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Separate paging is given to this Part, in order that it may be filed as a separate compilation.

## PART V.

### PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

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

*Abstract of the Proceedings of the Council of the Governor of Bombay, assembled for the purpose of making Laws and Regulations, under the provisions of THE INDIAN COUNCIL ACTS, 1861 and 1892.*

The Council met at Poona on Thursday the 31st August 1893.

#### PRESENT:

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

The Honourable Mr. H. M. BIRDWOOD, M.A., LL.D., C.S.I.

The Honourable Mr. A. C. TREVOR, I. C. S.

The Honourable Mr. BASIL LANG, Acting Advocate General.

The Honourable Khán Bhádúr DORABJI PADAMJI.

The Honourable Mr. JOHN NUGENT, I. C. S.

The Honourable Mr. P. M. MEHTA, M.A.

The Honourable Mr. W. R. MACDONELL.

The Honourable Mr. HERBERT BATTY, I. C. S., M.A.

The Honourable Mr. R. G. OXENHAM, M.A.

The Honourable Mr. A. T. SHUTTLEWORTH.

The Honourable GANPATRAO DAMODAR PANSE.

The Honourable Mr. VISHNU RANGUNATH NATU, B.A., LL.B.

The Honourable Mr. W. H. CROWE, I. C. S.

The Honourable Ráo Bahádúr MAHADEVA GOVIND RANADE, C.I.E., M.A., LL.B.

The Honourable Mr. CHIMANLAL HARILAL SETALVAD, B.A., LL.B.

The Honourable Khán Bahádúr A. D. HASAN ALI BEY EFFENDI.

The Honourable Mr. NAVROJJI NASARVANI WADIA, C.I.E.

The Honourable Mr. JAVERILAL UMIASHANKAR YAJNIK.

The Honourable Mr. JAVERILAL put question No. 1 standing in his name:—

*Have any rules been framed by Government, pending the completion of the promised survey of villages within a radius of eight miles of Bombay, for the levy of fines under Section 65 of the Bombay Land Revenue Code, and whether these rules contemplate the levy of fine only on land actually built upon or also on the unbuilt portion included in the compound of such a building, and what is the amount of fine leviable at present?*



The Honourable Mr. TREVOR in reply said :—Rule 70 of the General Rules framed under Section 65 of the Land Revenue Code empowers Government in such cases as are deemed exceptional, to fix special rates for the fines to be imposed under Section 65 and Section 66 of the Land Revenue Code on the appropriation of land to purposes unconnected with agriculture, and in the exercise of this power the fines to be levied, pending the possibility of introducing a special survey assessment on building sites within a radius of eight miles from Bombay, were fixed in 1891 at rates varying from Rs. 250 to Rs. 3,000 per acre, according to the situation of the different villages and the comparative value of the land for building purposes. The fines are leviable on the whole plot appropriated to purposes unconnected with agriculture, and not only on the area actually covered by buildings. The attention of the local officers has, however, been drawn by a Resolution issued in June last to Section 67 of the Land Revenue Code, which provides for the grant of permission to build, &c., on such terms as may be agreed upon between Government and the occupant, and they have been directed, pending further instructions, to refer to Government any applications that may be received for permission to build in the villages of Bándora and Dándá or their suburbs, with a view to the negotiation of voluntary agreements on the basis of the substitution of a fair building assessment liable to revision at suitable intervals for the fine leviable under Section 65.

The Honourable Mr. JAVERILAL then put question No. 2 :

(2) *Has the attention of Government been drawn to the fact that in notifications issued to rayats, prior to the introduction of revised rates in a táluka, or group or groups of villages, inviting objections to enhancements proposed thereunder, only the existing and proposed maximum rates are announced, and that the rayats concerned are not thereby given a fair opportunity to be heard as to enhancements on their holdings contemplated by Government, and if so, whether it is the intention of Government, in issuing such notifications in future, to place the rayats in a position to know what the enhancements on their individual holdings are so as to enable them to make a sensible or reasonable representation to Government on the subject?*

The Honourable Mr. TREVOR in reply said :—The attention of Government has been drawn to the subject referred to in this question, and the Divisional Commissioners have recently been requested to consider the subject and advise Government if any improvement is possible in the existing procedure, with a view to facilitate intelligent criticism of proposals relating to the introduction of survey settlements. I may observe, however, that the general suitability of the rates and grouping proposed at a survey settlement, which is the question on which comment is invited in the notifications referred to by the honourable member, is a subject apart from the assessment of individual holdings in accordance with the rates and grouping accepted. In regard to the latter point, I would invite reference to paragraphs 4 and 6 of the published Government Resolution on the subject, No. 7447 of 21st October 1886, which directs that every opportunity is to be given to occupants of insisting, while survey operations are in progress, that due attention is given to any points affecting the classification of their land that they may desire to bring to notice, and saves their right of appeal against the assessment of their holdings after the rates have been sanctioned and the assessments formally announced.

The Honourable Mr. NATU then put question No. 1 standing in his name :—

*What are the terms of the agreement made by Government with the Gokák Mills Company in respect of the supply of water from the Dhupdál Storage Works to the said mills, and when does the term of the agreement expire?*

His Excellency the PRESIDENT in reply said :—The draft of a new lease between the Secretary of State for India in Council and the Gokák Water Power and Manufacturing Company, Limited, in cancellation and surrender of the previous instrument or indenture, dated 28th May 1884, and to have effect from that date, has been drawn up, but is awaiting execution until the plan referred to in the lease has been prepared.

In the meantime the terms of the new lease have been brought into force and they are as follows :—

The lease will expire on 28th May 1893, and the agreement provides for—

(1). A continuous supply of water to the Company of 17 cubic feet per second in return for an annual rental of Rs. 3,450, or nearly Rs. 203 per cubic foot.



(2). A further continuous supply on demand up to 68 cubic feet per second on an annual payment of Rs. 213 per each cubic foot per second above the supply of 17 cubic feet per second.

(3). A continuous supply on demand above 68 cubic feet and up to 136 cubic feet per second at a rate of payment of Rs. 350 per each cubic foot supplied in excess of 68 cubic feet per second.

There are other subsidiary conditions dealing with the possibility of the failure of the supply or of default on either side.

The Honourable Mr. NATU then put question No. 2 :

*Is the price of water charged to the Gokák Mills the same as that charged to the rayats, who use the Gokák Canal water for the irrigation of their fields, and does Government intend to raise the water-rates as suggested in the Irrigation Revenue Report for 1891-92? (page 56, para. 24)?*

His Excellency the PRESIDENT in reply said :—The Water Power Company pay at a fixed rate per cubic foot per second of water let out from the storage reservoir down the river ; the rayats pay at crop rates per acre varying according to the season, kharif, rabi or hot weather.

It is not easy to make an absolutely accurate calculation of the value of the water supplied to the mills and to the rayats respectively, but the following is a fairly reliable estimate :—

(a) The assessments of kharif and rabi annually made and based on the various rates charged for the different crops irrigated are accurately known and recorded in the Revenue Report for each year. The mean average discharge of the canal in the kharif and rabi seasons is also recorded and is believed to be quite as accurate as the discharge to the mills.

From these two items the value per cubic foot of water per second supplied for irrigation can be approximately determined.

For example, at page 54 of the Irrigation Revenue Report for 1891-92, the assessments are found to be as follows :—

	Kharif	...	...	...	...	Rs.
						6,160
	Rabi	...	...	...	...	5,281

also at page 55—

Kharif discharge = 21·82 cubic ft. per second.

Rabi do. ..33·99 cubic ft. per second.

Therefore the value of the cubic foot per second during the

Kharif season = Rs. 6,160

$$\begin{array}{r}
 \underline{\hspace{1cm}} \\
 21\cdot82 \\
 = \text{Rs. } 282 \text{ per cubic foot per second.} \\
 \underline{\hspace{1cm}} \\
 5,281
 \end{array}$$

$$\begin{array}{r}
 \text{Rabi season} = \text{Rs. } 33\cdot99 \\
 = \text{Rs. } 155 \text{ per cubic foot per second.}
 \end{array}$$

(b) Calculated in the same way the value of the cubic foot per second supplied to irrigation was in the kharif season of 1889-90 = Rs. 157·8 and in the rabi Rs. 70·9.

(c) In 1890-91 the values in the kharif and rabi seasons were respectively Rs. 237·9 and Rs. 95·4.

(d) The rates vary in the different years with the areas of crops irrigated ; the reason is obvious ; the average discharges do not vary very much, and as the areas irrigated increase, so do the gross assessments, and as a consequence the amount realised per cubic foot per second also improves.

(e) A revised scale of rates on the Gokák Canal, approved by both Revenue and Public Works Department officers, has been introduced since 1st April 1893, and is to have effect for five years—I place on the Table the following copy of Government Resolution Public Works Department No. 69A. I.—5561, dated 30th March 1893 :—Memorandum from the Superintending Engineer, Southern Division, No. D.—119, dated 30th January 1893.



