer, unless he resided within the Municipal limits. Several towns had been brought under the operation of the Act, in which there was no resident European Officer. In the early stages of the working of such an Act, a certain amount of European superintendence was most desirable. He might instance the case of Conjevaram. It was an important and populous town, to which it was desirable that the Act should be extended; but there was no European Officer resident whom the Government could employ. This was one point as to which some amendment was necessary with the view to making the provisions of the Act more flexible. It was also desirable that non-official persons residing in the neighbourhood, or in the suburbs, which were not included within Municipal limits, should be enabled to serve on the Municipal Commission.

Again, as regards the taxes, which form the sources of Municipal revenue, one somewhat serious defect had been discovered. One universal source of taxation consisted of tolls. The Council would probably have seen, and most of the Members would perhaps have read, a Resolution of the Government of India calling the attention of other Governments to the extent to which transit duties, which had

been abolished many years ago, had now begun to be revived, as a source from which to supplement or supply local funds. The Government of India made especial reference to the large amount of tolls collected in this Presidency, and urged on the Madras Government that the collection should be confined within narrower limits, and, if possible, should be restricted to a sort of octroi on articles intended for consumption within the towns. His (Mr. Arbuthnot's) own opinion, which he believed to be that of His Excellency the President, was that this limitation could not be carried, and that it was not desirable that it should be carried, quite so far as the Government of India had suggested. But he considered that the system under which the tolls are levied in this Presidency is defective, and that an amount of taxation from this source had been raised, which was never contemplated by the framers of the Act. He held in his hand a statement of the taxes levied in the different Municipalities. He found that in two of the Southern Districts, viz., Palamcottah and Tinnevely, the entire Municipal taxation had been raised by tolls, with the exception of one small sum of Rupees 300 levied by the tax on vehicles and animals. At Palamcottah, a sum of 10,000 Rupees had been raised by tolls. At Tinnevely, the entire amount of the Municipal Fund for the year 1868-69 was estimated at 20,000 Rupees, of which 15,000 was raised from tolls, while 5,000 was the Government grant-in-aid. This was a state of things which would be remedied by the proposed Act.

The Council would also have learnt from the notice of motion that it was proposed to apply the provisions of the Bill to the promotion of education and to other objects of local utility calculated to promote the public health, comfort and convenience of the inhabitants. For instance, it was intended that part of the Municipal Funds should be applicable to the support of dispensaries. It was not necessary to go into a statement of the general principles of the Bill, or of its details, upon this occasion. These would be laid before the Council when the draft had been finally settled, and a full explanation would be furnished in the Statement of Objects and Reasons.

He would therefore move for leave to introduce a Bill in the terms of the notice that had been read, omitting the word "primary" before "education."

The Motion was put and agreed to.

The Council then adjourned *sine die*.

MADRAS,
The 4th June 1869.

JOHN D. MAYNE,
Asst. Secretary to Government,
Legislative Department.

Madras—Printed by H. MORGAN, at the Fort St. George Gazette Press.

Abstract of the Proceedings of the Council of the Governor of Fort Saint George, assembled for the purpose of making Laws and Regulations, under the provisions of the Act of Parliament, 24 and 25 Victoria, Cap. 67.

The Council met at the Council Chamber in Fort Saint George, on Thursday the 2nd day of September 1869.

PRESENT :

The Hon'ble H. D. Phillips—*Presiding*.
The Hon'ble J. B. Norton.
The Hon'ble Mir Hoomayoon Jah Bahadur.
The Hon'ble J. C. Loch.
The Hon'ble R. S. Ellis, C. B.
The Hon'ble V. Ramiengar.
The Hon'ble G. N. Gajapathi Rau.



The President announced that the Bill to "enable the Government to levy a duty, by way of excise, on salt manufactured in such Districts of the Presidency of Fort Saint George as the Government may think proper," which was passed by this Council on the 5th March last, has been disallowed by His Excellency the Viceroy and Governor General.

The Assistant Secretary reported that the Bill "for the regulation of Jails within the Presidency of Fort Saint George, and for the enforcement of discipline therein," which was passed by the Council on the 4th June 1869, received the assent of the Right Honorable the Governor on the 11th idem, and has been transmitted for the sanction of His Excellency the Viceroy and Governor General.

MADRAS EQUITABLE ASSURANCE SOCIETY'S BILL.

