Wednesday,
20th August, 1884

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXIII

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Council of the Governor General of India,

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

The Council met at Government House, Simla, on Wednesday, the 20th August, 1884.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of the Panjáb, K.C.S.I., C.I.E.
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.
The Hon'ble J. W. Quinton.
The Hon'ble D. G. Barkley.

SETTLEMENT-OFFICERS' (PANJÁB) DECISIONS VALIDATION BILL.

The Hon'ble MR. ILBERT presented the further Report of the Select Committee on the Bill for the validation of decisions passed by certain Settlement-officers in the Panjáb.

FUNCTIONS (LIEUT.-GOVERNOR, N. W. P.) VALIDATION BILL.

The Hon'ble MR. ILBERT also introduced the Bill to legalise the discharge by the Lieutenant-Governor of the North-Western Provinces of certain functions assigned to the Governor General in Council, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Gibbs and Quinton and the Mover, with instructions to report in six weeks.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the *North-Western Provinces and Oudh Government Gazette* in English and in such other languages as the Local Government might think fit.

The Motion was put and agreed to.

TRANSFER OF PROPERTY ACT, 1882, AMENDMENT BILL.

The Hon'ble MR. ILBERT also introduced the Bill to amend the Transfer of Property Act, 1882, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Gibbs and Barkley and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the local official Gazettes in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

PANJÁB MUNICIPALITIES BILL.

The Hon'ble MR. BARKLEY moved that the Report of the Select Committee on the Bill to make better provision for the organization and administration of Municipalities in the Panjáb be taken into consideration. He said :—

"When this Bill was introduced last year, I explained that it was required not so much to facilitate the development of local self-government in the towns of the Panjáb, the most important of which have possessed it in some measure since 1862, as to remove doubts as to the extent of the powers of municipal bodies which have arisen from the imperfections of the law under which they are at present constituted, and which have placed the committees in the unenviable position of not knowing accurately what they were legally competent to do, and have thus hampered their action in some cases in which, in the interests of the public, it would have been desirable to leave them greater scope. These defects were probably unavoidable when the existing law was passed, as there had not then been sufficient time to gain experience of the working of municipal institutions in the Panjáb to admit of the framing of anything approaching a complete Municipal Code, and much had therefore to be left to bye-laws to be made by the committees themselves, which can now be more satisfactorily provided for by substantive enactment.

1884.] [*Mr. Barkley.*]

"At the same time, as it was thought desirable to give municipal committees a more representative character and greater powers of initiative than they had hitherto possessed, the Bill dealt in greater detail than the existing law with the constitution of municipal bodies, and it also became necessary to state more fully the powers of control necessarily reserved to Government and its officers.

"Before proceeding to notice the principal changes which have been made in the Bill by the Select Committee, it may be convenient to attempt to give some idea of the number and size of the communities which at present have municipal institutions, and of the amount of the revenue which the municipalities have to administer. According to the census of 1881, the urban population of the province was upwards of 2,400,000, or more than one-eighth of the whole population, and inhabited 238 towns. The municipalities, however, were less numerous, as several cantonments and civil stations not included within municipal limits were classed as towns, and all places with a population of 5,000 or more inhabiting a compact group of houses were similarly classed, while many such places in the Panjáb are simply large agricultural villages with little or no non-agricultural population, except the persons occupied in supplying the ordinary wants of the residents of the village.

"When the census was taken, the number of municipalities in existence was 195, with a total population exceeding 2,000,000, though only 102 had a population exceeding 5,000. The latest returns, which are those for the year ending 31st March, 1883, give a total of 202 municipalities, with a population exceeding 2,100,000 and an income of about 28¼ lákhs of rupees. Ten years before there were only 125, with an income of 16¾ lákhs. More than one-ninth of the population of the province reside within municipal limits.

"Of the 202 municipalities in existence, only 46 have a population over 10,000. These have a total population of 1,371,658, with an income exceeding 22,82,000 rupees. Of these, again, only 12 have a population over 25,000, their total population being 835,555, and their income exceeding Rs. 15,69,000. Three of these are cities with a population varying from 130,000 to 173,000 and a total income of Rs. 9,69,000, or more than one-third of the entire municipal income of the province. These are the two imperial cities of Delhi and

'Lahore of Great Mogul,'

and Amritsar, the sacred city of the Sikhs, and the centre of the confederation known as the Khálsa, which, before Ranjít Singh reduced the country north-west of the Sutlej under the rule of one sovereign, was the sole bond of union of the Sikh people. Of these, Delhi is surpassed in size by but three inland cities in India, Haidarábád of the Dakhan, Lucknow and Benares, and it is probably surpassed in trade by none; its commerce, including both exports and imports, being, according to the latest returns, over seven crores of rupees. Lahore resumed its place as the provincial capital under Ranjít Singh in 1798, and it continues to hold that place under our own Government. Amritsar, in addition to its religious importance in the eyes of the Sikhs, is, as a place of trade, second only to Delhi, and has large manufactures, especially in shawl wool, silk goods and embroidery. Besides these three cities, only three other municipalities in the province have an income exceeding one lákh of rupees. These are Pesháwar and Multán, both places of extensive trade, and Simla, in which this Council is now meeting. If we add the income of these three municipalities to that of the three great cities, we will find that six municipalities, with a population exceeding 616,000, have an income of over Rs. 14,19,000, which is more than half of the total municipal income of the province.

"It will thus be seen that, of the numerous municipalities now in existence, the great majority are in minor towns, and but a small number are in places of considerable importance. Eight, four of which are in the hills, are first class municipalities, and twenty are second class, the remainder belonging to the third class, which, as was stated when the Bill was introduced, it has not been thought necessary to continue; and the Local Government will therefore have to determine, with reference to each municipality of this class, whether it is fit to be constituted a municipality under the new law. The Select Committee has, therefore, thought it better, instead of repealing Act IV of 1873 and bringing the new law into force in all municipalities at once, and at the same time empowering the Local Government to withdraw any place from the operation of the Act, to require the Local Government, as soon as may be, to decide, as to each place where municipal institutions now exist, whether the provisions of the new Act are suited to that place, and, if they are, to declare it to be a municipality of the first or second class under the new Act. This is provided for by section 4, and, as section 171 empowers the Local Government to abolish any municipality, whether constituted under Act IV of 1873 or under the new Act, it will be able to put an end to any municipalities which it considers unfit to be brought under the new law. This change in

the form of the Bill has made it necessary to empower the Local Government to continue in office for a term the members of the present committees when the new law is applied to any place which is now a municipality; and, for the same reason, we have found it necessary to declare, by section 12, the consequences which will follow when the new law is applied to such places, so as to provide for Act IV of 1873 ceasing to apply, and at the same time to maintain all existing rights and liabilities as if the committee under Act IV of 1873 continued in existence.

"In dealing with the constitution of committees we have not thought it necessary, in section 5, to retain the provision of the Bill requiring the sanction of the Governor General in Council to a direction of the Local Government substituting appointment for election for reasons affecting the public interests when no desire for a change has been expressed by the electors. Considering how numerous municipalities in the Panjáb are, and how small some of them are, it seemed better to leave it to the Local Government to decide whether circumstances exist which render a change in this respect desirable; and, as the Bill requires reasons to be given, and any person who is dissatisfied with the direction could lay his objections before the Government of India, no further check appeared to be required.

"In section 14, as the Local Government considered the approval by the Commissioner of the election of the president of a second class committee sufficient, we have altered the Bill accordingly, requiring the approval of the Local Government in the case of first class committees only. In other respects the changes made in the provisions of the Bill as to the constitution of committees have been aimed at assimilating them to the corresponding provisions of the Panjáb District Boards Act passed last year.

"In section 20, the Local Government desired that the concluding words of the proviso, relating to the transaction of business at adjourned meetings whether a quorum is present or not, when the adjournment of the original meeting was due to a quorum not having attended, should be omitted, a report to the Local Government when a quorum was not present at the adjourned meeting being substituted. The Select Committee, however, considered the proposed substitute inconvenient, and that it was desirable to retain the provision in order to guard against the risk of combinations among members to obstruct business by absenting themselves from meetings.

"In the Bill as introduced, both the appointment and the removal of a paid secretary by a committee was made subject to the sanction of the Commissioner of the division. The majority of the Select Committee, however, were of opinion that it was not desirable to carry control over appointments to this length; and section 28 of the Bill as now modified therefore only requires the Commissioner's consent to the appointment, as secretary, of a person not being a member of committee, and to the rate of pay proposed to be allowed to the person so appointed. The powers of control given by the Bill as introduced over the appointment of other officers and servants have also been greatly restricted, but by section 30 the Commissioner is empowered to interfere to prevent the employment of unduly large or expensive establishments or the grant of excessive salaries, while section 29 makes appointments to offices requiring professional skill subject to rules to be made by the Local Government as to the qualification of the persons to be appointed.

"In section 36, requiring notice to be given before suing committees or their officers for their official acts, we have omitted as unnecessary the provisions of the Bill as introduced as to limitation of suits, which is sufficiently dealt with by the Limitation Act, and as to the effect of tender of amends, in regard to which the Courts should require no guidance from the legislature. In consequence of these omissions, we have been enabled to make the section general in its application, while in the Bill as introduced it was confined to suits for compensation for wrongful acts. I shall, however, have an amendment to propose to provide for a point which was brought to notice since the Report of the Select Committee was presented.

"In the chapter on taxation, the taxes which may be imposed for the general purposes of the Act are brought together in section 39, a schedule being added allowing a higher rate of tax on lands and buildings in the hill-stations of Simla, Dharmsála, Dalhousie and Murree than that which is fixed as the maximum elsewhere. This tax has hitherto been imposed only in these hill-stations and at Abbottábád in the Hazára district, and the practice has been to levy it upon the estimated gross annual rental of houses without making any deduction for repairs or insurance, or in hill-stations, where houses are usually let furnished, on account of the proportion of the rent estimated to be paid on account of the furniture. In the Bill as introduced a proviso was added to the explanation of 'annual value' expressly authorizing the continuance of this practice, unless, in the case of furnished houses, the Local Government should otherwise order;

but the majority of the Select Committee, while agreeing that, in order to facilitate assessments, they should be calculated on the gross annual rental, no deduction being made for repairs or insurance, were of opinion that the proportion of the rent estimated to be payable on account of furniture should not be liable to taxation, and have therefore omitted the proviso and added to the explanation words making the sum for which a house might be expected to let unfurnished the value on which it should be liable to be taxed. I may say that, in the opinion of the Local Government, there is no sufficient reason for departing from the existing practice, and that I propose to move an amendment restoring in substance the proviso which has been omitted from the Bill.

"At the end of the Bill a special section applicable only to Simla has been added, saving the land-tax, which has been substituted for the ground-rent formerly charged by Government, and which is levied concurrently with a tax on the annual value of property.

"In sections 40 and 41 we have given special powers to impose a scavenging-tax and a water-tax as payments for services rendered to the occupiers of any buildings or land, or for the construction and maintenance of works for the supply of water from which such occupiers may benefit.