With reference to Government Resolution No. 26 A. I.—345, dated 21st February 1891, forwards a statement as follows from the Executive Engineer, Belgaum, showing proposals for new water rates on the Gokák Canal, 1st Section, together with copies of a letter from the Collector of Belgaum, and requests sanction to their being enforced for the next five years. Observes that it is proposed to reduce the rate for single watering for tilling ground to annas 4, because the Executive Engineer reports there has been no case of the water being so used, and that after reduction, it may perhaps be availed of. Adds that, if the single watering is taken after 15th February 1893, and before commencement of rains, a rate of annas 8 is proposed:—

Class No.	Classes.	Current Water Rates sanctioned in G. R. No. 48 A. I.—629 of 29th March 1889.	Proposed Water Rates per acre.	REMARKS.
1	2	3	4	5
		Rs. a. p.	Rs. a. p.	
I.	<i>Perennial</i> .—Such as sugarcane, pán, plantain, &c ... ..	10 0 0	*14 0 0	* Rising by Rupee one per annum till the final rate of Rs. 18 is reached.
	(a.)— <i>Inferior Perennial Irrigation</i> .—Such as sweet potatoes, vegetables, &c. ... ..	7 0 0	8 0 0	
II.	<i>Eight Months.</i>			
	(b.)— <i>Monsoon and Rabi</i> .—(15th June to 15th February) such as chillies, turmeric, ground-nut, &c. ...	3 0 0	3 8 0	
	(c.)—Do. do. Rice...	3 0 0	3 0 0	
	(d.)— <i>Rabi and hot weather</i> .—(15th October to 15th June) such as turmeric, ground-nut, maize, sweet potatoes, &c. ... ..	6 0 0	7 0 0	
III.	<i>Four Months.</i>			
	(e.)— <i>Monsoon four months crops</i> .—(15th June to 15th October) such as garlic, onions, carrots, &c. ... ..	1 8 0	1 8 0	
	(f.)— <i>Rabi four months crops</i> .—(15th October to 15th February) such as onions, jowári, (shálu, garlic, wheat, cotton, grain, tur, kusumba, vegetable, tobacco, &c.) ... ..	2 0 0	2 8 0	
IV.	<i>Monsoon dry crops</i> .—Such as hájri, jowári, kulti, kidney bean, rála, rájgira, ragi, tur, &c. ... ..	0 12 0	0 14 0	
V.	<i>Special hot weather crops</i> .—(15th February to 15th June) such as onions, maize, vegetable, fodder, &c. ... ..	5 0 0	6 0 0	
VI.	<i>Single watering.</i>			
	For tilling grounds ... ..	0 8 0	0 4 0	
	Do do. after February 15th ... ..	.....	0 8 0	
VII.	<i>Irrigation by lift.</i>			
	Half the flow rates.	.....	.....	



Memorandum from the Commissioner, Southern Division, No. 531, dated 5th February 1893.

Submits the above with the remark that the proposed rates, which are concurred in by the Collector of Belgaum and the Superintending Engineer, may be sanctioned.

Memorandum from the Revenue Department, Secretariat, No. 2102, dated 22nd March 1893.

With reference to this Department memorandum No. 107-I., dated 14th February 1893, returns the above with an expression of concurrence in the opinion of the Commissioner, Southern Division.

RESOLUTION.—The proposed scale of rates may be sanctioned for five years with effect from 1st April 1893."

The Honourable Mr. SETALVAD then put the question No. 1 standing in his name :

(1) *What is the total number of whole-time teachers (1) in the Local Board primary schools controlled and managed by the Government Educational Department, and (2) in the Municipal Primary schools, respectively, in the Northern Division, and what is the number of those out of such teachers whose salaries are less than Rs. 5 per mensem? What are the corresponding figures for the Central and Southern Divisions, respectively, and for Sind? What educational test is insisted upon in employing such teachers and what is the minimum salary given in the Revenue and other departments of the State to persons who have passed similar tests? Will Government take measures to fix a reasonable minimum salary for teachers in primary schools and do away with the starvation salaries above referred to?*

His Excellency the PRESIDENT in reply said:—For convenience I have subdivided the honourable member's first question :

(1) *What is the total number of whole-time teachers, (a) in the Local Board Primary Schools controlled and managed by the Government Educational Department, (b) in the Municipal Primary Schools, respectively, in the Northern Division?*

(2) *What are the corresponding figures for the Central and Southern Divisions, respectively, and for Sind?*

As to Nos. 1 and 2. There has not been time to collect the information except as to the Central Division. So far as that Division is concerned, the total number of whole-time teachers in *Local Board* Schools controlled and managed by Government is 2,473. The number in *Municipal Primary Schools* is 772.

As to (3). *What is the number of those out of such teachers whose salaries are less than Rs. 5 per mensem?*

None of the above teachers are paid less than Rs. 5 per mensem.

(4) *What educational test is insisted upon in employing such teachers?*

As to question 4, the Educational Department lays down as a rule that only those shall be employed who have passed the Public Service Certificate Examination so far as this is possible, and in Rule I of Chapter II of the Code for Deputy Inspectors, it is ruled that no man can be appointed or promoted to a place of Rs. 8, who has not passed the Public Service Certificate Examination except with the special sanction of the Inspector; as a matter of fact, it is not always possible, especially in villages, to obtain men who have qualified for the Public Service for places of Rs. 5 and Rs. 6, and the best material available has to be selected.

(5) *What is the minimum salary given in the Revenue and other Departments of the State to persons who have passed similar tests?*

As regards question 5, there has not been time to obtain the information.

(6) *Will Government take measures to fix a reasonable minimum salary for teachers in Primary Schools and do away with the starvation salaries referred to?*

As regards 6.—With limited funds and the pressing necessity for extending primary education as far as possible, the Department has regulated its operations to some extent by the law of supply and demand, and it has assumed the sufficiency of the pay given by the readiness of candidates to accept the posts offered.



But the pay of the lower assistants has been raised as increased funds became available. In the report of the Director of Public Instruction for 1890-91, paragraph 23, the Inspector, N. D., has quoted as follows:—"My efforts have been principally directed to the careful grading of Schools, and to supplying schools with an adequate staff of teachers fairly well paid."

Again in the Director of Public Instruction's report for 1891-92, paragraph 23, the same Inspector reports "a fair amount of money has been spent in strengthening the subordinate establishments."

Only a few years ago, there were assistant teachers in the Northern Division, on Rs. 3 and even Rs. 2-8-0 per mensem. and these rates are still to be found in Native State Schools in Káthiáwár, where the efforts of the Department have not yet succeeded in inducing the States to adopt the more liberal rates of the British Districts.

Except in large towns the assistant teachers rarely spend many years in that condition. They often take up these places for a year or two, while waiting for employment in the Revenue Department or elsewhere. If they do remain in the Educational Department, they have a chance of rising to Rs. 10, without a Training College Certificate, and if at any time they pass the examination and obtain a certificate, they qualify for pensionable pay. Assistant teachers are permitted to take private tuition under the rules prescribed by Government, and in this way supplement their income.

It is impossible for me to make promises as to a re-organization of the pay of the officers referred to; but I need hardly say that if Government can find the means, it will be glad to raise the rates of pay, where they are insufficient to procure the class of men which should be entrusted with the education of youth.

The Honourable Mr. SETALVAD then put question No. 2:

*Is there any truth in the statements made in the "Gujarátí" of the 9th of July, 1893, and in subsequent issues of the same paper to the effect that Mr. Bhanushankar Naranshankar Davé, an Assistant Master in the Surat High School, and a member of the Surat Municipality, has been transferred to Nadiád, and his salary reduced by Rs. 15 per mensem for his having taken a prominent part in the agitation against the imposition of a house-tax by the Surat Municipality? Have Government perused the correspondence that is said to have passed between the Collector of Surat, the Educational Inspector, N. D., and the Director of Public Instruction about Mr. Bhanushankar's reduction, and how far are the statements made in the issues of the "Gujarátí" above referred to, as to the contents of that correspondence, correct?*

His Excellency the PRESIDENT in reply said:—With regard to this question the transfer referred to was a departmental arrangement made in the regular manner by an order of the Director of Public Instruction, sanctioning certain proposals of the Inspecting Officer responsible for the Division. The officer transferred has not so far as is known petitioned or made any complaint to Government, and Government is under no obligation to take any action upon or to notice statements and allegations made by anonymous and irresponsible contributors to the Press, connected with the discipline of a Government Department.

The Honourable Mr. SETALVAD then put question No. 3:

*Have Government read the letter that has appeared in the issue of the "Times of India" of 1st August 1893, under the signature of Dr. M. G. Deshmukh, regarding the working of the Chemical Analyser's Department, and have Government made any enquiries with a view to ascertain how far the allegations made in the said letter against the said Department are correct? If no enquiry has been made about the matter, do Government intend making any such enquiry?*

The Honourable Mr. BIRDWOOD stated in reply said:—The replies to the first and second questions put by the honourable member are in the affirmative. A report has been received from the Chemical Analyser, which, in the opinion of Government, is satisfactory.

The Honourable Mr. SETALVAD then put question No. 4:

*Is it true that when the transfer of schools from Government to the various Municipal Boards was effected from time to time, the Government educational grants to those boards were fixed at one-third of the gross expenditure of those schools at the time of the transfer payable for a period of five years on the principle of the Provincial Contract;*



that although the contract term of five years has, in a majority of cases, long since expired, and although the expenditure of the said schools have considerably increased during that period, the contract grants have not been revised, and that the same grants as were fixed at the transfer are still being paid? What was the total expenditure of schools maintained on the contract grant system by the Municipalities in the Northern Division, and what was the total amount of the Provincial grants to those Municipalities during the year ending 31st March 1893, and what are the corresponding figures for the Central and Southern Divisions and Sind respectively? When will Government be pleased to revise the grants?

His Excellency the PRESIDENT in reply said:—What Government has contemplated doing is to give both to each Municipal Board and each District Board one-third of the total cost of primary schools on the principle of the Provincial contract, *i.e.*, a lump allotment open to revision every five years. But it has been repeatedly announced that this undertaking of Government is subject to financial ability.

In paragraph 21 of Government Resolution No. 1938, dated 29th October 1885, which was published with the Annual Educational Report for 1884-85, it was laid down that the cardinal principle must not be overlooked that the Municipality is made responsible by law for the establishment and maintenance of the whole of the system of primary schools in the Municipal Districts, the aid of Government being entirely voluntary and discretionary and subject to such conditions as Government may think fit to impose in the interest of education.