The Hon'ble J. B. NORTON presented the Report of the Select Committee on the Bill, "for regulating the affairs of the Madras Equitable Assurance Society," and moved that the Bill, as amended by the Committee, may be taken into consideration. He said that he had very few observations to offer on the subject of the Bill. The Committee was aware that at the last meeting it had been suggested that, in order to protect the rights of the share-holders, notice should be given in the most public manner of the intended legislation, and that the share-holders should have ample time to offer any objections, and, if so disposed, to appear by Counsel to oppose the Bill.

The 7th paragraph of the Report showed the steps that had been taken, and the result of those steps. The Bill as amended had been published in the *Fort Saint George Gazette*; a number of prints of it had been sent to the Solicitors of the Society in London; and a notice had been inserted in the *London Gazette*, the *Times*, and the newspapers of the three Indian Presidencies, inviting attention to the Bill, and stating that a copy of it would be furnished at any time before the 30th June last to any Policy-holder or other person who might be peculiarly interested in the Society. The Committee were informed by the Secretaries and Treasurers of the Association, that a few copies of the Bill had, from time to time, been applied for, but that no communications had been received by the Secretaries or by the Society in any way suggestive of dissent or objection, while no communications at all had been received by the Select Committee regarding the Bill. He thought, therefore, that there was most satisfactory ground for concluding that all persons who were interested in the Society were satisfied with the proposed law.

Recent events made him desirous again to impress upon the Council that this was not a Bill to bolster up a failing Society, but to put an end to legal doubts as to the course adopted by the Directors in forming a Reserve Fund, a course which had operated in fact most beneficially for the welfare of the Society. He could not help thinking that the Bill, if assented to, would form a model which might with advantage be adopted by all similar classes of Companies. No persons were more worthy of compassion than those who placed their trust in Assurance Societies. They invested their money, actuated by feelings of affection towards their wives and children or other relatives, and in a praiseworthy effort to secure a provision for them in the event of their own death before time had permitted their saving a competency; and they were much to be pitied when these efforts resulted in their losing their money by no fault of their own, but by the mismanagement or misconduct of Directors and Boards. He would suggest to the public to look to the constitution of the Madras Equitable Assurance Society, and to see whether they could not help themselves better by joining an Association formed like it, in which the Policy-holders were also the shareholders, and themselves shared the entire profits. This Society had lasted since 1829; the returns had always been very large; and the last half year's returns showed that during that period the astonishing amount of 72 per cent. on the premiums paid had been returned to the share-holders. He did not wish to cast any slur on the Assurance Societies in general; but he invited the attention of the public to a means whereby they might secure the whole of the profits to themselves, and be in a position at the same time to watch and overhaul the affairs of the Society and the management of the Board, which would be on the spot, and not at such a distance as rendered any supervision practically impossible.

The Motion was put and agreed to.

The Bill was then read Section by Section, and the following amendments were made :—

In Section 2, line 20, the word “Secretaries” was inserted after “Directors.”

In Section 3, at the end, the following proviso was added :—“Provided also that the said Guarantee Fund shall be invested by the Directors in the manner provided by the following Section in regard to the General Fund.”

In Section 4, line 22, instead of the words “in Government Securities,” the word “in Securities of the Government of India” were inserted; and in line 24, after the word “Government,” the following words were added :—“of India, or by the Secretary of State for India in Council.”

In Section 6, lines 4 and 5, the words “not later than the last day of the month of March” were substituted for the words “in the month of—or of—”; and in line 9, the words “and at least in two issues of two of the Madras Newspapers respectively” were added after the words “Fort Saint George Gazette”; and in line 38, after the word “used”, the following proviso was added :—“Provided also that no person shall be enabled to be present or to vote at any such meeting as the holder of a proxy, unless he is at the time himself a Member of the said Society.”

In Section 7, lines 4 and 5, the word “twenty” was substituted for the words “one-fifth in number”; and in lines 15 and 16, instead of the words “date of the requisition,” the words “receipt of the requisition by the Secretary” were inserted.

In Section 12, line 6, the word “the” was substituted for “any.”

The other Sections were read and passed without amendment.

In the Schedule, paragraph 2, the words “bona fide” were struck out.

In the Preamble, page 5, lines 32 and 33, instead of the words “at that time subsisting”, the following words were inserted :—“On the last day of every such quinquennial period;” and at page 6, lines 11 to 15, the last two sentences after the words “hereinafter mentioned” were omitted.

The Title of the Bill was read and passed without amendment.