"We have added provisions as to the time when new taxes shall come into operation, and have made other modifications of the provisions of the Bill on the subject of taxation, of which I need only say that they are sufficiently set forth in the Select Committee's report.

"In the chapter relating to the municipal fund and property we have brought together the provisions of the Bill as to the constitution, custody, investment and application of the municipal fund, and have added express provisions as to the vesting of municipal property and the management of public institutions maintained out of municipal funds. The Panjáb Municipal Act of 1873, unlike those in force in most other provinces, while, in section 10, it gives the municipal committee control over all property which may become vested in it, is silent as to what property vests in a municipal committee when constituted, and as to the manner in which property may be acquired by committees. As committees are now, by section 10 of the Bill, made bodies corporate, with power to acquire, hold and transfer property, and as property vesting in former committees for the purposes of the Act is transferred to the new committees by section 12, it appeared desirable to include in the Bill some specification of the property which should vest in these bodies.

Section 71, which declares the property which is to belong to the committee, is, however, made subject to any special reservation which may be made by the Local Government, so as to enable that Government to retain any public property of the descriptions specified, situated within municipal limits, which it may not be thought desirable to allow the committees to become owners of. There are of course many public buildings within the limits of some of the larger municipalities which are held not for municipal but for Government purposes, and the effect of the section is that property of this nature, as well as any other public property of the descriptions specified which it is not desired to vest in a committee, would have to be reserved by order of Government. The orders given for this purpose will remove any doubt which may at present exist whether particular property belongs to the State or to the municipality. On this point also I propose to move an amendment which will render it unnecessary to reserve public buildings maintained for other than municipal purposes.

"Section 72 gives the administration of public institutions maintained out of municipal funds to the committee, but empowers the Local Government to give orders as to the extent of the independent authority of the committee in respect of any such institution. It will thus be possible for Government to lay down any regulations which may be necessary in regard to the management of schools, hospitals and other like institutions the management and control of which may be transferred to municipalities. As cases may arise in which committees may wish to be relieved of the charge of institutions or property, section 73 enables the committee, with the sanction of the Local Government, to transfer to Her Majesty any property which has vested in it under the preceding sections.

"In the chapter relating to municipal police the only new provision is section 78, which empowers the police to arrest persons committing offences against the Act or the rules made thereunder if their names and addresses cannot be ascertained, and requires them to give immediate information to the committee of the commission of such offences, and to assist members or officers of the committee in the exercise of their lawful authority.

"It will no doubt have been observed that the Bill has grown very much in size since it was referred to the Select Committee, and this is in great measure due to the change which has been made in the form of the part of the Bill at which I have now arrived. Chapters VI and VII, consisting the

one of 46 and the other of 19 sections, take the place of 14 sections of the original Bill and of four sections of the present law. I may now briefly state how this has come about. While the present Municipal Act empowered committees to make rules for defining, prohibiting and abating certain nuisances, and for regulating the entry of their officers on private property for the detection and abatement of nuisances, the Act was silent as to many powers which are usually expressly conferred by law on municipal bodies. Some of these powers, which involved interference with rights of property and with the carrying on of particular trades, it was not thought advisable to leave to depend upon the authority of bye-laws made under the Act, and they were therefore expressly conferred in the Bill as introduced. But the Bill still contained a power to make rules prohibiting acts of the nature of nuisances, and regulating entry on private property for the detection and abatement of nuisances, and powers to issue injunctions and to make conditional orders for the removal of nuisances. With reference to this, Mr. Plowden, the Senior Judge of the Chief Court, had strongly urged upon the Local Government the desirability of specifying in detail in the Bill the acts and omissions not prohibited by the general law which should be punishable under the municipal law; and, in the letter of the Panjáb Government submitting the draft Bill to the Home Department, His Honour the Lieutenant-Governor admitted the force of Mr. Plowden's arguments in favour of this course, and expressed his willingness to go further in the direction of expressly defining the authority of committees if circumstances admitted of this. When the Bill came to be considered in committee, it was thought desirable either to append a schedule of municipal offences, which could be made applicable wholly or in part to any municipality as local circumstances might render necessary, or to make such offences punishable by the Bill itself. It was ultimately decided to adopt the latter course, and accordingly these two chapters have been substituted for the provisions of the original Bill dealing with the same subject, one setting forth with some fullness the powers of committees for sanitary and other purposes, and the other providing for the punishment of certain offences affecting the public health, safety or convenience.

"In framing the sections comprised in these chapters the bye-laws at present in force in the principal municipalities were referred to, as well as the bye-laws adopted for the municipalities of the North-Western Provinces, and the detailed Municipal Acts in force in other provinces of British India; and, while we have omitted matters which appeared to be sufficiently dealt with by other laws, as, for instance, the Indian Penal Code, the Code of Criminal Procedure

and the Police Act of 1861, we have endeavoured to give in the Bill all powers which it seemed to be necessary or proper that Panjáb municipalities should possess, and to provide for the punishment of all offences partaking of the character of public nuisances which were not otherwise provided for by law.

"Some of the powers given may not be required in minor municipalities, and some of the offences constituted may not cause such injury to the public as to require to be made punishable in those municipalities; but, as by section 170 the Local Government is empowered to except any municipality from provisions of the Bill which it considers unsuited thereto, it will not be necessary that the whole of the provisions of these chapters should be brought into force in all municipalities.

"While we have thus been enabled to strike out the provisions of the Bill empowering municipalities to make rules as to nuisances and as to entry on property for the detection and abatement of nuisances, it has been necessary to continue the powers, given by the Bill as introduced, to make rules regulating other matters in the public interest, as no uniform rules which would suit all municipalities could be suggested. These powers are given by sections 119 and 120, and in the former of these sections the subjects with reference to which rules for the regulation of lodging-houses may be made are more fully stated than they were in the original Bill, and provision is made for making similar rules in regard to houses occupied by more than one family. Section 114 also provides, subject to an appeal, which is given by section 126, for prohibiting the use for human habitation of houses unfit to be so used. The want of powers like these has recently been much felt in Simla, and powers to regulate lodging-houses may also be found useful in places such as Amritsar and Thánesar, where the population is liable to be largely increased at particular seasons by the resort of pilgrims or the holding of large fairs.

"In regard to one matter which has hitherto been regulated by municipal bye-laws,—the cultivation of crops, use of manure or irrigation of land in such manner as to be injurious to health,—the Select Committee thought it better not to empower municipal committees to make rules; and in lieu of this power it has, in section 116, made provision for authorizing the Local Government, on the report of the Sanitary Commissioner, to prohibit or regulate such cultivation, manuring or irrigation, compensation being allowed if the practice interfered with was of long standing.

"Though these chapters add a good deal to what was contained in the original Bill, the additions have been so largely of the nature of enacting rules

which are at present contained in municipal bye-laws that it has not been thought necessary to republish the Bill with a view to further discussion.

"In the chapter on the subject of control little change has been made, but its provisions have in some respects been assimilated to those of the Panjáb District Boards Act, and the list of subjects on which the Local Government is empowered to make rules has been revised. In some of the papers which have been considered by us the powers of interference given by this chapter have been objected to as much too wide and as being likely to be abused, but there is no reason to think that Commissioners or Deputy Commissioners will be disposed to interfere under section 147, 148 or 149, unless such interference is necessary to protect the interests of the public; and, if any injudicious interference should take place, it can be corrected by the Local Government when the report required by section 150 is made. It is obviously necessary that some control should exist over the action of corporations charged with public duties, whether their members are elected or nominated, and there can be no more suitable agency for the purpose than the officers in charge of divisions or districts, who will be guided by their local knowledge and experience in determining whether the circumstances have arisen which would justify their interference under the powers given by law, and also whether a suggestion from them would not be likely to induce the committee itself to do what was required, in which case recourse to those powers would not be necessary. Though the existing law, while it gave very large powers of interference to the Local Government, gave no similar powers to Commissioners and Deputy Commissioners, there was not the same necessity as there is now for such powers being possessed by them when the Deputy Commissioner was president of every municipal committee in his district and the other members were in part officials subordinate to him, and in part, unless in a few of the largest municipalities, nominated on his recommendation. There appears to be no reason to think that committees who endeavour faithfully to discharge their duties to the public will find themselves hampered by the existence of these powers of control, or will have any reason to think that they are viewed with an unfriendly eye by the executive officers of Government with whom they are brought into contact.

"In conclusion, I may be allowed to express a hope that the Bill, after the pains that have been bestowed upon it by the Select Committee, will be found to put the law applicable to municipalities in the Panjáb in a clear and satisfactory form, and that, whatever defects in it may hereafter be brought to light

by experience, they will not be such as to prevent it from working smoothly and efficiently."

The Hon'ble MR. ILBERT said:—"Of the various alterations made in this Bill by the Select Committee, there is only one to which I need refer on the present occasion, and that is the inclusion in the body of the Bill of certain powers and provisions which, under the Bill as at first introduced, were left to be given or made by rules or bye-laws. The question of how much should be put into the body of an Act of this kind, and how much power of regulating sanitary matters and suppressing nuisances should be left to be exercised by bye-laws, was discussed in connection with the recent Act for regulating municipalities in the North-Western Provinces; and, in the debate which took place on the passing of that Act, I said that, so far as my own opinion was concerned, I should be disposed to leave a reasonable amount of discretion to the Local Government. The Bill for the North-Western Provinces proposed to leave a great deal to bye-laws, the reason being that the Government of those Provinces had already framed a Code of model bye-laws which were understood to work well and which the Local Government apparently wished to leave as much as possible undisturbed. Under these circumstances, whilst we altered the form of the clause giving power to make bye-laws about nuisances, we did not think it necessary or desirable in that case to insert in the Bill provisions which had not been suggested by the Local Government, and which, if they had been inserted, the Local Government would not have had a sufficient opportunity for considering.

"But the case of the present Bill is different. In the first place, so far from there being in existence any model bye-laws which have worked well in the Panjáb, it is notorious that there has been the greatest difficulty not only in framing satisfactory bye-laws but in working the bye-laws which have been framed. In the next place, the Bill as originally framed went into much greater detail on sanitary matters and with respect to the provisions relating to nuisances than the North-Western Provinces Bill, and as it went so far there seemed no sufficient reason why it should not be carried farther. And, lastly, the municipal authorities themselves did not seem to be particularly anxious to have the power of framing these bye-laws, and they represented to the Local Government that the task of framing them required the possession of an amount of legal skill which would not ordinarily be at their disposal, unless special assistance was given to them by the Government.

"This being so, when the Bill came before the Select Committee last spring, I asked His Honour the Lieutenant-Governor whether he would prefer to leave the Bill in its existing form, leaving all these matters to be dealt with by bye-laws, or to have it expanded by inserting the necessary provisions in the body of the Bill. I pointed out that the adoption of the latter course would involve some delay, but that it would probably save a great deal of trouble in the long run, both to the local authorities who have to frame the bye-laws, and to the Local Government who would have to sanction them.

"The Lieutenant-Governor expressed his preference for adopting the latter course, and that course was accordingly adopted.