It may be noted that last year Mr. Chatfield proposed to revise the grants for municipal schools and asked for an increase of Rs. 28,136 to the Budget provision of Rs. 1,40,000 for mofussil municipal schools. The proposal has been approved by the Educational Department, and has been sent to the Financial Department, unofficially to see before issue of orders. The increase will be met from the additional grant of one lakh provided in this year's Budget for primary education.

The figures for 1892-93 required by the Honourable Mr. Setalvad are not available, as the Director's Annual Report for 1892-93 has not yet been received.

The Annual Report for 1891-92 (Appendix E) gives the figures for that year which are extracted below:—

	<i>Northern Division.</i>		Rs.
Total expenditure ...	...	...	... 1,39,118
Provincial grant ...	...	...	... 42,840
	<i>Southern Division.</i>		
Total expenditure ...	...	...	... 93,917
Provincial grant ...	...	...	... 27,259
	<i>Central Division.</i>		
Total expenditure ...	...	...	... 1,45,436*
Provincial grant ...	...	...	... 41,691*
	<i>Sind.</i>		
Total expenditure ...	...	...	... 76,829
Provincial grant ...	...	...	... 7,059†

The Honourable Mr. Ránade then put question No. 1:

*In reference to the newly sanctioned scheme of exchange compensation allowances to be paid to the European and Eurasian officers of Government, has any approximate estimate been made of the probable or maximum amount of such compensation which will be monthly payable to the officers concerned, in this Presidency, and whether this additional charge is to be met out of the Provincial assigned revenues in cases where the salaries of the officers are chargeable to the Provincial Account?*

The Honourable Mr. TREVOR in reply said:—This Government has no information on the subject at present, except what is contained in the Resolution of the Government of India published in the *Bombay Government Gazette* of the 24th August.

The Honourable Mr. Ránade then put question No. 2:

\* Inclusive of Bombay.

† This amount is paid after deducting charges, *viz.* about Rs. 17,000 on account of Police taken over from the Sind Municipalities by Government. The system of adjustment is to be abolished and full grants are to be made to the Sind Municipalities.



*What progress, if any, has been made during the last ten years in the way of giving fuller effect to the policy of Government to encourage, as far as possible, the purchase of articles of local manufactures in substitution of those imported from England, not only in the Stationery, but also in the Public Works, Police, Medical and other Departments, and what has been the extent, if any, of the economies thereby ensured from year to year since 1884?*

The Honourable Mr. TREVOR in reply said :—The honourable member's question is one which might more usefully be put in the Legislative Council of the Government of India. The general effect of the orders referred to can only be very imperfectly exhibited in their application to the Provincial transactions of a single Presidency, and I am afraid the particulars asked for cannot be furnished for some time, as a reference to the Departments concerned will be necessary. Steps are being taken, however, to collect such information as is available, and the result will be laid before the Council at the earliest opportunity.

The following papers were laid on the table :—

- (1) Statement showing the Receipts and Charges of the Province of Sind for the year 1892-93.
- (2) Second Report of the Select Committee appointed to consider Bill No. 1 of 1893, a Bill to further amend the law relating to the municipal government of the City of Bombay.

The Council then proceeded to consider the Bills and Orders of the day.

- (1) A Bill to further amend the law relating to the municipal government of the City of Bombay. *Second Reading.*

The Honourable Mr. BIRDWOOD said :—Your Excellency,—It will be in the recollection of the Council that, at our last meeting, this Bill was referred back to the Select Committee for a reconsideration of their report. The Committee have duly presented their

Second report, and it now becomes our duty to consider that report, and to decide whether the principle of the Bill shall be affirmed by this Council or not. The Bill, as I have already pointed out, at a previous meeting, deals with two important matters. It proposes, first, to extend by thirty-seven years the period provided by the existing City of Bombay Municipal Act of 1888 for the repayment to the Government of India of the Vehar Water-Works Loan. It does this by reducing the amount of the monthly instalment payable by the Municipality into the Treasury by a sum of about Rs. 5,000. It is unnecessary for me to state again to the Council the circumstances which have led to the introduction of this measure; and as it merely transfers to a future generation a portion of the debt incurred for the benefit of all future inhabitants of Bombay, such sensible relief as it proposes to give to the taxpayers of to-day is not, I apprehend, likely to be objected to by the members of this Council. As to the second part of the Bill, which deals with the surplus balances of the Bombay Municipal Fund, there has been, as the Council is aware, considerable discussion in the public press, which has not been without its effect on the deliberations of the Select Committee. In its first report, the Committee, while expressing its approval of the principle of the Bill, recommended an amendment of Section 4, based on a section of the Madras Municipal Act. They considered it desirable that the power which it was proposed to confer on the Corporation of selecting the Bank or Banks in which the surplus money at the credit of the Fund might be deposited and the further power of selecting the securities in which such moneys might be invested should be subject to the control of Government. I will not discuss the reasons which induced the Committee to make this particular suggestion, because the Committee have now, though not unanimously, abandoned it, and distinctly prefer such a section as that embodied in the draft Bill presented with their second report. The Honourable Mr. Ranchoddal, however, still approves of the Committee's original proposition; and he has set forth his reasons for this view in the minute appended to the second report. Now as regards the proposal submitted by the Select Committee on a full consideration of the several suggestions received after they had prepared their first report, it is perhaps desirable that I should say a few words. The Committee, as a body, entertained the opinion that the Bill, as originally framed, might have the effect of enlarging the powers of the Municipality, in respect of surplus balances, in a manner inconsistent with the position of the Corporation as public trustees of the Municipal Fund, and that it might, therefore, go beyond the real intention of Government, which was to give the Bombay Municipality the same

The Honourable Mr. Birdwood moves the Second Reading of Bill No. 1 of 1893.



freedom of action in respect of such balances as is possessed by the Calcutta Municipality. The position of the Bombay Municipality as Trustees of the Municipal Fund, for the purposes of the Act, is expressly recognised by Section III of the Act of 1888. The Calcutta Act contains no similar provision; but if it be assumed that the position of the two Municipalities in relation to their respective Funds is similar, that both Corporations occupy the position of Trustees, it is remarkable that the Calcutta Act nowhere attempts to regulate the action of the Municipality in respect of surplus balances of the Fund remaining at its credit after current charges have been met. The only provision it contains as to the disposal of any part of the fund is that relating to the reserve fund set apart for the repayment of Municipal debt. If the position of the Calcutta Municipality is, then, that of Trustees, their power as to the disposal of surplus balances would be regulated by the general principles applicable to public trusts in British India; and it is for the Courts to say what those principles are; for there is no law on the subject, the Indian Trusts Act of 1882 being applicable only to private trusts. If, then, the Calcutta Corporation are trustees of their Municipal Fund, the Bombay Corporation, who are undoubtedly trustees, could be given precisely the same freedom of action which the Calcutta Municipality possesses by a simple repeal of Section 122 of the Bombay Act of 1888. One of the suggestions laid before the Select Committee was indeed one for simply repealing Section 122 and leaving the Corporation to be guided in its action in respect of surplus balances by the general principles applicable to public trusts in British India, whatever those principles might be or be determined by the Courts to be. But the adoption of such a course would perhaps be scarcely fair to the Corporation, and the Committee thought that a much more satisfactory course would be to endeavour to define generally the power of the Municipality in such a manner as would not be inconsistent with the principles which might be presumed to be applicable to public trustees in British India, regard being had to the rules by which Courts in England have been guided in such matters. The section, therefore, which the Committee would now propose for adoption, in substitution for Section 4 of the Bill, as originally framed, provides that surplus moneys at the credit of the Municipal Fund, which cannot immediately or at an early date be applied to the purposes of the Act, or of any loan raised under the Act may be, from time to time, deposited at interest in the Bank of Bombay or be invested in public securities. As regards, therefore, all moneys which it is not necessary to keep readily available for application for the purposes of the Act or of any loan raised under the Act, the provision in the proposed section is similar to that contained in clause 1 of Section 122 of the present Act as it stands. It is only in respect of such moneys as it is necessary for the Corporation to keep ready at call and all moneys which cannot be favourably invested that the enlarged power of deposit is proposed to be conferred; and in respect of these moneys it is proposed to confer the power with the following restrictions. On deciding that moneys cannot be favourably invested at any time, the Municipal Commissioner cannot give effect to his decision unless his opinion is concurred in by the Standing Committee. If his opinion is concurred in, then the Standing Committee may, from time to time, select any Bank or Banks in the City of Bombay at which to deposit such moneys at interest. But their selection is to be subject to the control of the Corporation. The enlarged power is given only as regards deposits, not as regards investments; which, as hitherto, can only be in public securities; but the Council is aware that the definition of public securities contained in clause (o) of Section 3 of the Act is tolerably wide. It includes securities of the Government of India, and any securities guaranteed by Government, securities of the Bombay Port Trust, securities issued under the Municipal Act of 1888, and any Bombay Municipal debentures or other securities theretofore issued. Clause 3 of the proposed new section provides that all deposits and investments must be made by the Commissioner on behalf of the Corporation with the sanction of the Standing Committee; and no order for making any deposit or investment, withdrawal or disposal of money under the section is to be valid unless it is made in writing and signed by the Commissioner and also by one member of the Standing Committee and the Municipal Secretary. The last clause of the section repeats the provision of clause 3 of the present Section 122. It provides that the loss, if any, arising from any deposit or investment under the section shall be debited to the Municipal Fund. It is not necessary, I think, for me to enter into any fuller explanation of the details of the section. If more light be needed by any honourable member as to the legal aspects of the proposed section than I have been able to throw on it, I am sure that, in seeking for light, he will not appeal in vain to my honourable friends the Advocate-General and the