The Hon'ble J. B. NORTON then applied to the President to suspend the Standing Orders, in view to the Bill, as amended by the Council, being at once passed.

The PRESIDENT having declared the Standing Orders suspended,

The Hon'ble J. B. NORTON moved that the Bill as amended be passed.

The Motion was put and agreed to.

DISTRICT MOONSIFFS' BILL.

The Hon'ble R. S. ELLIS, C. B., in moved for leave to introduce a Bill "to consolidate and amend the law relating to District Moonsiffs", said that the main object of the Bill was to raise the jurisdiction of District Moonsiffs in this Presidency, in suits regarding personal property, from Rs. 1,000 to Rs. 2,500. The origin of the Bill was this:—The merchants and residents of Bimlipatam addressed a Memorial to Government a short time ago, representing the great inconvenience experienced by them in the prosecution of their business, from the want of any Court at that town of higher jurisdiction than that of the District Moonsiff. Both the Collector and the Civil Judge supported the Memorial, and suggested that the jurisdiction of the District Moonsiff at Bimlipatam should be extended to Rs. 2,500. The Government referred the Memorial to the Honorable the Judges of the High Court, and requested their opinion as to whether it would not be better to raise the jurisdiction of District Moonsiffs throughout the Presidency. The Judges, in reply, stated that any increase of the District Moonsiffs' jurisdiction which might be made, should be general; that the late Mufty SudderAmcens had jurisdiction up to 2,500 Rupees; and that the District Moonsiffs of the present day were equally qualified to exercise this jurisdiction. The Judges were of opinion, however, that the jurisdiction of District Moonsiffs in regard to real property should remain the same as it was now, but that their jurisdiction as respects personal property should be increased to Rs. 2,500.

He ought to mention that the opportunity had been taken to embody in the Bill all the enactments relating to District Moonsiffs in this Presidency. This had been done in accordance with the suggestion made by the Government of India for the consolidation of the scattered fragments of the Regulations left on the local Statute Book. The Sections of the Bill were almost identical with those of the existing enactments. Regulation VII of 1816, which authorized District Moonsiffs to assemble Panchayets, was proposed to be wholly repealed, without anything being substituted in its place. This Regulation was considered no longer necessary, as Chapter VI of the Code of Civil Procedure contained simple provisions for the same object, and which applied to all Courts. Madras Act IV of 1863 was left untouched by the Bill, as that enactment was rather a branch of Small Cause Court law than of that properly applicable to District Moonsiffs as such.

The Motion was put and agreed to.

MOPLAH OUTRAGES ACT CONTINUANCE BILL.

The Hon'ble R. S. ELLIS, C. B., also moved for leave to introduce a Bill "to continue Act No. XX of 1859, (*An Act for the suppression of outrages in the District*

MOPLAH OUTRAGES.

of Malabar in the Presidency of Fort St. George)". He said that the circumstances under which that Act had been passed were probably known to most of the Members of the Council. It was passed in order to renew Act XXIII of 1854. The class affected by it were Moplahs. They were a Mahomedan race, industrious and possessing of many good qualities, but who were subject to violent outbreaks of fanaticism.

Prior to 1841 such outrages were generally committed by single individuals, but since that year it was found that they banded themselves together, attacked and murdered Hindoos, desecrated temples, and died, resisting desperately the Police and Military detachments sent against them. In 1852, these outrages had so increased that the then Collector of Malabar, Mr. Conolly, applied for a special Commission to enquire into the cause of such outrages and to suggest a remedy. The result of this enquiry was, to put it beyond all doubt that the Moplahs were not oppressed; that they were suffering under no special difficulties; and that there was no cause which could be assigned for these outrages except the wildest fanaticism. Act XXIII of 1854 followed upon this Commission. Its main provisions were, (1st) forfeiture to the State of all property belonging to the persons convicted; (2nd) that they should be hanged and their bodies, after execution, burnt within the precincts of the jail; and (3rd) that a fine should be levied from the inhabitants of the parish to which the offender belonged, or in which he resided shortly before the outrage, and that the fine should be applied in the first instance to the relief of those who had suffered by the outrage, the balance being credited to Government.