"I am very glad that it was adopted, because I think that the addition of these chapters effects a very considerable improvement in the Bill, and also because, after having inspected some of the bye-laws made or proposed under the existing law, I am bound to admit that there is a certain amount of risk in delegating to local authorities the power to legislate about nuisances and similar matters, even when that power is exercised subject to the approval of the Local Government.

"Chapter VII of the present Bill, the chapter relating to offences affecting the public health, safety or convenience, was based, as my hon'ble friend Mr. Barkley has told us, on a comparison of several existing sets of bye-laws; and, when I looked at the first draft of that chapter, I thought that a good many of the rules which it contained were open to serious objection. There were rules which repeated provisions of the Penal Code, of the Criminal Procedure Code and of the Police Act, with modifications which would have had the effect of making those provisions more absolute, more stringent and more severe; and there were other rules which, as it appeared to me, interfered with the liberty of the subject in an unnecessarily arbitrary, minute and vexatious manner. When the draft came before the Select Committee, we applied to it a very vigorous process of weeding, and, with the full approval of His Honour the Lieutenant-Governor, we reduced its dimensions by, I think, about one-half. Even in their present form these two chapters, as Mr. Barkley has said, do materially affect the size of the Bill, and the Bill has, as a consequence of their addition, grown in bulk since its original introduction; and hence it may be objected that it is in appearance somewhat more lengthy and elaborate than is either necessary or desirable. But it is obvious that the law which will have to be administered is to be found, not in the Act alone, but in the Act *plus*

the rules and bye-laws made under it, and that the more you put into the Act the less you will have to put into the bye-laws. My belief is that, by adding to the bulk of the Act and thereby reducing the bulk of the rules, we have made the law more and not less easy to work."

The Motion was put and agreed to.

The Hon'ble MR. BARKLEY also moved that the following proviso be added to section 36:—

"Provided that this section shall not apply to any suit instituted under section 54 of the Specific Relief Act, 1877."

He said:—

"The right given by this section to committees and their officers to receive notice of action before being sued is similar to that given by section 424 of the Civil Procedure Code to the Secretary of State in Council and to public officers, in respect of their official acts. It goes beyond section 19 of the present Municipal Act, as that section, as well as the corresponding sections in the Municipal Acts of other provinces, has been held to apply only to suits for damages or compensation for some wrongful act committed by the committee or its officers in the exercise or the honestly supposed exercise of the powers given to them by law, and not to a suit for specific recovery of land, irrespective of any damage. Notice to committees where the title to land is in question is quite as important and, if the committee finds that it has made a mistake, is quite as likely to lead to an adjustment of the dispute out of Court, as where the proposed suit is one for damages or compensation; and, when we omitted the special provisions relating to limitation and tender of amends, there appeared to be no reason for not requiring notice in both cases, as in the section of the Civil Procedure Code applicable to suits against the Secretary of State.

"It has been pointed out, however, in a communication received by my hon'ble friend the Legal Member, that hardship might be caused in case an invasion of the plaintiff's right to, or enjoyment of, property was committed or threatened, under circumstances which would entitle him to apply to the Court for an injunction under Chapter X of Act I of 1877 (the Specific Relief Act, 1877), if he were required to give a month's notice before making the application, as the invasion might be continued, or the threatened invasion might be carried out, before the Court could be asked to interfere. This

objection to the section as framed appeared to be a sound one, and the amendment of which I have given notice is proposed in order to remove it.

"I may mention that two sections of Chapter X of the Act to which I have referred provide for the grant of injunctions. Section 54 provides for the ordinary case where the injunction is required to prevent the breach of an obligation, that is, a duty enforceable by law, existing in favour of the applicant. Section 55 provides for the further case where it is desired, not merely to prevent the breach of the obligation, but to compel the other party to perform certain acts; for instance, to pull down a wall by which lights are obstructed. Apparently the Court could exercise its powers under this section, if necessary, in any case in which a perpetual injunction under section 54 was applied for, as acts done after the application might render a mandatory injunction necessary, though the application was for a perpetual injunction only. The section simply enables the Court to grant further relief. But, if the plaintiff chooses to delay his application to the Court until the injury he complains of has been done, and then applies for a mandatory injunction under section 55, no presumption seems to arise that the case is of so urgent a character that he should be relieved of the obligation of giving a month's notice before he brings his suit; and I have therefore not thought it necessary to propose to extend the exemption to suits instituted under section 55."

The Hon'ble MR. ILBERT said:—"I think this is a necessary and proper amendment. My own inclination is, as I have said on a previous occasion, to dispense with the requirement of notice in actions of this kind, on the ground that notice is not necessary for the protection of the local authorities, and that in the event of litigation ensuing it introduces an additional element of expense, complication and delay. But the Panjáb officials who were consulted expressed a strong opinion that the requirement of notice would tend to promote the amicable settlement of differences, and accordingly I deferred to their opinion on this point. If, however, the requirement is retained, it certainly ought to be qualified by the exception which the English Courts have found it necessary to engraft on similar provisions in the English Statute-law."

The Motion was put and agreed to.

The Hon'ble MR. BARKLEY also moved that in the explanation of "annual value," in sub-section (2) of section 30, the words "and in the case of houses may be expected to let unfurnished" be omitted;

that after the words "Provided that" the words following be inserted:—

"(*1*) where in any municipality, or part of a municipality, houses are usually let furnished, it shall not be necessary to make any deduction from the estimated annual rent of a house in respect of so much of the estimated rent as would be payable for the use of such furniture as is usually supplied in the case of houses let furnished, unless it is shown that not less than one-fifth of the estimated rent would be payable in respect of such furniture, or such deduction is, by order of the Local Government, required to be made either generally or in any class of cases;"

and that the proviso following be numbered (*2*).

He said:—

"The object of this amendment, which only affects the hill-station municipalities, is to admit of the existing system of assessing the tax upon houses being maintained. While taxes upon buildings and lands are confined to a few municipalities, and therefore yield but a small portion of the municipal income of the province, they are an important source of income in hill-stations such as Simla; and, as in these stations it has been always the custom to let houses furnished without discriminating between the payment made for the use of the house and the payment made for the use of the furniture, the same considerations of convenience which have led to the house-tax being calculated upon the gross annual rent without making any deduction for repairs or insurance have also led to no deduction being made on the ground that the rent really includes a payment for furniture. If a uniform deduction were made, the result would obviously be the same as if the tax were assessed at a lower rate, and the effect of giving power to make no deduction will be the same as if the tax were to be assessed upon the net rental, but at a higher rate. If the deduction is to vary according as more or less of the rent is supposed to be paid on account of furniture, it will be necessary, not only to revise the assessment of every house in Simla, but to discover some standard of valuation by which to determine for what sum houses may reasonably be expected to let unfurnished. The most satisfactory standard obviously would be the rents found to be actually paid for unfurnished houses, but I believe I am right in saying that, if any houses in Simla have ever been let unfurnished, this has been a most exceptional occurrence. I do not know whether the houses taken as Government offices in recent years have been let unfurnished or with the usual furniture, but the demand for Government offices would tend to increase the rates of rent usually charged, the supply of houses to be let remaining the same, and the rents paid for them might therefore be considered not to afford a satisfactory standard by which to estimate rents generally.

1884.] [*Mr. Barkley.*]

"The result of the change made by the Select Committee will therefore be that, instead of estimates of rent being based on a comparison with actual rents as hitherto, the actual rent being accepted as the annual value in all ordinary cases, some deduction must be made from the actual rent where that is not itself exceptional; and this deduction, whether uniform or not, must be of a more or less arbitrary character, in default of any standard of the actual letting value of an unfurnished house being found. It must be a mere matter of opinion whether the deduction in any given case or in all cases should be five, ten, fifteen or twenty per cent. And the committee will be expected to solve this problem correctly for every house in Simla; for I apprehend that, in case of dispute, the burden of proof that the annual value assessed does not exceed the sum for which the house might be expected to let unfurnished must be borne by the committee.

"Another result will be to render a general re-assessment necessary at the very time when the committee will be engaged in considering what changes in its rules should be made before they are republished under the new Act; and still another result will be a reduction in the actual income of the committee of an unascertained amount, which may very probably necessitate proposals for fresh taxation, to enable it to meet its liabilities.

"There will thus be a considerable amount of inconvenience caused by the change in the existing law on this point which the Select Committee proposes to make; and I may add that the only objection to the provision of the original Bill maintaining the existing system, which has been received from any of the places where the house-tax exists, was made by a gentleman in the legal profession practising at Simla, who seemed to think that inequality of taxation must result between furnished and unfurnished houses or houses occupied by their owners. The answer to this is that, where the proviso will apply, houses are not ordinarily let unfurnished, and that the same standard would be applied to the valuation of houses occupied by the owners as if they were let furnished. It has been suggested that books, pictures and objects of art are included under the designation of furniture, but it is not likely that any other furniture would be included in the rents usually charged than such furniture as was necessary to the enjoyment of a house, and if, in any case, a higher rent is paid because a house contains objects not usually supplied by landlords, this case would be excluded by the terms of the amendment.

"Power is also proposed to be taken for the Local Government to order deductions for furniture, so that, if in any class of cases the rule was found to

act harshly, this could be rectified by an order of Government prescribing such deductions as seemed proper. Another exception has been introduced, providing for cases in which it can be shown that not less than one-fifth of the rent is payable in respect of the furniture, but I attach little importance to this, as I doubt whether this could be shown in any case in which the furniture would be taxable under the other provisions of the section. I have retained the exception mainly because it was suggested in Select Committee, and, if any one attaches more value to it than I do, it may be allowed to stand for what it is worth.

"The case of furnished apartments, which has once, I believe, been raised in Simla, is different from that of a furnished house. Whether under the rules now in force, or under the Bill, with the proposed amendment, it would be the house, and not the apartment, which would be liable to taxation upon the amount for which it might be expected to let.

"If it is said that the amendment is objectionable in principle as making what professes to be a house-tax include a tax upon furniture, I reply that furniture is not taxed apart from the house to which it belongs, and, so far as it is taxed at all, is taxed only as an accessory of the house. Furniture belonging to the tenant or hired by him from a third party is not taxed. The tax includes a tax on furniture only in the same sense in which, if the letting-value of the house was increased by its having a good garden, it might be said to include a tax upon roses or fruit. The present system has the advantages of simplicity and certainty, and in questions of taxation these advantages are at least as important as precision of nomenclature."

The Hon'ble MR. QUINTON said :—

"As I was nominated a member of the Select Committee to which this Bill was originally referred, I think I ought not to give merely a silent vote on the question raised by the amendment of my hon'ble friend.

"I may say at once that, having been for many years of my life president of municipal committees, I approached the subject with a strong bias in favour of a measure which at first sight appeared so much to facilitate the assessment and collection of a house-tax. Nothing can be simpler than a fixed rate on the gross rentals of all classes of houses. The proposal had also in its favour to some extent the existing practice in several hill-stations, notably that in which we are now living.