Remembrancer of Legal Affairs. I have made no reference to the amendments on the notice paper, as the proper time for considering these will be after the motion for the second reading of the Bill has been voted on and when the Bill is considered in detail. I will only now mention that a suggestion has been received by this Government for the substitution of the words "Bank of Bombay" for the words "the Bank for the time being appointed to receive Government dues," wherever these words occur in the Act of 1888. This suggestion will also be brought before the Council at a later stage. I would only now express the hope, and I do so with some confidence, that this Council will feel no difficulty in affirming the principle of the Bill as now amended by the Select Committee, seeing that the proposed amendments come before us with the approval and on the recommendation not only of such members of the Committee as are officers of Government and of the two responsible legal advisers of Government, but of the representatives in this Council of the Bombay Municipality and the Bombay Chamber of Commerce. In conclusion, I would wish to refer to a statement made by me, when moving the first reading of this Bill, as to the extent of the Municipal balances that would probably be affected by this Bill if it becomes law. I wish to do so because the correctness of my statements has been called in question. I indicated the sources of my information, viz., the reports in the daily papers of meetings of the Corporation when the proposal to enlarge the power of the Municipality was under discussion. I stated that, at about that time, the balances were about eighteen lakhs of rupees. I added that I understood that the balances at present were in excess of that sum. In making this last statement, I merely repeated a remark I had heard made in this Council room, as it seemed to me, on good authority. It so happens that at the moment of my speaking the balances were much below eighteen lakhs. A few months ago, however, they happened to be much above that sum, but only temporarily; and it was no doubt to that period that a reference was made by the honourable member by whose remark I was misled. As regards the earlier period to which I have referred I am not aware that I made any mistake. From a statement of balances during the last twelve years which the Municipal Commissioner has been so good as to prepare for me, at my request, I find that in 1891 the uninvested balances lying at interest at the Bank of Bombay amounted at one time to more than twenty-two lakhs of rupees. Should any honourable member desire any further information regarding the contents of Mr. Acworth's statement, I shall be glad to place it at his disposal. I now move that the Bill to further amend the law relating to the municipal government of the City of Bombay be read a second time.

The Honourable Mr. R. G. OXENHAM said:—Your Excellency,—The Bill as introduced into this honourable Council came before us with the approval of the Local and the Supreme Governments, but was regarded as open to objection by some honourable members. It is now before us in an amended form, which has, I believe, the approval of Government. If that be so, it need not be assumed that the objections urged have been found valid, now that the Governments of India and Bombay, and members like myself, who were prepared to support the original proposals, were recklessly ready to give power and discretion to a body of persons unworthy of this power and not to be trusted with the discretion. In short, it is not to be assumed that the supporters of the Bill, who thought at first that the Bombay Municipality might properly be allowed to manage its cash balances, have now found that they were wrong. It is still less to be assumed that this conviction has been produced by the assertions—I cannot call them arguments—which we have heard about the corruption and jobbery which would appear in the Corporation if the original Bill became law—such an assumption will not, I trust, be made either in this honourable Council or by the public. It would imply an imputation upon the Bombay Municipality which is undeserved and unwarrantable. Your Excellency displayed some natural surprise when it appeared that distrust and suspicion of the capacity or the integrity of the Bombay Municipality was felt by honourable members who, as your Excellency said, largely represent the principle of local self-government themselves, and who might be supposed eager to welcome any form or extension of what we are frequently told is the great political panacea. Your Excellency seemed almost saying to the Mofussil members in the words of Quince, "Why bless thee, Bottom, thou art translated". However, perhaps, this translation was only an instance of what is often observed when the rhetoric of the platform is confronted with responsibility. But from these advocates of autonomy in the abstract who recoiled from its application in the Presidency City we heard other objections which seem less based on any solid foundation and even less worthy of serious consideration. Mofussil



members may have had experiences in municipal mismanagement and have only been misled by a false analogy and an excusable failure to realize that the particular Municipality affected by this Bill was, in most respects, different from those with which they were familiar, and that abuses which might grow up and flourish in a country town, would be practically impossible in Bombay, however theoretically conceivable. The publicity of its proceedings, the variety of interests, the searching light of a vigilant criticism, all are securities of the highest value, all are present and active in the one case, all are often absent or inoperative in the other. When to this we add the great powers already possessed, and, on the whole, I venture to say worthily possessed, and the immense financial business already transacted, and on the whole transacted with conspicuous success, I cannot but see that analogies, upon which some honourable members may have relied, are not applicable, and must be misleading. Of such objections as those of an honourable member who imagined as possible the disastrous doings of a Standing Committee containing six unscrupulous swindlers acting with the connivance of a Commissioner, assumed, we must suppose, to be fatuous—of such objections I can only say that they imagine what is quite unimaginable and betray a pathetic ignorance of the facts. No one at all familiar with the constitution of the Bombay Municipality, no one who has had personal experience of the way in which business is done in the Standing Committee and Corporation, could ever imagine such a state of things as possible. Every one who has seen how in practice the existing checks and safeguards are real and effective must smile at such a bugbear of the uninformed imagination offered as a picture of what might happen—moreover, if such objections had any force they would fall beyond the purview of the present Bill. If honourable members who raise such objections have any clear perception of their necessary consequence, they should propose the repeal of the Municipal Act. If under this Act we can reasonably imagine a fatuous Commissioner appointed by Government, and a Standing Committee of swindlers and rogues, the sooner the Act is repealed the better, and Bombay must be unfit for local self-government at all. But it has not been that, further consideration has shown that the Bombay Municipality is less to be trusted than the framers of the original Bill imagined. It is not this or anything like this that will lead me to vote rather for the Bill as now amended than for the original Bill. Not ethical but legal difficulties have led to the change of form. Legal questions such as the precise effect of section 111 of the Bombay Municipal Act, and the exact application of this law of trusts; these have demanded and have received most careful consideration, and the Bill as now amended is not framed to forge fresh fetters to hamper this Municipality, but rather to allow the widest discretion which can be given having regard to existing law.

The Honourable Mr. CHIMANLAL H. SETALVAD said :—My Lord,—The original Bill as moved by the Honourable Mr. Birdwood, proposed to give to the Standing Committee the power to select the Bank, or Banks other than the Bank of Bombay, for depositing municipal funds. During the discussion on the first reading of the Bill several honourable members objected to the Bill as it then stood, principally on the ground that the Standing Committee was too small a body in number to be entrusted with such large powers. With a view to meet those objections my honourable friend Mr. Mehta then intimated his willingness to move an amendment to the effect that the power proposed to be given to the Standing Committee should only be exercised with the approval of the Corporation. That was to my mind a very fair and safe compromise. The Select Committee, however, to whom the Bill was then referred, so amended the section as to make the approval of Government necessary before the power of removing municipal funds from the Bank of Bombay to any other Bank could be exercised. I for one, my Lord, was disappointed at that report of the Select Committee as it, to my mind, involved a total want of confidence in the Corporation. I therefore at that stage gave notice of the amendment that stands in my name. I am consequently much gratified at the second report of the Committee which is before us to-day, as it recognises the principle of my amendment, *viz.*, that the final power of determining the place for depositing municipal funds should rest with the Corporation. I however find that several honourable members, and notably the Honourable Mr. Javerilal, are dissatisfied at the report. Mr. Javerilal seems strongly opposed to giving to the Corporation the powers that are proposed to be given to them by the Bill, so much so, that if, in spite of him, this Council passes the present Bill, as I trust it will, he threatens to move that sub-section (4) of section 2, which provides that the loss, if any, arising from deposits and investments shall be debited to the municipal fund, a provision



which, it must be remembered, exists in the old section, be deleted; that is simply because the Bombay Corporation had, according to him, the audacity of demanding the power proposed to be given to them and because the legislature had the imprudence of granting them that power. Mr. Javerilal would have this Council to lay down that even if the Corporation does not avail themselves of the extended powers and keep their moneys with the Bank of Bombay, still in case there is any loss the members of the Corporation should make it good out of their own pockets. I confess, my Lord, my inability to understand the logic of this position, nor do I comprehend why Mr. Javerilal, if he would make the members of the Corporation personally responsible for losses, would not be generous and just enough to allow them to help themselves to the profits that might arise by the deposits and investments of municipal funds. But, my Lord, all the objections raised by Mr. Javerilal and the other members who think with him, when closely examined and properly analysed, are reduced only to this, *viz.*, that there is just the possibility of the Corporation committing a blunder in the exercise of the powers proposed to be given to them and, therefore, they should not be trusted with those powers. Why, my Lord, this argument, if pushed to its logical conclusion, would be subversive of all local self-government. Is there no possibility of municipal bodies committing blunders in the exercise of all the various powers they have already been invested with, and if Mr. Javerilal's argument is to be accepted, should not all these powers be taken away? I perfectly agree with the Honourable Mr. Oxenham that if we yield to the arguments of the Honourable Mr. Javerilal and those who have opposed this Bill, we must do away with all local self-government. I am, my Lord, much surprised at the attitude taken by the Honourable Mr. Javerilal with regard to this measure when he is known to be the champion of local self-government in this Presidency. The position he has now taken up seems, my Lord, to my mind all the more unintelligible when I remember that when Bombay Act III of 1888 was being discussed by the Corporation, Mr. Javerilal was one of those who strongly desired that the Corporation should be entrusted with executive functions also, thus necessarily widening the sphere of committing mistakes and blunders. When, my Lord, as the Act stands at present, the Standing Committee can enter into all contracts, when one member of that body and the Commissioner and the Secretary have the power of withdrawing any amount from the funds deposited with the Bank of Bombay, when the Standing Committee is trusted with the unlimited power of authorising the removal of municipal funds to any Bank in the mofussil, when that Committee is made the final arbiter for determining the system of keeping municipal accounts, when the Corporation is empowered to levy taxes and recover them in case of failure to pay by distress warrants, when they can acquire any properties, movable and immovable, and dispose of the same as they please, when they can borrow up to an enormous extent, *viz.*, double the rateable value of assessable premises in Bombay and can mortgage all their immovable properties and even their taxes as security for such loans, when, my Lord, those two bodies have already been entrusted by the legislature with all those and various other extensive powers and when there has been not a single instance in which those powers have been abused, I feel that it will be hopelessly inconsistent for this Council now to lay down that the Corporation cannot be given a free hand about the deposit and investment of their funds. Moreover, my Lord, when the Calcutta Corporation and the Corporations in Great Britain have unrestricted powers in this matter, where is the precedent for denying those powers to the Bombay Corporation? The Honourable Mr. Ranchodlal, who, I regret, is absent to-day, tells us, look at the Madras Municipal Act and there you will find that the Corporation can deposit their funds at other Banks only with the approval of Government. But I put to honourable members, are we in this Council prepared to set up the illiberal Madras municipal constitution as a model for the municipal government of the city of Bombay? While several of our mofussil municipalities can elect their own Presidents, the President of the Madras Corporation is a paid officer appointed by Government, in whom all the executive functions are vested; it is just as if the Municipal Commissioner were to be the *ex-officio* President of the Bombay Corporation. The audit of municipal accounts is made yearly by auditors appointed by Government who make their report to Government. In fact the Madras Corporation seems to be so much distrusted that it is not allowed to construct filtering tanks or aqueducts or lay out and make roads except with Government approval. I sincerely trust, after the picture that I have given above of the Madras municipal constitution, honourable members will shrink from holding it up as a model for Bombay. The present report of the Select Committee appears to me for these reasons satisfactory, and I have, therefore, great pleasure in sup-



porting the motion that the Bill as now amended by the Select Committee be read a second time.