The necessity for this law was most painfully shown by the murder of Mr. Conolly in his own house in 1855. The cause of his murder was that he had been active in securing the deportation of a Moplah Priest who had sanctioned these outrages before they were committed, and who had blessed the people who were going forth to their perpetration. Mr. Conolly's murderers were tracked and died fighting; their bodies were burnt, their property was forfeited, and fines were levied from the villages in which they resided. Until 1859 no renewal of this class of outrages took place. Act XX of 1859 was then passed with certain additions, which prevented the alienation of property by Moplahs who were about to commit an outrage, as well as extended to the parish in which such an outrage was perpetrated the same liability to fine to which the parish in which the offenders might reside was liable, and also made it lawful for the Magistrate to call on the inhabitants of the parish to which the offender might belong, or to which, after the commission of an outrage, he might flee, to deliver him up, or, failing this, to assess a fine upon them in the same manner and for the same purpose as he might already fine those who, residing in the same village as the offender, were assumed to have been cognizant of his intention to commit an outrage.

This Act was opposed during its progress through the Legislative Council in Calcutta. It was argued that it was unfair to impose such heavy responsibilities upon the inhabitants of the parish, who might be ignorant of the intention to commit any outrage, and who might even be unaware that the offender had resided among them. With reference to this argument, however, it might be well to read an extract from the report of Mr. Strange who had been appointed the Commissioner to enquire into the causes of these outrages :—

“These outbreaks, saving where a solitary individual may break out, as in the early cases, are brought about by concert, and are not executed until some time has passed, during which the plan is being matured. The mind has to fortify itself for execution of a tragedy which involves the agent as well as the victim in destruction. The fanatic doctrine needed for this has to be imbibed and to work. Comrades have to be gained; the priest consulted; and the consent of parents obtained. When the resolution to die has been taken, some further time is passed in devotional exercise, and affairs of this life should be settled; debts should be paid off, or forgiveness for them obtained, and the wives should be put away, and their dowries in like manner adjusted. The very demeanor when a man has thus doomed himself to leave the world, must undergo a change, and it is prominently marked in the instances of these fanatics, in their hardening themselves against any show of affection for their families. All these characteristics have been brought to light more or less in the course of the outbreaks or threats of outbreaks, and some are also dwelt upon in the commemorative songs to which I have before alluded. The consent of parents is there described as obtained at times with difficulty, and is finally given under the consideration that the merit of the martyrdom will extend also to them by virtue of such consent. It is impossible, hence, but that the priest, the neighbours, and the families of the fanatics, must have that knowledge or inkling of their design which would serve to expose it. In every case, therefore, where it may appear that an outbreak has been premeditated, these parties should be punished, if they have not given timely intimation thereof, and can adduce nothing to purge themselves from the charge of suppressing information arising presumptively and naturally against them.”

That description applied to all the outrages that had been committed in Malabar, and afforded ample justification for the additional powers contained in Act XX of 1859. The Act had seldom been used since 1859. On searching the Government records, he (Mr. Ellis) could discover only two instances in which it had been applied. In 1864, a Moplah killed a Hindoo; he was given up by the Moplahs and hung, and a companion of his, who was an accessory before the fact, was deported. In 1865, three or four Moplahs attacked a Hindoo and murdered him. They were hung, and their property was forfeited. Six friends who had assisted at the ceremony known as the “Moilut,” which takes place prior to the commission of such murders, were deported.

In asking for the renewal of this law, the Government had no reason to apprehend any immediate recurrence of such outrages in Malabar; but the fact of having such special powers as the Act conferred, was found to be influential in deterring the Moplahs from these crimes.

He had troubled the Council with these remarks, because he thought that it was necessary to make out some special reason when he asked that such exceptional powers should be continued. It was probable that before long the Moplahs might have so far advanced in civilization and peacefulness that Government might be in a position to say that such a law was no longer required. When that time arrived, he would be most happy to assist in removing the law from the Statute Book.

The Motion was put and agreed to.

The Council then adjourned *sine die*.

JOHN D. MAYNE,
Asst. Secretary to Government,
Legislative Dept.

Abstract of the Proceedings of the Council of the Governor of Fort Saint George, assembled for the purpose of making Laws and Regulations, under the provisions of the Act of Parliament, 24 and 25 Victoria, Cap. 67.

THE Council met at the Council Chamber in Fort Saint George on Tuesday the 9th November 1869.

PRESENT :

His Excellency the Governor of Madras—*Presiding*.
His Excellency the Commander-in-Chief.
The Honourable H. D. Phillips.
The Honourable A. J. Arbuthnot.
The Honourable J. B. Norton.
The Honourable R. S. Ellis, C. B.
The Honourable Mir Hoomayoon Jah Bahadur.
The Honourable V. Ramaiyangar.
The Honourable G. N. Gajapathi Rau.
The Honourable W. R. Arbuthnot.