1884.] [*Mr. Quinton.*]

"A closer examination of the subject has, however, led me to believe that the facility of assessment promised by the scheme put forward in the amendment could be achieved only by a disregard of sound economical principles, and the apparent simplification of the collection of the tax had not, I discovered, even the merit of success to recommend it, as in one of the papers printed relative to the Bill I found the Simla Municipal Committee asking that powers should be given to realize the large sum of Rs. 15,000 now due to them as arrears.

"The inconvenience likely to be caused by the disturbance of the existing practice in some places did not seem to me an argument of much weight. I have had some trying experiences of the necessity for readjusting municipal taxation; and although at first sight formidable obstacles to any change presented themselves, yet when the change became inevitable the obstacles gradually diminished in proportion and the new state of things turned out to be no worse than the old. Moreover, in framing a law of general application it is impossible to avoid altogether particular inconveniences.

"The amendment proposes to tax, under certain circumstances, chattels in the shape of the furniture of hired houses. If it had been made directly on section 39 (*a*), and thereby indicated clearly the intention to include among the species of property on which municipalities should be empowered to impose taxation, not merely houses and lands, but the furniture of hired houses, I cannot think that the claim would have been pressed. The unsuitability for taxation of property so perishable in its nature, so changeable in its value, and so easily made away with, has been generally accepted, and, so far as I am aware, the present proposal to treat it differently finds no precedent in the Indian Statute-book. The Municipal Acts of Calcutta, Madras, Bombay, and the North-Western Provinces and Oudh authorize the imposition of taxes on lands and houses, and direct, some of them, that the estimated gross rental be assumed as the annual value for the purposes of taxation; but they nowhere lay down that the furniture of a house is one of the constituents of this annual value, or that the owner is to pay the tax on the income derived from his furniture as well as from his house.

"It may be said that this objection only applies in a degree which is practically unimportant to the scheme of the amendment, inasmuch as the latter proposes to tax only furniture which bears a certain proportionate value to the value of the house in which it happens to be, but that this is so does not affect

the unsoundness of the principle on which the scheme rests; and only in case of extreme necessity are we justified in adopting unsound economical principles to any extent as a basis for legislation.

"The scheme, however, is open to an objection still more practical, for it is impossible that it should not give rise to inequalities in the incidence of the house-tax. No distinction is made by it between the assessment on an unfurnished and a furnished house bringing in the same rental, so long as the estimated rent payable for the use of the furniture is under one-fifth of the full rental. The owner of the latter house pays a tax not only on his house, but on his furniture, while the owner of the former pays on his house only. Similarly, the owner of the furnished house is placed at a disadvantage as compared with the man who derives an income from letting out furniture for hire. The latter pays no tax on the profits flowing from this source, while the owner of the furnished house is compelled to do so.

"Further, the proposed system will entail separate valuations for separate classes of persons, from which inequalities in the incidence of the tax must arise. One estimate will have to be made for the owner who lives in his own house and is content with scanty furniture, a second for an owner similarly housed whose tastes demand more luxurious appliances, a third for the landlord who has little concern for the comfort of his tenants, and a fourth for one of a more liberal disposition. These several classifications and estimates cannot result in uniformity of taxation, and annual valuations of furniture, if properly carried out, are not likely to create a feeling in favour of the visits of the tax-collector. If the valuations be not annual and be not carefully made, the income of the municipality will suffer, and the reason for the proposal falls to the ground."

His Honour THE LIEUTENANT-GOVERNOR said :—

"I shall vote for the amendment, and, in explaining my reasons for doing so, I will not detain the Council at any length.

"Of course, we are all familiar with the fact that, in England, the practice is to tax the unfurnished house, and we all know the reasons, so that I need not here refer to them. They are those sound economical principles to which my hon'ble friend Mr. Quinton has referred. There is perhaps the less reason to notice them, because I observe that the Select Committee has not been guided by those sound economical principles, and the English practice does not

appear to have influenced them in framing the section now under consideration. Had the Committee considered those principles applicable to the case of Simla and other European settlements in the hills, in which alone I believe a house-tax is levied, I can hardly conceive they would, in complete disregard of them, have defined 'annual value' for purposes of taxation to be the 'gross annual rent', and have proceeded to tax that gross rental without any allowance for the cost of insurance, annual repairs and other similar outlay. Whatever may be said for or against taxing chattels, a tax on the rent of furniture is, after all, a tax on profits. But insurance and repairs are direct outlay, and a tax on a gross rental which includes these is, supposing the tax to fall on the landlord, a tax on expenditure which it is infinitely more difficult to justify than a tax on a furnished house.

"Speaking chiefly with reference to Simla, which is the hill-station I am best acquainted with, the principle of taxing the gross rental, without any deduction for insurance or for repairs or for furniture, seems to me the proper one to follow. By section 60 of the Bill, the house-tax is no doubt to be an owner's tax. But that simply means that the owner, and not the occupier, is liable to the municipality for the payment of it. The ultimate incidence of the tax is in no way affected; and it is notorious that the house-tax is, with hardly an exception, paid not by the owner, but by the tenant in addition to his rent. The all but universal arrangement is for the tenant to pay, say, Rs. 2,000 as rent, plus Rs. 200 house-tax at 10 per cent. Formerly the tax was 5 per cent., and when it was doubled, a year or two ago, the extra 5 per cent. was immediately thrown by the landlord upon the tenant. In the ordinary form of leases, of which I hold a copy in my hand, there is a formal clause binding the tenant to pay the house-tax over and above the rent. In hardly any case, therefore, does the tax fall upon the landlord at all. The only practical effect of the section of the Bill, if passed into law as it now stands, will be either that landlords will have to reduce proportionately the aggregate amount demanded from their tenants, or they will simply intercept a portion of the sum paid by tenants which in reality is the house-tax, and which should on all grounds, public and private, find its way into the municipal fund instead of sticking in the pockets of the landlord.

"Again, in 90 per cent. of the Simla houses, the furniture is of the most inferior and worthless description. In former days I was for many years a tenant in Simla under various landlords, and I had generally to relegate to the garret the bulk of the furniture supplied and put in furniture of my own. In nine cases out of ten there is no material difference between a furnished

and an unfurnished house, and, as my hon'ble colleague Mr. Barkley has justly pointed out, there is no standard of what the rent of an unfurnished house should be. Why then put the committee to all the expense and trouble of trying to make a distinction in such matters without any appreciable difference but with all the chances of difference of opinion and dispute? Why for such a matter dislocate the arrangements which have hitherto prevailed between landlord and tenant? I can conceive no greater mischief than for the legislature to interfere in this way with the business customs of the community. There may of course be, and doubtless are, exceptional cases in which landlords supply a better class of furniture than usual; and there are cases in which owners occupy their own houses and furnish them both comfortably and elegantly. For such exceptional cases the amendment provides. But it throws upon those who seek exemption the onus of claiming it and of establishing their right to it; and that, I venture to think, is the correct position.

"Lastly, the section as it now stands upsets without sufficient reason what has been the continuous practice ever since the municipality was established—a practice which on the whole has worked well and satisfactorily. I am quite aware that, owing to the wretched way in which the bye-laws under Act IV of 1873 were framed, and to the defects in the law generally, there have been cases of dispute and even of hardship in connection with the house-tax, which led at one time to representations on the part of certain house-proprietors against the taxation of furniture. But I do not believe there have been half a dozen cases arising out of the furniture question during all the years the house-tax has been in force. The causes out of which they arose have been removed, partly by the decisions of the Courts, partly by the revision of the bye-laws; and such imperfections as may still remain will, it is to be hoped, be gradually removed under the new law. This continuous practice, I say, has on the whole worked well. The municipal committee unanimously desire its retention. The community desire no change. I can see no reason why a tax which is customary, which is fair in itself, which is paid on the whole without objection, which is acceptable to the general body of the community, and which is unanimously preferred by the representatives of the inhabitants, should be made to give place to arrangements which hardly anybody asks for, which are in themselves inconsistent, which disorganise business customs, which throw needless difficulties upon the municipal committee, which lessen no one's burdens, and which intercept for the private benefit of the landlord part of a payment which is in reality a public tax and which ought to find its way into the public treasury.

"For these reasons I shall vote for the amendment."

1884.] [*Mr. Hope.*]

The Hon'ble MR. HOPE said:—"At the stage at which we have now arrived in discussing this question, it may, perhaps, be convenient that I should preface my remarks in opposition to this amendment by a very brief sketch of the way in which this question has arisen. In doing this I shall necessarily have to take the case of Simla, because, although I understand from the remarks of my hon'ble friend Mr. Barkley, and other members of Council, and from other sources, that the circumstances of other hill-stations are much the same, still the present complication has arisen out of Simla, and Simla is the municipality with the working of which we are all best acquainted.

"By rules made under the Panjáb Municipal Act of 1873 it was permitted to levy a tax on "the annual rental of each inhabited dwelling-house." After the introduction of these rules, the municipality, in that rough and ready way of doing injustice which it would appear some people still so much admire, proceeded to establish the practice of taxing on the whole gross rental, inclusive of what was paid for furniture, whereas these rules allowed them to tax on the rental of the dwelling only. If they thought that the rental of an inhabited dwelling-house included all its contents, then I do not know what need have prevented them from levying a poll-tax on the inhabitants and calling that a house-tax. However, in those days, furniture was extremely scanty, and people in general were ignorant of the rights and equities of the case; they simply came up here for a short time to enjoy themselves, took a house on the best terms that they could make, and so matters jogged along. The Simla municipality, however, as the place expanded, gradually carried their procedure so far as to put assessments upon the rent obtained for furnished apartments. Furnished apartments having gradually become much more numerous in Simla, this proceeding attracted attention, and eventually one of the owners of such houses resisted the claim. As to the more strictly legal aspects of a claim of this kind, I propose to leave any exposition that may be necessary to my hon'ble colleague the Law Member. I would merely state here that the question having been referred to a distinguished lawyer at Calcutta, Mr. Evans, he advised that, in the first place, any such interpretation of the power to take a tax on the annual rental as to include furniture, &c., was entirely contrary to all custom and to the usage followed in other well known localities, and that the contemplated assessments put upon gross rental was really a tax upon the ordinary profits of a lodging-house in addition to one on the estimated annual rental. Besides that, he pointed out that in other ways the rules and mode of procedure followed

were *ultra vires* in the particular case, and I believe the municipality were consequently unable to recover the sums for which they made a claim.

"Foiled in this attempt to maintain their position in the face of advancing intelligence and civilization, the municipality proceeded in April last to put forth a new set of rules, with the sanction of the Local Government, containing provisions intended to get over the difficulty which they had already experienced. These rules contained an explanation that 'the words 'rental' and 'estimated rental' shall be deemed respectively to include also any sum paid, or agreed to be paid, or which might be expected to be paid, or to be agreed to be paid, directly or indirectly, on account of furniture, fittings (whether fixtures or not), furnishings and all other conveniences and benefits whatsoever intended to be enjoyed together with the house or other building.' I believe that the municipality are now endeavouring, although the middle of the year has passed over, to enforce these new rules; with what success I am not aware.