The Honourable Mr. JAVERILAL UMIASHANKAR YAJNIK said :—Your Excellency,—It will be remembered that when the honourable member in charge of the Bill stated at the last Council meeting, that certain weighty suggestions having a legal bearing had been made to him, but which the Select Committee had not time to consider, and asked for a second reference to the Committee, the Council readily assented to the proposal. I must own that in one important respect the Bill, which, after a second reference, has now emanated from the Select Committee, is a distinct improvement on the first amended Bill. The first amended Bill provided for surplus funds being invested in public securities or such other securities as may, subject to the approval of Government, be selected by the Corporation. But, in the second reference, the Select Committee have removed the words “or such other securities,” thereby restricting the investments only to securities recognised under Sec. 20 of the Indian Trusts Act (Act 2 of 1882), that is to say, securities guaranteed by Government. This important change in the Bill indicates that the law now, for the first time, recognises in a distinct manner the position and responsibilities of the Corporation as Trustees of the ratepayers and the bond-holders’ moneys. The removal of these words further shows that considerations of the safety of the Municipal funds override all considerations of greater profit derivable from investments in securities not guaranteed by Government. This feature of the Bill I look upon especially as a decided improvement. So far for investments. Coming now to the question of the deposit of unspent balances of revenue and loans, which it may be deemed necessary to keep readily available, or which cannot be favourably invested at a particular time, I wish it was in my power to offer similar congratulations in respect of them. Here the point I wish the Council to consider is, whether, consistently with the recognition of the position and responsibility of the Corporation as trustees and bearing in mind the limitations placed in respect of investments, it is expedient and safe for the Legislature to allow the Corporation to deposit at interest such available funds at a Bank or Banks other than the Presidency Bank which the Corporation may select for the purpose. Such a permission would mean that the Legislature is prepared to empower the Corporation to take a course diametrically opposed to that which the investing and depositing public have thought fit to adopt. For, what is the chief feature of the banking history of Bombay during the past two years? It is nothing more or less than a series of transfers by private persons of their cash balances and fixed deposits on maturity from other Banks to the Bank of Bombay without interest. Such transfers at one time swelled the private deposits of the Presidency Bank to about six crores of rupees, and at this day they are somewhere near four crores and a half. And it would seem not only curious, but opposed to prudence and common sense, that while the investing and the depositing public should move in the direction of the Bank of Bombay as the haven of refuge, the Legislature should think seriously of empowering the Corporation as Trustees of Municipal moneys to move in a quite contrary direction. Turning to Government, I ask, what has been their policy in respect of their huge surplus balances, compared to which those of the Municipality are but small? Are Government insensible to the advantage of earning interest on their moneys for which they have to pay four per cent. per annum to the public creditor? And yet they allow their balances to lie idle, partly in the till of the Bank of Bombay, and, partly, with the Accountant General. Safeguarding their moneys is, in all this, the governing idea. By the side of this idea of safety, the argument as to earning interest loses much of its force. And when it is considered that the Municipal balances with the Bank of Bombay within the last eighteen months have been on an average over four lākhs, and that now they stand at over two lākhs, the loss of interest is but a trifle. A working balance of two lākhs is not a large sum in the case of an institution such as the Bombay Municipality, considering that it may be wanted any time for advances against loan works. It is a fact that between five and six lākhs of rupees out of the surplus cash balances are at present employed as advances against loan works to be repaid when the loans are raised. These advances serve a most useful and economic purpose, inasmuch as they relieve the Municipality of the charge for interest if the loans were raised so soon as the loan works began. I said just now that the safeguarding of Municipal balances should override all considerations as to interest or profit. To this it is replied that, in the case of a body like the Municipal Corporation of Bombay, whose acts are subject to keen criticism from members inside the body and the public press outside the body, such



criticism may be looked upon as affording one of the greatest safeguards it is possible to have, far greater than any which the Legislature can impose. No doubt, such criticism inside and outside the body does a great deal of good, but it also happens that such criticism often comes too late to repair the mischief already done. There are instances in which the Corporation have paid dearly for such mistakes. In one instance, the Corporation had to pay to the tune of something like Rs. 1,25,000 to a firm of contractors. But it is urged that the object of this Bill is to place the Bombay Municipality in respect of the deposit of its surplus funds in the position in which the Calcutta Municipality stands at present. If it did, I should have very little to say. But the point is, does this Bill really place the Bombay Municipality in the position of the Calcutta Municipality in respect of dealing with its funds? This is a point to which I wish to invite the special attention of the Council. What the Chairman of the Calcutta Municipality says in his reply to your Excellency's inquiry I am prepared unhesitatingly to admit, namely, that "with the exception of the fund reserved for the payment of loans, the Calcutta Municipality is not restricted in the investment of its moneys." And, yet, as a matter of fact, the Calcutta Municipality does invest with the Bank of Bengal, that is to say, the Calcutta Municipality have seldom deposited its moneys at any Bank other than the Bank of Bengal. And here it is a pertinent question to ask, what is the reason that the Calcutta Municipality, with such unrestricted power of depositing its moneys, should still hold fast to the Bank of Bengal? The reason, I submit, is to be found within the four corners of the Calcutta Act. While not restricting the Municipality to the Presidency Bank for the deposit of its surplus funds, the Calcutta Act lays down no express provision as to debiting the Municipality with loss arising from the deposit of its funds. In the absence of any such express provision the Commissioners of the Calcutta Municipality doubtless hold that as trustees of the funds the law would hold them personally liable, if anything went wrong with the Bank or Banks at which the moneys were deposited by their direction. Thus in Calcutta power and responsibility go hand in hand. On the other hand, what do we find in this Bill? The Bill gives extended powers of patronage to the Standing Committee, subject to the control of the Corporation in respect of the Bank or Banks for the deposit of the Municipal funds. But while giving this power, the Bill releases members by means of sub-section (4) of section 4 from any personal responsibility in respect of loss arising from the failure or mismanagement of the Bank. The Commissioners of the Calcutta Municipality act or have to act from a sense of *personal* responsibility. The members of the Bombay Corporation are held practically irresponsible for the consequences of their votes. This, I submit, makes all the difference between the Calcutta Act and this Bill. Let the members of the Bombay Corporation guarantee to the public the loss arising from the deposit of available funds, and I shall not object to their selecting any Bank or Banks they please for Municipal deposits. The arrangement in the Bill seems scarcely fair. To bring home to every Corporator a sense of personal responsibility, the Council should either retain sub-section (2) of section 4 and dispense with sub-section (4) or retain sub-section (4) and remove sub-section (2). Unless the Council does this, the Bill, I fancy, cannot be said to place the Bombay Municipality on a par with the Calcutta Corporation. I do not see why in financial matters the Bombay Municipality should possess powers which are not granted to Madras or Calcutta. It will be urged that Bombay collects a revenue of sixty-five lakhs and expends an equal amount every year, that therefore it may safely be entrusted with the power of dealing with its balances as it likes. It may further be urged that they will never have a self-governing body among them unless they allowed it to make its own mistakes. My Lord, I am as earnest an advocate of local self-government as any among my honourable colleagues at this board, in fact, I was the first in this Presidency to write a 'Note on local self-government in the Bombay Presidency' in 1882 when Lord Ripon granted the boon of self-government to this country, but I have maintained and I still maintain that the doctrine thus laid down holds good only in a qualified sense, that is to say, it holds good in respect of questions connected with the promotion of health and sanitation, and not, I submit, in respect of the safeguarding of the Municipal Fund, which is the life-blood of all Municipal reforms. Having shown that this Bill does not place the Bombay Corporation in the position of that of Calcutta, I wish the Council to consider whether (1) the selection of a Bank or Banks for depositing Municipal funds at interest is a fit subject for discussion by the Corporation, and (2) whether such discussion may not call forth undesirable remarks, and (3) whether the publication of such remarks in the press may not do more harm than good to the particular Bank recommended for deposit. But there