The PRESIDENT announced the assent of His Excellency the Viceroy and Governor-General to the following Acts :—

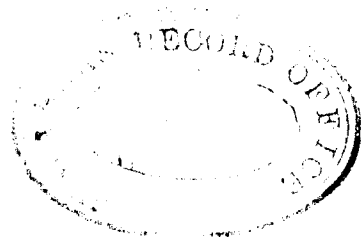
No. V. of 1869.—“An Act for the regulation of Jails within the Presidency of Fort Saint George, and for the enforcement of discipline therein.”

No. VI. of 1869.—“An Act for regulating the affairs of the Madras Equitable Assurance Society.”

The PRESIDENT also announced that the Act “to enable the Government to prescribe Rules for regulating the navigation of rivers, canals, and other inland waters; for the management of ferries; and for the levying of tolls and license fees,” which was passed by this Council on the 29th January last, has been disallowed by His Excellency the Viceroy and Governor-General.

DISTRICT MOONSIFFS' BILL.

The Honourable R. S. ELLIS, C.B., introduced the Bill “to consolidate and amend the law relating to District Moonsiffs,” and said that it was not necessary to trouble the Council with any remarks on the Bill, beyond what he had made at the last Meeting of the Council. Since then he had received two communications on the subject of the Bill, one relating to the method of valuing suits,



and the other as to the propriety of retaining those Sections of the Bill which provided for the removal of District Moonsiffs for misconduct. He would reserve his observations upon these points until the Bill came before the Select Committee. He therefore moved that the Bill should be read a first time and referred to a Select Committee consisting of the Honourable Messrs. A. J. Arbuthnot, J. B. Norton, V. Ramaiyangar, and himself.

The Motion was put and agreed to.

MOPLAH OUTRAGES ACT CONTINUANCE BILL.

The Honourable R. S. ELLIS, C.B., introduced the Bill "to continue Act No. XX. of 1859, (*an Act for the supersession of outrages in the District of Malabar in the Presidency of Fort Saint George*)," and said that the object of Government in asking for the renewal of Act XX of 1859, had been fully stated at the last Meeting and had also been set out in the Statement of Objects and Reasons annexed to the Bill.

The Act in question would expire at the end of the year, and the Government were anxious that the Bill should be passed with as little delay as possible. He moved that the Bill be read a first time.

The Motion was put and agreed to.

The Honourable R. S. Ellis, C. B., then applied to His Excellency the President for the suspension of the Standing Orders, in view to the Bill being passed at once.

The President having declared the Standing Orders suspended,

The Honourable R. S. Ellis moved that the Bill be passed.

The Motion was put and agreed to.

CANALS AND FERRY BILL.

The Honourable R. S. Ellis, C. B., in moving for leave to introduce a Bill "to provide for the collection of tolls and license fees on canals and other lines of navigation, for the management of ferries, and for the construction and improvement of lines of navigation within the Madras Presidency," said that a Bill similar to the present Bill had been passed in the early part of the year and submitted for the assent of the Governor-General. It had been returned by the Viceroy for re-consideration by this Government, upon the ground that certain of the provisions of the Bill were incomplete, and that it did not contain the necessary powers for carrying out its objects. The Government had given its con-

sideration to the remarks made by His Excellency the Governor-General, and had caused an amended draft to be prepared and submitted to the Viceroy. At the same time, it had been pointed out to His Excellency that this Council possessed no power to amend a Bill which had once been assented to by the Governor. It was, therefore, suggested that the Viceroy should veto the original Bill, with a view to the introduction of a fresh enactment.

This had now been done, and the re-drafted Bill was the one which he asked leave to introduce. It was framed on the model of Bengal Act V of 1864, which had been followed most closely. In fact, all the sections, except some which related to ferries and the collection of fees and tolls, had been copied *verbatim* from that Act.

The Motion was put and agreed to.

The Honourable R. S. ELLIS, C. B., then applied to the President to suspend the Standing Orders with the view to the introduction of the Bill.

The PRESIDENT having declared the Standing Orders suspended,

The Honourable R. S. ELLIS moved that the Bill be read a first time, and referred to a Select Committee consisting of the Honourable Messrs. W. R. Arbuthnot, V. Ramaiyangar, and himself.

The Motion was put and agreed to.

The Council then adjourned *sine die*.

JOHN D. MAYNE,

Asst. Secretary to Government,

Legislative Department,

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