"At this stage, however, the matter came into the hands of the Select Committee. They found that in the original draft of the Bill laid before them provision was made for the inclusion of furniture in the taxation of houses.

"Part of section 34 provided that 'in municipalities where houses are usually let furnished it shall not be necessary in estimating the rental to make any deduction on account of the furniture unless the Local Government shall otherwise order.'

"After considerable discussion, a modified form of that provision was proposed, which very much corresponds with the amendment put forward by my hon'ble friend, namely, that a deduction shall not be made unless 'it is shown that not less than one-fifth of the estimated rent is in respect of the furniture.' The Select Committee carefully considered the original and the amended provisos, but have been unable to accept either of them, deeming them economically unsound and practically unworkable. It is this amended proviso, substantially, which my hon'ble friend now wishes to get the Council to re-insert.

"I should here like to refer to a statement of the hon'ble gentleman and to that of His Honour the Lieutenant-Governor with reference to one preliminary point. The hon'ble gentleman, if I rightly understood him, said, with reference to the difficulty of dealing with furniture when owners lived in their own houses, that of course the committee in assessing would

deduction is to be made? Is there to be a deduction made of the excess of rental *over* one-fifth attributable to furniture, or when the proportion is found to reach the fifth is the deduction to be made for the entire furniture? I cannot make out which is intended, though I have thought a good deal over it. It would appear, however, that, whichever view you take, it does not very much improve the case. If we say, for instance, that on reaching the fifth you are to make a deduction of the whole of the furniture, then consider the injustice of letting off a person whose furniture is found to be, for instance, Rs. 2,050 in value, or Rs. 50 over the one-fifth, and refusing to exempt a person whose furniture was found to be worth Rs. 1,950; consider, moreover, the extreme likelihood of frauds being successfully perpetrated in connection with valuation, and so on. But if, on the other hand, you are going to make the exemption only on the excess amount, and also even if you draw any line at all, you are practically after all giving no such relief and exemption as the hon'ble member would appear to think desirable, because the houses as a rule do not, as far as I am able to say, have such furniture as would come up to the one-fifth. Supposing, for instance, that I take a house rented for Rs. 1,000 annually; the one-fifth of that would be Rs. 200. If we capitalize that at 10 per cent. (the difficulties of capitalization I will notice separately), we get Rs. 2,000. I do not think that there is any doubt that houses which let for only Rs. 1,000 a year do not usually have as much furniture in them as would be represented by Rs. 2,000. And in the same way, taking a house letting for Rs. 3,500 annually, it is improbable that there would be Rs. 7,000 worth of landlord's furniture in it. But perhaps, in answer to this argument, I may be asked—Why do you object to all this if it is such a small matter, and the maxim '*de minimis*,' &c., may be thrown at me. But my answer is that it is just in small cases that the greatest amount of hardship would occur. The lower you go down and the smaller the rent, the greater will be the amount of the tax taken without redress.

"The economic objections urged against the Select Committee's exclusion of furniture, as far as I recollect them, were only two. One was an objection drawn from the analogy of the course adopted by the Committee in the case of repairs. It was argued that, because the Committee refused to make a deduction on the gross annual value on account of repairs, they ought, in order to be consistent, to have followed the same course in this case and refused to make a deduction for furniture. But the essential difference is that a deduction for repairs is one the amount of which it is comparatively easy to ascertain in all cases. The matter is in fact so well ascertained in

only take such furniture into consideration 'as was necessary to the enjoyment of the house.' Well, if that be the standard which the committee are intended to adopt, then it seems to me that this amendment is altogether unnecessary, and we need not trouble ourselves with it at all; because it only applies to municipalities in which the houses are let furnished, and, if furniture is taken to mean such furniture as is 'necessary to the enjoyment of a house,' all I can say is that there is no house in Simla in which there is sufficient furniture provided for any enjoyment of the house at all. For that statement I take the support of His Honour the Lieutenant-Governor, who argued that the houses in Simla are so exceedingly badly furnished that it was not worth the trouble of taking the furniture into consideration.

"However, to pass on to a more grave aspect of my objections, I would remark that this Council of course has the power to make this practice of taxing furniture legal; but I venture to say that it is beyond the power even of this Council to make such a provision either equitable or workable with tolerable smoothness.

"Taking, first, the equitable side of the question, it is perfectly evident that a house is a totally different kind of property from furniture. The moment we attempt to tax the two together, we drift into numerous anomalies and inequities. Why, for instance, should you take the moveables which are connected with a *house* and tax them, but not tax other moveables? On what principle are you to tax the chairs and tables in a house and not the crockery and glassware? And why, if you were to tax the crockery and glass which belong to the husband, should you not tax the trinkets or other moveables which belong to the wife? Again, we all know that here most of our houses contain in the first place a certain amount of furniture belonging to the landlord, and a certain further amount added by the tenant; but on what possible principle can the furniture of the landlord be liable to a tax, and not the furniture of the tenant standing side by side with it in the same room? I will not go further into these inconsistencies, because they have already been to a certain extent referred to by my hon'ble friend Mr. Quinton.

"Now, my hon'ble friend Mr. Barkley seems to be conscious of this inequity; for he proposes that there shall be some limit of exemption, and this limit he puts at one-fifth. I must confess that I am extremely puzzled to make out in the amendment what sort of a deduction is to be given when this one-fifth has been reached: the difficulty of reaching it I shall notice separately. What

different parts of the world, especially in India, that there are some of our laws which contain a provision that 10 per cent. should be deducted on this account. If it had been possible similarly to ascertain with approximate accuracy the average value of the furniture usually let with houses in Simla, possibly the Committee might have taken another view of this question; but it is obvious that this is not the case. Another economic objection taken was with regard to the incidence of this taxation being on the tenant. As to that, I would simply say that to trace the incidence of taxation in particular cases is a most difficult problem, and I should suppose that it would be exceedingly difficult to establish the position that, here in Simla, for instance, there were not some houses for which very high competition rents were paid, and others the reverse.

"Passing on to the practical difficulties presented by the amendment, I would merely state my belief, which I am glad to see has been put in a much clearer form by my hon'ble friend Mr. Quinton than I now can put it, that the present amendment would involve endless disputes and difficulties. First of all it would be necessary to have in every disputed case a list of the landlord's furniture with a valuation of it, and in order to get this a considerable amount of inquisitorial procedure, and discrimination between the landlord's and tenant's furniture, would be necessary. Having got this list, it would next be necessary to compare the value with that of an imaginary standard of houses usually let furnished in Simla, because it is stated here that the deduction is to be 'of so much of the estimated rent as would be payable for the use of such furniture as is usually supplied in the case of houses let furnished.' Therefore, the municipality must make a complete inquiry, and strike an average, and set up a standard in their own minds with which this list must be compared. My hon'ble friend advanced it as an objection against the Bill as it stands that it would be necessary to have some standard of valuation of furniture in order to make a fair exclusion of the furniture allowed for in the rental; but I think that it would be very much more difficult to establish such a standard as he desires for taxing furnished houses in Simla. Thirdly, having got at the whole of the furniture and its value, we arrive at a further difficulty, which is, at what rate are you going to put the capitalization? Is this furniture to be capitalized at a fixed annual rate—10 per cent., 15 per cent. or at what rate? Are you going to include in it insurance against destruction? What rate of interest is to be considered as giving a fair return on the investment? Other minor details will probably suggest themselves.

"In talking of the standard I omitted to say, how will it be possible, in trying to frame this standard, to treat all the different classes of houses that we find here—hotels, boarding-houses, schools, &c.? Are you going to take a hotel here and compare it with other hotels in Simla, or with hotels elsewhere, or with your own ideas of what the furniture of a hotel ought to be, or are you going to cut up the hotel in your mind into private suites and proceed to tax them accordingly? For my own part I cannot foresee the amount of dispute and difficulty which may arise out of this matter.

"There is another point I must notice, and that is, whether owners or tenants cannot contract themselves out of this provision of the amendment altogether. The municipality may have to deal with a contract, duly signed and registered, in which it is provided that so much is to be paid for the house and so much for the use of the furniture. Now, if people can contract themselves out of this amendment, then the putting it in is purely illusory. If, on the other hand, they cannot contract themselves out of it, then it appears to me we are asked to sanction an extraordinary interference with the right of private contract and arrangement.

"Another consideration is that such a provision as this is exceedingly impolitic and undesirable in the interests of the whole community, because it imposes a penalty on the good furnishing of houses. If the furniture is put in distinct from the rent, there will be a practical encouragement to landlords to invest a fair amount of capital in furniture, and they will have the assurance that they will be able to reap from that investment what would be a fair and reasonable profit, undisturbed by any whimsical and fanciful legislation.

"With regard to what fell from my hon'ble friend Mr. Barkley as to the difficulties involved in carrying out the provision which the Bill as now before us proposes, I would contend that, so far from this Bill causing any special difficulties, it would cause the avoidance of difficulties. Why the municipality of Simla cannot in the course of the next two or three months make a revaluation of furnished houses, if called upon to do so, I am unable, notwithstanding the objections brought forward, to perceive. When once the deduction has been made we shall hear no more of it, whereas in the other case, owing to the action of the municipality, we shall be liable to be perpetually involved in disputes, and to be constantly supplying funds to a very worthy branch of the professional community.

"In reply to His Honour the Lieutenant-Governor's final recommendation of the amendment, I have only to say that, if the present practice be customary, we are not called upon to continue bad customs. That the tax has been paid without objection by the people generally I simply attribute to the fact of the question never hitherto having been properly raised. I feel certain that, if, now that it has been properly raised, the Council were to allow the existing system to be continued, the difficulties arising from it would be numerous and intricate. Further, with regard to His Honour the Lieutenant-Governor's remark that the continuance of this system is desired unanimously by the representatives of the people, I would say that, to the best of the information at my disposal, it is not by any means unanimously desired by the members of the municipal committee, some of whom are strongly opposed to it. But perhaps that is hardly a point within the cognizance of this Council, or on which it is necessary to offer an opinion.

"In conclusion, I would urge that the amendment is economically unsound, that it is practically unworkable, that it is undesirable and prejudicial to the interests of the community, and I trust that the Council will reject it accordingly."