is another and more important point to consider, and that is that even the most experienced business-man in the City, to say nothing of the members of the Corporation, is hardly in a position to know with any degree of certainty as to the position of any exchange Bank at any particular period. That is our chief difficulty. The analogy of county Councils in England being left unrestricted in regard to the deposit of their Funds does not hold good. The reason why such county Councils are allowed a free hand in the matter is that they thoroughly know the affairs of the Banks with which they have to deal. They are local or national institutions whose accounts are published weekly. Here in Bombay, the Presidency Bank of Bombay is the only banking institution that publishes weekly a statement of its affairs. Every depositor or investor in the Bank knows what its assets and liabilities are. The Bank, again, is restricted in its operations. All exchange Banks do business which is more or less of a speculative nature. Their head offices are located in foreign countries. Their operations extend over vast areas. Their modes of lending moneys differ. Some of them lend on landed estates, and others on tea, coffee, and sugarcane plantations, and on mines. Their accounts are published in London half-yearly or yearly. Such Banks do very good business in Bombay, but they have had to succumb to losses incurred in some remote part of the world. But it is said that though power is asked by this Bill, it is not meant to be used. To those not having business experience, this may seem a reasonable request to make, but to business-men it would at once appear that it is in such a concession as this that financial danger lurks. That the possession of such a power should tempt its possessor to use it is only natural. That this is no imaginary case, I may point to an instance within the recollection of my honourable colleagues, that of the old Bank of Bombay. The Bank was established by the charter Act of 1840 with a capital of fifty-six lakhs. In 1863 its capital was quadrupled under a new charter. In this charter power was given to the directors to lend moneys on the shares of "*other public companies in India.*" The addition of these words proved the ruin of the Bank. The year 1864 was a year of great financial inflation in Bombay, and the Directors, not knowing what to do with the increased capital in the way of legitimate banking, began advancing it on shares of joint stock companies in pursuance of this clause, and in twenty months the ruin of the Bank was sharp, swift, and sudden. The clause received from some the appellation of "disastrous clause," and of "the flood-gate of the Bank's ruin" from others. The Directors, in their last report, stated that the responsibility for the alteration in the Bank's charter "must rest with the legislature of the day, and on those who personally assented to the change. But the fact remains that the inclusion of a brief sentence in the Act, which in all probability escaped notice, as it certainly did, the discussion of the law-makers is one cause of the losses which have been incurred." These losses absorbed not only the whole of the Bank's reserve fund of sixty lakhs, but the whole of its capital of two crores and ten lakhs and a crore of the Government of India's money, besides lent to enable the Bank to tide over the crisis; this brief reference to the cause of the Bank's misfortune ought, I humbly submit, to serve as a warning to us. My Lord, it is the old story of the temptation and the fall. It seems to me that there is really no necessity for a change in the Municipal law. Things will soon right themselves. The time is not far distant when the Bank of Bombay will pay interest as soon as it sees its way to do it without sacrificing the interests of its shareholders. My humble opinion is that it is to public securities alone that the Municipality should look for investments and for interest and not to Banks. It is a fact that in the whole history of its investments the Municipality has not lost any money. To all intents and purposes the Act will be a dead letter on the statute-book. If so, the question naturally arises, where was the necessity of moving the legislative machinery in favour of the Bill? For these reasons I submit that I for one will not be a party to the inclusion of sub-section (2) in the Bill.

The Honourable Khán Baháduf HASAN ALI BEY EFFENDI said:—Your Excellency,—I regret to have heard the observations of the Honourable Mr. Oxenham and fear he has misconceived the position of the objecting members and the nature and the reason of their objections. So far as I know, none of them made use of the objectionable words which he endeavours to put in their mouths; and they were not only the mofussil members of the Council who objected to the Bill as he says, but they included amongst them an eminent member who is a resident of the Presidency town and who is none other than the Honourable Mr. Macdonell, the Chairman of the Chamber of Commerce of Bombay; and to-day we have the Honourable Mr. Yajnik, the quondam President of the very Municipal Corporation and an eminent member of it at present, most strenuously objecting to the same.



My Lord, those who sought for the extension of an unlimited power for the Municipality had to explain why this should be granted now, when only about four or five years ago, that is in 1888, the Legislature thought it fit to restrict their power, by section 122 of the Municipal Act, to invest the surplus funds only in two ways, namely, either by depositing them in the Bank of Bombay or investing them in public securities. What has happened within the short period after passing the above Act to take away all restriction and to give the unlimited power sought for? The reason assigned is that the Bank of Bombay has failed to give interest. If so, speaking for myself I say, authorise one or two more sources of investment, but have them defined and limited. We have the old argument repeated here to-day by the Honourable Mr. Setalvad that if the Municipal Corporation can raise money by taxes, and can borrow and receive revenue and spend the money, it should be at liberty to invest it also any way they liked; but, my Lord, the receiving of money and the spending of it are not parallel cases with the investing of it. Money is received or borrowed under different conditions and sanctions, and it is spent also under different sanctions and safeguards; whilst the investing of the money was sought to be in the shape of an unlimited power and without any safeguards whatever. Hence the Bill met with the objections it did, but, my Lord, the difference between the Bill as at first submitted and the amendment now suggested by the Select Committee is remarkable, so far as the power of depositing the money or investment of it is concerned. According to the first alteration proposed in section 122 of the Municipal Act, the Municipal Commissioner, who is a Government officer of a high position, had no voice in the matter, which was left to the decision of the Standing Committee alone; whilst under the present recommendation the Commissioner is made the moving spirit, and the Standing Committee the concurring authority, subject to the control of the Municipal Corporation. This is decidedly a gain over the first proposal. The next improvement effected is that the *carte blanche* as to the mode and manner of investment which might have included many perilous transactions, which are not open to trustees even in matters of private trust, is now entirely withdrawn, and the power to invest beyond the Bank of Bombay and public securities is confined to the banks only. Section 4 as now framed makes a division between the moneys that may not be wanted immediately or at an early date, and those that may be so wanted. As regards those that are not wanted immediately, it gives absolute authority to either deposit in the Bank of Bombay or to invest them in public securities; and as regards those moneys which may be wanted at an early date, it allows to deposit them in any bank in the City of Bombay. Then comes in what I think may serve as a proviso to the whole section, and it says "and all moneys which cannot, in the opinion of the Municipal Commissioner, concurred in by the Standing Committee, be favourably invested as aforesaid, be deposited at interest in any bank," &c. This part of clause 2 has undoubtedly removed all restriction imposed by clause No. 1 as to the moneys which may not be wanted at an early date, and which were authorised to be kept in the Bank of Bombay or invested in public securities; and gives permission to deposit all moneys in any bank, the condition only being that the moneys could not be favourably invested either in the Bank of Bombay or the public securities. Now the term "favourably invested" may mean the high rate of interest or the safety of transaction or both. If only the rate of interest, nothing could be more deplorable: but if it means that the transaction should be a safe one, and at the same time the rate of interest should be reasonably good, then I should consider it a good condition. Since the Government will not accept the responsibility of controlling the investments of the Municipality the next possible solution of the difficulty was, I think, to give the Municipal Commissioner a direct share of the responsibility with the Standing Committee which is to be under the control of the Corporation. A provision of this sort was all the more necessary considering that we have to deal with a Corporation that would resist even a fair criticism, from the Government as to their financial statements simply because according to them such power in the Government does not exist within what they choose to call the four corners of the Act; therefore, my Lord, if I support the Bill as amended it will be on these grounds and not others. The slight amendments that I have suggested, if approved of, will make the meaning of the Select Committee, in my humble opinion, clearer and the provisions of section 4 more effectual, unless during the consideration of the details of the Bill they become unnecessary, in which case I shall not press them.

The Honourable Mr. PUDUMJI said that the same feeling of precaution which influenced Government to deposit their own balances in the Bank of Bombay, which caused



a loss of three lakhs yearly, ought to actuate all public bodies in investing public money. They not only for the sake of public safety lose a large sum of money, but paid the Bank of Bombay a large sum annually for doing other business for them. No sane man would suspect the Corporation of misusing their proposed liberty, but why, he asked, give them a liberty that other Corporations who already possessed it had never availed themselves of.

The Honourable Mr. PANSE said:—My Lord, it is with some unwillingness and diffidence that I rise to speak on the Bill before the Council, since I am not directly interested in the question involved therein. Still, I could not but view with approval the principle of the Bill presented to the Council. It is a step in advance of local self-government, and I, for one, would not grudge the Corporation of Bombay having the honour of being the first recipient of the new privilege sought to be granted by the Bill to a municipal body. As your Excellency observed the other day, it would be strange if a body that is allowed to raise and spend, as it chooses, more than half a crore of rupees per year, should not be thought fit to be empowered to choose the investment for its surplus funds. Nor can it be forgotten that the Corporation of Bombay has given proofs of excellent business capacity and has secured the approbation of Government and the people alike. Your Excellency has, after due inquiry, for which the Corporation cannot be too thankful, informed the Council that no restriction whatsoever is imposed in the matter of investments of its moneys on any of the local bodies in the United Kingdom. Moreover, we know that the Corporation of Calcutta too is equally free. Why should then the Corporation of Bombay, after its uniformly successful career ever since it came into existence, be thought unfit to be equally free? The *Urbs Prima in Indis* would have good cause to resent being considered inferior to Calcutta in this matter. Taking all these things into consideration, the honourable framers of the Bill seem to have proposed to give such a power to the Corporation. The power so proposed to be conferred can, I think, be called unrestricted. Sub-section II may however seem to be restrictive in so far as under it the Municipal Commissioner becomes the sole and the only proposer for investment in other Banks. Under it he is the person who determines if the money is or is not invested favourably in the Bank of Bombay or public securities. In case the Municipal Commissioner approves of investments in the Bank of Bombay or securities, no other investment can, it appears to me, be made, even if the Standing Committee or the Corporation be desirous of it. For my part, however, I do not look upon it as a restriction, because the Municipal Commissioner is the most responsible working officer specially appointed by Government, and his proposal must, therefore, be considered essential as an initiative for the investment. Such a sort of check,—if it could be so called,—is, I submit, necessarily required. The name of the Municipal Commissioner being included in the amendment, will naturally leave no room to apprehend any danger in connection with such investments. Under the proposed section, investment in Banks, other than the Bank of Bombay, can only be made if viewed favourably by that officer. I do not think that the Standing Committee or the Corporation has under the said section power to propose investment in any other way than that proposed by sub-section I without an initiative being taken in that behalf by the Commissioner. If the latter thinks that the investment in the Bombay Bank or securities is favourable to the interests of the Municipality, the Corporation cannot under this section take any action. My Lord, I do not think the passing of the Bill will necessarily mean a withdrawal by the Corporation of its moneys from the Bank of Bombay; for *ten to one* the latter will be more ready to yield to reasonable demands for interest, when it knows that the moneys will be withdrawn, if it is too persistent. Before resuming my seat, My Lord, I do not think it improper to observe that I am somewhat surprised at the controversy that is going on in connection with the matter. Government is ready and willing to place confidence in the municipal body, and invest it with the entire control and power of managing its own funds, but some of my honourable colleagues who are the representatives of public or popular bodies, and who ought, therefore, really to try to secure a larger share in the administration of the affairs of their constituents, oppose such a measure. Not a single instance of such a strange anomaly, so far as I am aware, has occurred ever since this Legislative Council came into existence. It would perhaps appear strange that I, who am a representative of the conservative Sardárs, should take the place of a liberal member and press for the passing of the Bill as now amended, but I do so gladly and cordially as Government is prepared, and that with reason, to place more confidence and confer greater power of administration on