"The Hon'ble MR. ILBERT said:—I must oppose this amendment. Its practical importance is trifling, for it affects only a small number of European houses in Simla and one or two other hill-stations; and, having regard to its very limited scope, I cannot help agreeing with my hon'ble friend Mr. Quinton that the practical inconvenience likely to be caused by leaving the Bill in the form in which it was settled by the Select Committee has been enormously exaggerated. My own belief is that the insertion of the proviso moved as an amendment will produce far greater difficulties and complications than its omission, and that its chief use will be to provide food for the members of my own learned profession. The question which this amendment raises was considered very carefully by the Select Committee, and the conclusion to which the majority of us came was that, although we were very anxious—I may say extremely anxious—to meet the wishes of the Simla municipality on this and other points, yet after thrashing the question out we found that it was really impossible for us to do so. There is a very attractive simplicity about the practice of taxing a house on the rent actually paid for it, without regard to the consideration that part of the rent represents the hire of furniture; and I do not in the least blame the Simla municipal authorities

for having adopted this practice under the circumstances with which they had to deal. But a practice of this kind belongs to a state of things which, to the regret of some, to the satisfaction of others, but by the admission of all, is passing away in the Panjáb and in other parts of India. It belongs essentially to what may be called the pre-legal age. It is one of the conditions of the existence of such a simple, rough and ready, easy-going practice that it should not be too minutely scrutinised, and, above all, that you should not attempt to formulate it. The moment you attempt to do that its imperfections start to the surface, and you find it impossible to overlook them. If you lay down a simple unvarying rule, you are at once struck with the unfairness which results from it; if, on the other hand, you attempt to introduce qualifications and exceptions, you leave gaps through which a lawyer of the most moderate intelligence can with the greatest ease drive a coach-and-six. The history of the practice here in Simla very well illustrates what I have been saying. For a long time the practice of making no distinction between the rent of furnished and of unfurnished houses for the purposes of taxation went on without much friction or objection. And the reason is not far to seek. It is that the furniture which is ordinarily supplied by landlords in what are called 'furnished houses' in Simla is apt to approach the infinitesimal. I very well remember that among the pieces of practical advice which my friend Sir Arthur Hobhouse gave me before I came out to India was this. 'Remember,' he said, 'that in Simla a furnished house means a house without furniture.' But, although this is the rule, I am bound to admit that there are exceptions, and I am glad to say that there are some Simla landlords who deal more liberally with their tenants in the matter of furniture; and the fact that the practice of taxing furniture supplied by landlords tends to check the growth of this liberal practice, and to keep down the standard of what a landlord ought to supply, is one of the reasons why I object to this amendment.

"Well, as I have I said, for these reasons the practice of taxing furniture went on for some time without much dispute or objection. At last a time came when the Simla municipal authorities—very unwisely as I think—proposed to tax a householder on what was obviously not rent in the ordinary sense, but the price paid for the kind of accommodation usually given in hotels. The attempt was naturally resisted, and very properly failed. Then the local authorities proceeded to draw up a set of elaborate rules, with any number of explanations and provisos, by which they attempted to cover the ordinary cases of what are

facetiously called 'furnished houses,' and to exclude such cases as that of which I have been speaking. We had these rules before us in committee, and we were all of opinion that they would not work, and I do not believe that even the legal ingenuity of my hon'ble friend Mr. Barkley would be able to frame a proviso which would work in the way in which his proviso is intended to work. I think I see a way of walking through his proviso, but I do not intend to disclose it at this moment. The fact is that, when you attempt to stray away from the broad high road of ordinary law in such matters as taxation, and strike out short cuts of your own, you are almost certain to land yourself either in a quagmire or in a labyrinth. Simla is not the only place in the world where taxes are levied on houses; Simla is not the only town in the world where houses are commonly let furnished. But I am not aware of any precedent either in English or in Anglo-Indian law for such a proviso as that embodied in my hon'ble friend Mr. Barkley's amendment, and you may feel sure that a rule which has such obvious recommendations on the score of apparent simplicity would have been adopted elsewhere if a wider experience than is obtainable here had not shown that it was either objectionable or impracticable.

"The Lieutenant-Governor has told us that the course which we propose to adopt is inconsistent and illogical, and that, if we wish to follow the English practice, we should follow it more closely. I quite admit that, in order to be perfectly fair, we ought to follow the English precedent and require the tax to be levied not on the gross annual value but on the net annual value, after making deductions for repairs and insurance. Our reason for not doing so was this. We found that the simpler and ruder rule of taxing on the gross and not on the net annual value prevailed in Bengal and some other parts of India, and we thought that we might relieve our Simla friends from the obligation of being in advance of Calcutta in this repsect.

"If, however, the Lieutenant-Governor wishes to propose that the assessment should be on the net annual value, I should be quite willing to support an amendment to that effect."

The Hon'ble Mr. BARKLEY said:—

"With reference to the remarks of my hon'ble friend Mr. Quinton, I believe his objection to the amendment substantially is that it would lead to inequality of taxation. He put the case of unfurnished houses; but this case does not arise, as in the places where the amendment will apply the practice of letting houses unfurnished does not exist. Then he referred to the variety in

the amount of furniture in different houses; but it is not proposed by the proviso to make the tax vary with the amount of furniture in a house. It is the rent which would be 'payable for the use of such furniture as is usually supplied in the case of houses let furnished' for which it proposes to allow no deduction, and the amount of furniture which a landlord is usually expected to supply when he lets his house as a furnished house is, in any given station, pretty well known.

"As regards the observation of my hon'ble friend Mr. Hope, that the Simla municipal committee had included furniture in the tax levied on the letting value of houses as a rough and ready way of doing injustice, it is, I think, hardly fair to the committee to suggest that it aimed at doing injustice. Whatever may be thought of the extent to which the system of assessing on the full rent paid has been carried, this system is not an innovation but has prevailed ever since the house-tax was imposed, and there is no reason to think that the committee ever intended to demand anything more than what appeared to it to be a proper assessment under the circumstances." (MR. HOPE here said he was aware that the tax was from the first assessed on the rent of furnished houses, and did not mean to suggest that the committee had introduced a new system of assessing.) "As to furnished apartments, I have already pointed out that neither under the rules now in force nor under the Bill could the tax be assessed upon the rent paid for such apartments, and it is therefore unnecessary to consider them.

"As has already been shown in this debate, it would be as easy to base a charge of injustice upon no deduction being made on account of repairs and insurance as upon none being allowed for furniture; and, if the estimate of my hon'ble friend, that in most cases not more than two per cent. of the rent represents furniture, be correct, it can scarcely be said that the hardship of making no deduction is very great. My hon'ble friend the Legal Member has indeed quoted a remark made to him by Sir Arthur Hobhouse that a furnished house in Simla is to be understood as meaning a house without furniture. If we are to accept this as a correct statement of the case, there is no question before the Council.

"As regards the deduction allowed when one-fifth of the estimated rent is payable in respect of furniture, I have already said that I attach no importance to this. It was proposed in committee as a check which would exclude extreme cases, but the suggestion was not mine.

1884.] [*Mr. Barkley.*]

"My hon'ble friend Mr. Hope again urged that the proviso would lead to frequent disputes, and that in case of dispute a valuation of the furniture would be necessary. He referred to what a house might be expected to let for furnished as an imaginary standard, but this implies that the rent at which an unfurnished house would let is well known, while the reverse is the case. Houses are ordinarily let with their furniture, and, unless it is alleged that something more than usual has been supplied and that the rent has been increased on this account, no question as to the amount of furniture in the house would arise. The imaginary standard in Simla which is likely to lead to disputes is the sum for which a house may be expected to let unfurnished. Supposing that, as suggested in any case, a deduction of two per cent. from the rent actually paid is proposed to be allowed, the owner may claim a deduction of 10 or 15 per cent., and it might not be found very easy to show that the house which he lets furnished for Rs. 1,000 would let unfurnished for even Rs. 800, in the absence of experience of what the demand for unfurnished houses is. It is for those who propose a change in the present system of assessment to show that it will work satisfactorily.

"When we start with the rent paid for furnished houses, no question of the possibility of capitalizing the value of the furniture could arise unless it was proposed to make a deduction on this account.

"As regards the power of contracting out of the proviso, no doubt, if landlords in general and tenants in general agreed that any charge made for furniture should be separated from the rent of the houses, the proviso would cease to apply, as houses would then cease as a rule to be let furnished. But no one contract would have this result. If the municipality were bound by the terms of the contract between landlord and tenant, they might agree that the rent of the house should be one rupee and that of the furniture one thousand rupees, and demand that the tax should be calculated upon the one rupee. But the tax is not upon the rent agreed upon, but upon the rent for which the property may reasonably be expected to let; and the committee would therefore be entitled, if the amendment passes, to estimate what the house would let for with the usual quantity of furniture.

"We have been told by my hon'ble friend the Legal Member that he thinks he sees a way of getting out of the proviso if accepted, but he has given us no hint of what it is. Of course, it is impossible to give any opinion beforehand as to what it may be possible for legal ingenuity to do, but, until the supposed way is pointed out, I can scarcely be expected to discuss the feasibility of passing along it."

His Excellency THE PRESIDENT said:—

"I came into this room today with a very great desire, I confess, to support this amendment, because I understood that it met with the approval of my hon'ble friend the Lieutenant-Governor, and it would always be my wish to agree with him, particularly upon a question not in itself of any great importance, in regard to a Bill relating entirely to his own province, and also because I understood it to be the wish of those who represent the community which is considered to be most immediately interested in the result of this motion. But, after listening with great care to the arguments brought forward on both sides,—and I may say that I do not intend to prolong this discussion by adding any arguments of my own,—the arguments against the amendment appear to me to be so strong that I cannot give it my support. It is with some reluctance that, for the reasons which I have stated, I have come to that conclusion; but it does seem to me that much practical inconvenience would arise out of the amendment, and that it is possible that a great number of legal questions would be raised upon it which would lead to great litigation. It appears to me also to be an amendment inconsistent with sound principles of taxation, and it must be borne in mind that, although this subject has been discussed this morning with especial reference to Simla, nevertheless the amendment is one of a general character which is to be applied to every municipality in the Panjáb which falls under the definition of a municipality in which houses are let furnished. I do not desire to raise any verbal arguments against the amendment, but I think a good deal of dispute might come out of that word 'usually' which occurs in it; and, looking at the matter as a whole, I am compelled to say that the arguments brought forward today against Mr. Barkley's proposal are such as to convince me that it would not be consistent with sound legislation to accept it; and therefore, so far as I am concerned, I shall be obliged to vote, though very reluctantly, against it."

The Motion was put and negatived.

The Hon'ble MR. BARKLEY also moved that at the end of clause (*a*) of section 71 the following words be added:—

"which have been constructed or are maintained out of the municipal fund."

He said:—"The object of this amendment is to limit the generality of the words 'public buildings of every description' in the description of the property which, unless specially reserved by the Local Government, is declared by the

1884.] [*Mr. Barkley; The Lieutenant-Governor.*]

Bill to vest in municipal committees. While it is right that the public buildings required for the purposes of the Act should be vested in the committee, it is not difficult to give instances of public buildings which ought not to be so vested. As examples I may mention the Government College at Lahore, churches where the buildings are public property, post-offices and telegraph-offices, the public offices at Simla of the Government of India as well as of the Local Government, and official residences. As the section stands, it would be necessary that all such buildings should be specially reserved by the Local Government, and it would therefore be necessary for the Local Government, before declaring any place to be a municipality under the new law, to ascertain what public buildings it should order to be reserved. The amendment will obviate this, so far as public buildings are concerned, though special reservations will still have to be made in some other cases, such as the grand trunk road or other provincial high roads."

The Motion was put and agreed to.

The Hon'ble MR. BARKLEY also moved that in section 72, for the words "municipal funds" the words "the municipal fund" be substituted. He said:—"This amendment is merely formal, to bring the language of the section into harmony with that of section 67 and the remaining sections of Chapter IV."

The Motion was put and agreed to.

The Hon'ble MR. BARKLEY then moved that the Bill, as amended, be passed.

His Honour THE LIEUTENANT-GOVERNOR said:—

"Before proceeding to make such few remarks as I have to offer generally upon the Bill, I wish to take this opportunity to acknowledge with gratitude the consideration and kindness shown to me by the Select Committee in inviting me to attend their meetings informally and discuss with them various matters of principle on which at one time there threatened to be material difference of opinion. The result of these deliberations has been that a common understanding has been arrived at on most points of importance, and the Bill is presented in a form which, although I cannot say it is in all respects what the Local Government would have desired, can still be accepted as suitable, and in which I have not thought it necessary to move in this Council any amendment of importance in addition to the amendments which have been proposed by my hon'ble colleague Mr. Barkley.

"The chief difficulty I have all along felt in connection with the Bill arises from the vast variety of municipalities with which we have to deal, and the impossibility of applying uniform conditions to all of them. It is difficult for any one unacquainted with the history of municipal institutions in the Panjáb fully to appreciate the difference between this province and the other provinces of India. The system of municipal taxation and administration in the Panjáb is in reality founded upon the *chúngi* system inherited by us from the Sikhs. These *chúngi* collections were made by the Native Government in every considerable village and town in the province, and after annexation they were continued in most places by the executive orders of the British authorities, the proceeds being devoted in the first place to police, and then to municipal improvements under the management of the Magistrate assisted by a committee of the townsmen. As the country progressed under our admininistration and the necessity for legislation arose, these primitive local bodies were in due time converted into legally constituted municipalities under sundry Municipal Acts. Thus, in 1871-72, we find there were no fewer than 824 towns and places in the province in which municipal income was raised. Of these, two were constituted under the old Municipal Act, XXVI of 1850; 127 were constituted under Act XV of 1867; while 195 were minor towns in which the municipal income was raised under executive orders in accordance with previous custom. After Act IV of 1873 was passed, the circumstances of all these minor towns were inquired into; 69 of them were formally brought under the new Act, while in the remainder the municipal form of taxation was abandoned and the *chaukídárí* system established in its stead.

"To this gradual historical development of municipal institutions is due not only the fact that, of the entire municipal income raised by taxation, no less than 96 per cent. is derived from octroi, which is only the old *chúngi* purified from certain abuses, but also the circumstance that we have in the Panjáb a larger number and a greater variety of municipalities than is usually found elsewhere—commencing, as they do, with what are little better than agricultural villages, merging by insensible degrees into towns, and from towns into cities,—the old capitals of dynasties and provinces such as Delhi, Amritsar, Lahore, Multán and Peshawar,—and ending with the British settlements in the hills, where the arrangements are regulated almost exclusively by European requirements.

"We have now in the Panjáb 202 municipalities constituted under Act IV of 1873, containing a population of 2,118,236, and with a municipal income of over Rs. 28,00,000. The number of municipalities in the Panjáb is nearly

double that in the North-Western Provinces and Oudh; and it may be instructive, as showing the kind of material with which we have to deal, if I compare on one or two points the statistics of the two Provinces. We have in the Panjáb 202 municipalities against 107 in the North-Western Provinces, or as nearly as possible double. The average population, however, is only 10,500 against 26,600, or considerably less than half. The largest population in the Panjáb is 173,000; in the North-Western Provinces 261,000. In the Panjáb, 98 municipalities or 48½ per cent. have a population under 5,000; in the North-Western Provinces there are only three. We have 95 municipalities with an income under Rs. 5,000, the North-Western Provinces has 15; and, while there are in the Panjáb 146 municipalities, or 72 per cent. of the whole, whose income is less than Rs. 10,000, there are in the North-Western Provinces only 44 such.

"It will thus be seen that in the Panjáb we have to deal with a comparatively large number of municipalities, with municipalities varying greatly in their circumstances and with incomes ranging from over Rs. 3,00,000 on the one hand, to less than Rs. 1,000 on the other; that, as pointed out by Mr. Barkley, six municipalities out of the 202 absorb half the income; and that the great majority consists of petty towns, some of them only agricultural villages, in which the arrangements differ little from the old traditional arrangements we inherited from the Native Government.

"Of course, the danger of dealing with municipalities of such varied types in one Act, especially under the influences which surround us in Simla, is the danger of sacrificing the rural communities to the interests of the large cities, and perhaps to the interests of the European settlements in the hills. On the one hand, in the petty municipalities, no change in the law is really required. We can get on very well with Act IV of 1873, and even the new arrangements called for by the local self-government policy have already been successfully carried out under that Act. On the other hand, in Simla and in the large towns in the plains, a thorough revision of the Act of 1873 had become a pressing necessity. On the whole, however, although from some points of view it might have been preferable to have limited the operation of the present Bill to the larger municipalities, leaving the minor towns under the Act of 1873, I think the Bill now before us has successfully dealt with the difficulty. At the same time, it must be admitted that the Bill is in many respects a compromise between two widely different sets of requirements, and the result

necessarily is that, on the one hand, less power has been conferred on advanced municipal committees, like that of Simla, than might have been entrusted to them; and, on the other hand, the powers of the Local Government over the petty corporations have been curtailed to a greater extent than was perhaps desirable.

"I trust that the action to be taken under section 4 of the Bill will not be unduly hurried, but that ample time will be taken to carefully ascertain the suitability or unsuitability of the Act to the various municipalities. There are, of course, some to which the Act can be extended at once without hesitation or further inquiry. There are a few, chiefly in frontier districts, to which it is impossible to say that the Act will probably be extended at any time in the immediate future. But, with respect to the great majority of municipalities, careful inquiries will be necessary, one by one, in order to determine, first, the general suitability or otherwise of the Act, and second, the particular provisions, if any, to be excepted under section 170. All this will require much time, much correspondence and much careful thought, both on the part of the Local Government and of executive officers in all grades. The work which has fallen upon the officers of the Panjáb Commission during the last 18 months has been unusually heavy. I cannot press them further, but am bound to treat them with the most indulgent consideration; and I wish to take this opportunity publicly to acknowledge, with gratitude, the zeal, the energy, the loyalty and the ability with which, notwithstanding the unusually heavy calls upon them in other departments of the administration, officers of all ranks have laboured to make the Government policy a success in the Panjáb. I cannot complain if people do not read the attractive pages of the *Panjáb Gazette*. But any one who will take the trouble to look over the numbers of that amusing publication which have appeared during the last twelve months will be able to form some slight idea of the work that has been done. To say nothing of the District Boards Act and the constitution of committees and boards under its provisions,—a subject which has quite a literature of its own,—we have, without waiting for the present Bill, framed, under the provisions of Act IV of 1873, municipal constitutions differing in no essential respect from the constitution to be enacted in Chapter II of the Bill, and applied them to 117 municipalities in the Province, and, in nearly all of these, committees constituted largely on the elective system have been already appointed. That more has not been done is owing solely to the impossibility of exacting more from zealous officers already greatly overworked.

1884.] [*The Lieutenant-Governor; Mr. Hope.*]

"There remain two points in connection with the Bill to which, although they are purely matters of detail, I should like to draw attention. The first is the provision in section 20 that, when a meeting is adjourned for want of a quorum, the adjourned meeting may dispose of the business whether there is a quorum or not. The operation of this section will have to be very carefully watched; for it may encourage packed meetings and enable minorities to carry party schemes of their own, and the knowledge that business will go on whether there is a quorum or not may tempt indolent members to stay away. It would, I think, have been safer to adopt the recommendation of the Local Government to the effect that, if there should not be a quorum at the adjourned meeting, the president should at once report the matter for the orders of the Local Government, leaving the Local Government to deal with the case under its general powers of control as a case of neglect of duty.

"Lastly, I wish to explain that section 28 of the Bill is not in accordance with the wishes expressed by a large and influential section of the Simla community last year. It will be remembered that, when the Simla election rules were under discussion in the summer of 1883, a large meeting of the United Service Club represented that, in any scheme for the municipal administration of Simla, one of three essential principles which should find place was that the appointment and dismissal of the paid secretary should be subject to the approval of the Commissioner of the division or of the Local Government. About the same time a similar representation was made by the Northern India Trades Association. These views seemed to be moderate and reasonable, and the Local Government promised as far as lay in its power to give effect to them. I have accordingly done my best, but have not succeeded. I think it right to make the above explanation, but the matter is not of sufficient importance that I should divide the Council upon it."

The Motion was put and agreed to.

INDIAN TELEGRAPH ACT, 1876, AMENDMENT BILL.

The Hon'ble Mr. HOPE introduced the Bill to facilitate the construction of Telegraphs, and to amend the Indian Telegraph Act, 1876, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Gibbs and Ilbert and the Mover. He said:—

"In making this Motion I do not know that it is necessary for me to add very much to what I said regarding the scope of this Bill when I asked for

permission to introduce it. It is a Bill which will give power to the Government and its licensees to construct and maintain lines of telegraph over or upon property belonging to private persons or public bodies. In the details of the Bill it will be seen that we have, in the first place, as regards all property on which lines are constructed, provided that the telegraph authority shall not acquire any right over such property other than that of a user, and that he shall do as little damage as possible. Beyond that, when the property belongs to a local or public body,—called local authority here,—the power given by the Act cannot be exercised over it without the consent of that authority; and it is provided that the local authorities shall be reimbursed for any expenses to which they may be put in the exercise of the power. No compensation, however, will be awarded to them, and they will not be allowed to make any charge for the accommodation thus afforded to the public. On the other hand, in the case of private property, full compensation will be paid for all damage sustained in consequence of the exercise of these powers. Provision has also been made for the removal of a line of telegraph in the event of circumstances arising on some future occasion which render it undesirable, or inconvenient or prejudicial to private rights. In the one case—the case of the local authorities—a simple order will suffice to remove it; and in the other case any dispute may be referred to the District Judge.

"As regards the general amendment of the Telegraph Act, we have added one more amendment to the two previously mentioned; that is to say, the insertion of a few words in harmony with the recent amendment of the English Act, so as to make it quite clear that telephones are within the operation of the Indian law."

The Motion was put and agreed to.

The Hon'ble MR. HOPE also moved that the Bill and Statement of Objects and Reasons be published in the local official Gazettes in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

BURMA GAMING BILL.

The Hon'ble MR. ILBERT moved for leave to introduce a Bill to provide more effectually for the suppression of certain forms of Gaming in British Burma. He said:—

"The object of this measure is to put down certain forms of gambling which are prevalent in British Burma, and which are without doubt a

fertile source of crime in that province. The particular form of gambling for which legislative provision appears to be specially needed is that which is known in Burma as the '*ti*' or 36-animal game. You would probably wish to know what this game is against which the legislative powers of the Council are invoked. It is really very simple. The *modus operandi* appears to be this. Your banker or professional gambler, who makes his living by the game, chooses one of 36 animals, and deposits a piece of paper on which its name is written in a hollow bamboo or box. Then his emissaries go round asking people to name the animal so chosen and to back their guess by putting down their money. Any one who guesses rightly gets thirty times his stake: the others lose. The theory is that the winning animal is named beforehand by the banker, but there is reason to believe that the theory does not strictly conform to the practice, and that the banker usually so arranges matters as to select the animal on which the smallest amount is staked.