such efficient public bodies as the Municipality of Bombay. In conclusion, my Lord, I beg to submit that the amendment has been very judiciously drawn up, and I most cordially support it.

The Honourable Mr. P. M. MEHTA said:—My Lord,—After the clear and practical statement we have heard from the honourable mover of the Bill, I had hoped that it would not have been necessary for me to make any remarks on the amended Bill before the Council, but some of the observations which fell from my honourable friend Mr. Yajnik are of so astonishing a character that it is impossible to allow the debate to pass without making one or two remarks. When I say this, I do not refer to the main portions of his observations, which I may describe as a *rechauffe* of the arguments which he has placed before the Corporation more than once and without success. The Corporation rejected his arguments on the last occasion he urged them, almost unanimously, even though he presided at the head of the Corporation when the debate took place. But the astonishing observations to which I refer relate to the exposition of his position as an advocate of local self-government. My honourable friend tells the Council that he is an ardent advocate of local self-government, but it seems that his advocacy only goes as far as this: he is quite prepared to give Municipal bodies and especially the Municipality of Bombay the power of making mistakes which might have the effect of killing people, but he will not give them the power of making mistakes which might cost them a few thousand rupees. I must take the liberty of emphatically saying that I entirely dissent from such a view. If there is a choice in allowing the power of blundering, I would ask you not to entrust the power of killing people to them, but would rather say give them the power to lose some of the moneys with which they are entrusted, rather than they should blunder away as regards the health and sanitation of the city, and educate themselves only by killing people. It seems to me that my honourable friend having found that all his arguments as to the Exchange Banks and powers of investment have been exposed in the Corporation, as being inconsistent with the principles on which true local self-government is founded, he is now driven for the purpose of justifying himself to turn his back upon his old position as an advocate of local self-government, for the remarks he has made on this occasion only show that although he claims to have been one of the first advocates of local self-government he is sadly wanting in his grasp of the main principle on which it is founded, and upon which alone it can be justified. I will not take up the time of the Council by referring to his other arguments as well as those of the other two honourable members who followed him, for they have tried to convince us of a fact that has never been disputed. We have never said that the Exchange Banks are as safe places for the custody of deposits as the Bank of Bombay. We have never required their arguments to convince us of that, for we have always admitted that it is so. The position we take up in the matter is this—and it is one I am sorry to say Mr. Yajnik will not meet. He says he for one can so far exercise his judgment as to discover that Exchange Banks are not so safe as the Bank of Bombay. We say that just as you are capable of doing so when such questions arise, surely a body, constituted like the Bombay Corporation, with all its checks and counter-checks contained within itself, can be safely trusted to exercise the same judgment and come to the same conclusion which my honourable friend says he is capable of drawing. I submit if he is capable of doing so, I say the seventy-two members of the Corporation or even the members who compose the Standing Committee or the Municipal Commissioner himself, who is always a high officer of Government and one of its most experienced and able officials, can be trusted just as much as Mr. Yajnik with the power of exercising a correct judgment on a matter of that character. I have only one other remark to make, which I cannot help offering in consequence of the reference made by the honourable member for Karachi to the action of the Honourable Mr. Macdonell at the time the Bill was introduced into this Council. It is a matter of considerable congratulation that he has signed the present report of the Select Committee, because it marks a continuance of the attitude the Chamber of Commerce has hitherto borne towards the principle of local self-government. The record of the representatives of the Chamber in this Council in relation to the constitution of the Corporation has been a unique one. That body has steadily stood by the Corporation in this respect, and given most liberal support to that principle. The records of the Council will show that such men as Mr. Bythell, Mr. Forbes, Mr. Macaulay, Sir Forbes Adam, and various other members have always stood up for local self-government with that sturdy liberalism which has distinguished them, and I am glad to find that Mr. Macdonell keeps up the traditions of the Chamber in this respect.



The Honourable Mr. BATTY said:—Your Excellency,—I think a great deal of misunderstanding and alarm have been needlessly caused by a difficulty which has arisen in the minds of many honourable members as to the precise effect the Bill now before the Council would have. It seems to have been assumed that the effect of the Bill would be to place all municipal funds at the absolute disposal of the Corporation. That this was not the intention, is, I think, to be gathered from the Statement of Objects and Reasons which was published with the Bill as it appeared in its earliest form. In paragraph 5 of that Statement it is said “Section 4 is intended to give a power, similar to that which is enjoyed by the Corporation of Calcutta, of investing *surplus* moneys remaining to the credit of the Municipal Fund.” The sixth paragraph of the same Statement also indicates that the power which, it was proposed to confer, would extend only to certain surplus moneys remaining over after all statutory requirements had been satisfied and current charges provided for. It was never intended, either in the original draft of the Bill or in the form which it has now taken, that the Corporation should have power to deal with any funds that were not of the nature of surplus moneys. In Section 408 of the Calcutta Municipal Corporation Act, 1888, *i.e.*, Bengal Act II of 1888, express provision is made for the investment of certain surplus funds remaining over out of a reserve fund which the Commissioners are required to set aside, but as to any other surplus, there is no express provision either for investment or for deposit. Some doubt may be entertained as to whether the funds vested in the Commissioners of Calcutta by Section 5 of the Bengal Act are held by them as Trustees. Probably the position of the Corporation of Calcutta would be held to be that of a Trustee in regard to the entire Municipal Fund. If that be the case, it would seem that the principles laid down by Brice on *Ultra Vires* with regard to the investment of surplus moneys would apply to the Corporation. It is stated by Brice (page 246) “that in the case of trust corporations and possibly of all public bodies on the one hand, receipts not immediately wanted for their purposes, *must* and not merely *may* be invested, and on the other such investments must be of a proper nature, and such as either are expressly directed by Statute, or indicated in the constating instruments (*i. e.*, in the instruments which determine their constitution), or in default of such direction, are allowed by the Court of Chancery under similar circumstances.” It might therefore be assumed that if the position of the Corporation of Calcutta be that of a Trustee, that Corporation, notwithstanding the silence of the Legislature as to the investment of surplus moneys, would be not only empowered, but bound to invest their surplus moneys in such investments as a Court of Equity would approve. Possibly the uncertainty as to the position of the Calcutta Corporation as a Trustee may account for the fact that hitherto that body has never availed itself of such powers as are now claimed for Bombay, but has contented itself with depositing its surplus balance without interest at the Bank of Bengal. But there is no such doubt in the case of the Bombay Corporation. For Section 111 of the Bombay City Municipal Act, 1888, expressly declares that the Municipal Fund shall be held by the Corporation in trust. This being the case, it would seem that the principles I have quoted from Brice’s Work, would apply to the Corporation of Bombay as Trustees, and that the Corporation would be not only empowered but actually bound to invest surplus moneys in such safe securities as a Court of Equity would approve, so that the interests of the rate-payers committed to their care should not suffer from such moneys lying idle. If those principles apply in their entirety in India, it might be thought sufficient for the purpose now in view (which is to prevent the loss of interest on municipal balances which cannot be immediately employed), to make no provision whatever as to investments by the Corporation, and to leave that matter to be settled entirely by the general principles of law applicable to trust corporations. Such a course, however, even if it be that followed in the Bengal Act II of 1888, is not free from objection. For there is no Statute law in India on the subject, the Indian Trusts Act, 1882, recently extended to this Presidency,\* applying only to Private Trusts. And there is very little “case law” on the subject either, as the powers of Municipalities have generally been defined in the Acts of incorporation. For these reasons alone it would be wise to make express legislative provision defining the powers of the Corporation as to investments, although in the absence of such express “powers” it might be held on the analogy of the principles of English law above quoted, that the Corporation would be not only empowered but bound to invest. The rate-payers, who are *quasi cestui que trustent*, are entitled to be relieved as far as possible from the loss of interest on such sums as cannot be applied to the purposes of the Act, and it is for their benefit, that a power

\* By Notification No. 4202 at Bombay Government Gazette for 1891, Part 1, page 743.