"Now, the question which has been exercising the judicial minds of British Burma for a good many years past has been whether this form of amusement—I will use a neutral term—is a kind of gaming which can be hit under the Public Gambling Act, or is a lottery within the meaning of the Penal Code, or whether it merely constitutes a series of bets which is not punishable under any provision of the existing law.

"Let me explain a little more fully how the law stands. In the first place, there is the Public Gambling Act of 1867 (Act III of that year), which is in force in the North-West, the Panjáb, Oudh, the Central Provinces and British Burma. Three sections of this Act extend to the whole of these territories: the rest of the Act can only be brought into force, by order of the Local Government, in any specified city, town, suburb or railway-station, or in any place within three miles of a railway-station. The Act provides for the punishment of public gambling and the keeping of common gaming-houses; it imposes penalties on the owners, persons in charge of, and persons resorting to, common gaming-houses, and it gives police-officers powers of entry, search and seizure. Then, under one of the sections which extend of their own force to the whole of the province (section 13) a police-officer may apprehend without warrant—

'any person found playing for money or other valuable thing with cards, dice, counters or other instruments of gaming used in playing any game, not being a game of mere skill, in any public street, place or thoroughfare.'

"The instruments of gaming may be seized and destroyed, and the person found gaming under such circumstances is liable to a fine of fifty rupees or to a month's imprisonment.

"So much for public gambling. Then there is a section (294A) which was added to the Penal Code by an Act of 1870 under circumstances which the Council may remember, and which is specially directed against lotteries.

"Under this section—

'Whoever keeps any office or place for the purpose of drawing any lottery not authorized by Government shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

'And whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in any such lottery, shall be punished with fine which may extend to one thousand rupees.'

"Now, for some years after the passing of Act III of 1867 it was held that a *ti* was a form of gaming, and that the lists and papers used in the *ti* were instruments of gaming, within the meaning of that Act. This view was confirmed by the High Court of Calcutta in 1869. In 1876 the late Mr. Wilkinson and my hon'ble friend Mr. Quinton, as Judges of the Special Court of British Burma, held that *tis* were lotteries, and that, since the enactment of section 294A of the Indian Penal Code, lotteries were punishable under that section and not under Act III of 1867. Since the date of this judgment, the prosecution of the promoters of *tis* under Act III of 1867 may be said to have ceased; *tis* have been regarded as lotteries, and the persons concerned in them have been prosecuted under section 294A of the Indian Penal Code; and until lately no doubt of the applicability of that section to this particular kind of gambling has arisen.

"But two recent rulings of the Judicial Commissioner have presented a different view of the law. In the first of the cases in question the accused had been convicted by the Magistrate, under section 13 of Act III of 1867, as having been engaged in a *ti* in a *zayat* or public rest-house beside a public road. The Judicial Commissioner called for the proceedings, and, having come to the conclusion that a *ti* was not a game of chance and was mere betting or wagering, he referred the matter to the Special Court. The Officiating Recorder, Mr. Allen, dissented from the Judicial Commissioner's opinion, and held that the conviction was right. Under the constitution of the Special Court the opinion

of the referring Judge prevails. The Judicial Commissioner accordingly issued a circular in which his own view of the law is enjoined on the Courts subordinate to him,—in other words, on all Courts outside the jurisdiction of the Recorder of Rangoon,—and in which he lays down the doctrine that a *ti* is not a game nor a lottery, and that the papers used in collecting the money of the persons who take part in the *ti* are wrongly described as lottery-tickets. In the second of these cases the accused had been convicted by the Magistrate at Rangoon under section 294A of the Penal Code of keeping a lottery-office. On appeal to the Officiating Recorder, that officer referred the question of whether a *ti* is a lottery to the Special Court. The Judicial Commissioner held that it was not; the Officiating Recorder that it was. In this case also the opinion of the referring Judge prevailed. The Judicial Commissioner, however, has informed the Courts subordinate to him that his own view of the law is to be their guide. There are thus two contradictory judgments of the Special Court, and two diverse rules of law established for different parts of the province, each Judge holding to his own opinion.

"Now, the question which of these two learned authorities is right in his view of the existing law is a question on which it is not necessary for me to express an opinion. Mr. Jardine has justified his opinion by reference to some cases which have been decided in England under the English law, and I am by no means prepared to say that the cases to which he refers are not in point. But whether he is right or wrong in point of law, there can, I think, be no doubt that his decisions have had an unfortunate effect and have given a great impetus to gambling throughout the province.

"In confirmation of this statement let me read you some extracts from the Police Administration Report of British Burma for the year 1883 :—

'Gambling, admittedly one of the most fruitful sources of crime in Burma, has been frightfully on the increase of late, notably in its most dangerous form—Chinese lottery: this the Judicial Commissioner ruled could not be dealt with under the Gambling Act nor under the Penal Code; the lotteries are consequently universal all over the country. As I write I receive from a Superintendent a diary from which I give the following extract:—" In the morning strolled casually along the bank of the river and entered the verandas of four brokers' houses at hazard; found lotteries going on and being collected in each one..... In the evening went through the town, and again found lotteries hard at work." And this was in a part of the country where five robberies have occurred in the last month within a few miles radius.

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'78. The number of gambling cases brought to trial does not materially differ from that of the previous year; but that gambling has increased, and is daily increasing, is I fear, beyond a doubt.

'79. The Chinese lottery, or "36-animal game," has been reported on, written about and discussed by every officer in the province; it is the favourite form of gambling throughout Burma; it exercises the most extraordinary fascination over people of every class and age; men and women seem equally fond of it and children take to it eagerly; and, as it has now been declared by the Judicial Commissioner not to be illegal, it is in full swing all over the country. Rangoon is an exception; there the Recorder has declared it to be still punishable under section 294A of the Indian Penal Code, and it is therefore kept in check to some extent.

'80. So much has been said and written on the subject of gambling in British Burma that it is superfluous to dilate on the subject. The most competent judges have given it as their opinion that gambling is one of the principal sources of crime: the most dangerous form of gambling is now legalized, and crime is increasing with giant strides.

'81. A draft Bill for the prevention of gambling has, I believe, been submitted to the legislature by the Local Government. Some stringent measures are absolutely necessary if anything like order is to be preserved in the country. It is not only the magistracy and police who are calling out for help in this respect; the lugyis or elders have on several occasions petitioned the District Magistrates to put down this crying evil; and who are better judges than they of the harm that is being done by gambling?

'82. It is not only that the gambling itself does harm, but the lottery-houses in many places are the haunts of loose characters; liquor and opium add to the excitement of the lotteries, and the result is riots and quarrels, ending in one or more being carried off with dangerous or fatal wounds, and others concerned in the infliction, or abetting the infliction, of these wounds being carried off by the police or absconding from justice, possibly to become habitual criminals and pests of society.'

"The request for legislation which is embodied in this report is only a repetition of similar representations which had been made on many previous occasions. In consequence of a representation to the same effect which had been made in the previous year (1882), the Chief Commissioner issued a Resolution directing the Commissioners of the province to obtain an expression of public opinion on the question. With the Resolution were circulated various papers bearing on the subject, including a Bill for the suppression of unlawful gaming which was before the legislature of the Straits Settlements. Special inquiry was made as to whether the people of Burma desired, and were prepared to accept, a stringent gaming law similar to that Bill.

"The answers showed clearly that the Burmans as a body regarded the prevalence of gambling, specially as practised in the *ti*, as a very great evil. Government officers were almost equally strong in their denunciations of these *tis*. With a few exceptions the opinions received were in favour of suppressing this and other forms of public gaming, and the Bill proposed for the Straits Settlements was accepted as a guide to the direction which legislation should take.

"These answers came in at a time when Mr. Charles Crosthwaite was officiating as Chief Commissioner, and the advice which he gave us was by all means to legislate, but not to take the proposed Straits Settlements Ordinance as a precise guide to legislation.

"After mature consideration," says the letter of the Chief Commissioner,—

'of the opinions of the local officers and of the Native gentlemen who have been consulted, the Chief Commissioner's opinion is strongly against the endeavour to copy the measure proposed by the Government of the Straits Settlements. This draft Ordinance is a very complicated piece of legislation, very stringent in its provisions, and very likely, unless worked under closer supervision than can be given to it in Burma, to become an engine of oppression.' Mr. Crosthwaite is not at all in favour of a crusade against gambling of every kind. A people like the Burmese must have amusement of some sort. It is quite possible to make gambling an expensive amusement, but to stop it altogether, if the people wish to indulge in it, is beyond the power of the law, and the attempt to do it will only result in systematic bribery and the corruption of the police. From the papers submitted it appears that what is chiefly needed is the repression of the professional *ti*-gambler, the man who makes his living by going about inducing people to game and as often as not swindling them out of their money. The urgent requisite is a law which will enable the authorities to deal with professional gamblers, and all who aid and abet them, with prompt severity, wherever they may be found. For other purposes the Act of 1867 appears to be sufficient, and the Chief Commissioner does not desire the extension of all its provisions to the province generally.'

"Mr. Crosthwaite submitted with the letter from which I have been quoting two alternative drafts, either of which he suggested might be taken as the basis of legislation. The chief difference between them was that one of them was so framed as to deal exclusively with *ti*-gaming, whilst the other proposed to repeal the Act of 1867 and re-enact it for British Burma with the necessary additions and modifications.

"Since Mr. Bernard has resumed office as Chief Commissioner, he has strongly urged upon us the necessity for early legislation on the lines of the proposals submitted to us by Mr. Crosthwaite.

"I think I have said quite enough to show that some legislation on the subject is urgently required. I will reserve until the introduction of the Bill my explanation of the precise manner in which it is proposed to amend the law. All I will say on the present occasion is that, of the two alternative proposals submitted to us by Mr. Crosthwaite, we have resolved to adopt in principle the former, that is to say, not to recast the Gambling Act, but to amend or supplement it in such a manner as to bring the game of '*ti*' within the grasp of the law. There is some difficulty in adapting the provisions of the Act of 1867 to this particular game, because that Act is directed against public gambling, and the keeping of and resort to common gaming-houses, whereas the game of '*ti*' is carried on also in private houses; but this is a kind of difficulty which can probably be got over by a little ingenuity of drafting. And, if the game is to be made an offence, I do not see why it should not be made punishable both under the provisions of the Penal Code and under the Gambling Act. When I say that the offence should be punishable under both these provisions, of course I do not mean that a man should be made punishable twice for the same offence, but merely that the two Acts should to a certain extent overlap each other, and that the prosecutor should be left his choice of proceeding under one or the other, according to the circumstances of the case."

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 27th August, 1884.

SIMLA;
The 28th August, 1884.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

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