of investment is to be exercised by the Corporation. Probably no one would deem it advisable to withdraw such a power altogether from the Corporation, as the loss would fall on the local public, and to leave the limits of such a power to be determined in each case by the Courts might lead to litigation and other unsatisfactory results. Moreover on turning to Section 111 of the City of Bombay Municipal Act, 1888, it seems there is no alternative but to define precisely the powers which it is intended the Corporation should exercise. For Section 111 expressly provides that the Municipal Fund shall be held by the Corporation in trust subject to the provisions therein contained. Thus it appears an imperative necessity to specify the conditions and limitations subject to which the Corporation may exercise their power of investment. The only question seems to be what restrictions it is desirable to place on a power which it is obviously necessary should be conferred and defined. It may perhaps be convenient to refer to the powers enjoyed by such bodies in England. In England, as stated in the preamble to 45 and 46 Vict., C. 50, almost all Municipal Corporations constituted before the Statute of 5 and 6 Will. IV. C. 76, and all such bodies subsequently constituted do beyond question under Section 72 of the Statute last mentioned, possess their property upon Trusts, and Section 92 of that Statute expressly directed that surplus moneys should be applied to the public benefit of the inhabitants and improvement of the borough. But the Municipal Corporations Act, 1882 (45 & 46 Vict., C. 50), gave in certain cases a power of investment in Government annuities under the direction of the Treasury, and Section 7 of the Trust Investment Act, 1889 (52 & 53 Vict. C. 32) confers on such bodies for the purposes of a sinking fund, the same liberty as regards investments as a private Trustee has under that Statute, except that they cannot invest in real or heritable securities. In the present Bill it is proposed to observe similar precautions and to authorise investments by the Corporation in such securities as in India would be permissible to a private Trustee under Section 20 of the Indian Trusts Act (II of) 1882, excepting only the securities mentioned in clauses (e) and (f) of that section, thus excluding on the precedent of the English Statute mortgages on real, or as we call it in India immoveable property. It will be found that the term "public securities" used in Sub-section (1) of Section 122, as it is proposed by this Bill to amend it, as defined in clause (o) of Section 3 of the City of Bombay Municipal Act, includes nothing that a private Trustee may not invest in under Section 20 of the Indian Trusts Act, and does not admit of investments on mortgages which would be obviously undesirable investments for public funds. This is the power which the Corporation have hitherto enjoyed under Section 122 without the faintest objection. It is, I think, a proof of great moderation in the claims made by the Corporation that this very restricted power is all that is asked for by the two members of that body who sat on the Select Committee and who are certainly no lukewarm supporters of the Corporation. Honourable members will doubtless feel re-assured when they realise that even this very restricted power of investment is limited strictly to moneys which cannot otherwise be utilized. Possibly it has been feared that the Corporation might be tempted by the powers conferred to accumulate surplus moneys for the express purpose of investment or deposit. But Section 111 of the Municipal Act constituting the Corporation trustees is sufficient to prevent this. For it would be a fraud on the power to exercise it for purposes foreign to those for which the power was created (Kerr on Fraud, C. 1, Section 5). And thus the Corporation are only at liberty to invest or deposit sums which cannot be applied for the purposes of the Act, so long as they remain incapable of such application, and which, if not so invested or deposited, would be entirely idle and entail a loss on the rate-payer. The restrictions imposed, it will be observed, are such as are recognized as binding on all trustees, and such as must necessarily be imposed in order to render Section 122 consistent with Section 111 of the Act. Consistency seems to demand the definition of these restrictions quite apart from all ideas of attaching suspicion or distrust to the exercise by the Corporation of indefinite powers. No doubt the Corporation might safely be trusted with more extended powers. But it is not usual for the Legislature to confer powers it never expects to be used, and it is not of course for the Legislature to pay compliments or to alter the law by giving powers which might attract persons less disinterested than the present members of the Corporation. The Bill, as it now stands, appears to give just so much discretionary power as is necessary to prevent loss to the Corporation. It is further to be noted the provisions in the Bill have special reference to the distinction which is observed in the ordinary law between investments and deposits. An ordinary trustee can *invest* only in specified securities, that is to say, in securities which he is either specially authorised to invest in, or in which under the general law relating to Trustees he is at liberty to



invest. But the question of deposit must be kept distinct. Deposit is the delegation for safe custody only. A trustee must necessarily have to wait occasionally in the interests of the trust for a favourable opportunity to invest. Meanwhile he is not bound to carry the trust money about in his pocket. He is at liberty to choose his own agency for its custody though of course he must use ordinary discretion. Thus every trustee is at liberty to make *temporary* deposits of trust money for safe custody with a responsible banking house. The limitation of his power in this respect depends not so much on the selection of the banking house, as on whether the trustee is justified in keeping the moneys in hand *at all*, whether in his own custody or in that of his agent the banker. It is a breach of trust if a trustee keeps in mere custody money which he ought to invest and can invest. But it is no breach to intrust such moneys as it is not possible to invest, to a bank for safe custody for so long as is necessary to admit of a satisfactory investment being found. If the money is kept in the custody of a banker for a period longer than is necessary for this purpose, then the law regards such deposit not as a deposit for safe custody, but as an investment on personal security which no trustee is justified in making. The impropriety consists not so much in the agency selected or even in the receipt of interest on the deposit made, for that may be allowable when a current account is kept, but in keeping the money in custody at all, when it ought to be and might be invested. So that it would be quite as irregular for the Corporation or any other trustee to keep money in their own custody as to deposit it with a bank, when they could invest it or apply it to the purposes for which it is held. When the money cannot be so invested or applied, it is no more a breach of trust under the ordinary law to deposit it with any responsible bank than to keep it in a Municipal strong box. I trust this will make it clear that if no provision whatever were inserted in the Act as to the power of *deposit*, the discretion of the Corporation would, under the general law applicable to trustees, be entirely unfettered as to the particular bank with which they might deposit, and would be under restrictions only as to the amounts which they would be justified in keeping in any custody whatsoever. The object of Sub-section (2) of Section 122, as it is proposed to amend it by Section 5 of the Bill, is to emphasize this distinction. It will *not* empower the Corporation to deposit all their surplus moneys in any bank whatsoever, as seems to have been supposed, but only allow them such choice of agents as any trustee would be allowed, for the custody of money which must necessarily be kept in hand, that is to say, not all surplus moneys, but only such as it is necessary to keep readily available and which *cannot* be invested. Such money must be kept in safe custody somewhere, and the ordinary law would not regard it as a breach of trust to deposit it with any respectable bank. The section therefore does not go beyond the ordinary law relating to private trustees in this respect, but in fact somewhat limits the power which, if the Act were silent, the Corporation would be entitled to exercise as trustees. For it restricts the power of selecting the banks to be entrusted with such deposits, to banks situated in the City of Bombay and gives a power of selection among them only when there is no preferable custody available. I trust that honourable members will see that the Bill viewed in this light, confers no powers on the Corporation beyond such as the ordinary law recognizes as absolutely indispensable to the proper and fair discharge of the duties of trustees.

Bill read a second time.

His Excellency the PRESIDENT then put the motion that the Bill be read a second time. The motion was carried.

The Council then proceeded to the consideration of the Bill in detail.

Sections 1, 2 and 3 were adopted.

The Honourable Mr. BIRDWOOD moved under Rule 28 that, after Section 3, the following new section, to be called Section 4, should be inserted:—

4. (1) In sub-section (1) of Section 96, and in sub-section 2 of Section 98 of the said Act, for the words "to the officer or into the bank for the time being appointed to receive Government dues at Bombay", wherever they occur in the said sub-sections, there shall be substituted the following, *viz.*:—

"to the officer for the time being appointed to receive Government dues, or into the Bank of Bombay."



(2) In Section 112, for the words "into the bank for the time being appointed to receive Government dues at Bombay," there shall be substituted the following, *viz.* :—

"into the Bank of Bombay."

The motion was adopted.

His Excellency the PRESIDENT :—Having accepted the honourable member's amendment as Section 4, the present Section 4 now will have to be numbered Section 5.

The Honourable Mr. PADAMJI moved as an amendment that :—(1) In Section 4 to substitute the following for clause (1) :—Surplus moneys at the credit of the Municipal Fund which are not required for current charges may, from time to time, be deposited in the Bank of Bombay or in any other Indian bank entrusted by the Local Governments or the Government of India with the charge of their own cash balances, or be invested in public securities or advanced as loans on the security of its own municipal bonds or of public securities on such terms as may be previously determined by the Corporation.

The Honourable Mr. Padamji in proposing the amendment said :—Your Excellency, If the Bank of Bombay continues to be immovable, I still think its action is not prompted by any unreasonable or selfish motives. The liberty which the amendment I have proposed gives to the Corporation will bring some healthy competition into play. In my humble opinion, a more powerful and a handier instrument this Honourable Council cannot place in the hands of the Corporation than the power to advance moneys on the mortgage of public securities. A rate of interest half a per cent less than that charged by the Bank of Bombay would soon clear the Corporation of all its surplus balances, and in the safest and most advantageous way. It would be inconsistent to tell a person or a body to use discretion in a matter which offers no scope for the use of indiscretion.

The Honourable Mr. TREVOR :—I do not think the honourable member's amendment will read well with the other Sections of this Bill.

His Excellency the PRESIDENT :—It seems to me that the honourable member has overlooked the fact that the Select Committee has altered the section from what it was at first proposed to be, and consequently the honourable member's amendment does not agree now with the section as last reported on by the Committee, although it did agree with the section as first drafted. The result is that if his amendment was carried he would have to assure the Council that he would be prepared to make the rest of the clause coincide and make sense with his amendment. As far as I can see it would require some consideration to bring the following sub-sections into accord with his amendment, and certainly for my part I prefer the amendment which has been submitted by the Select Committee after careful consideration.

The Honourable Mr. HASAN ALI :—My Lord, I think the latter point of the honourable member's amendment would tend to make the Corporation a Banking House, I think this will involve them in grave legal difficulties.

His Excellency the PRESIDENT :—The Bill as now drafted, I think, meets the difficulties that were first put forward and the honourable member's present amendment is altogether out of place.

The Honourable Mr. BIRDWOOD :—I venture to hope the honourable member will not press his amendment, for it will, if carried, lead to a new departure in the business of the municipality altogether. The municipality have never undertaken the business of bankers and have never asked for such powers, and I do not see why this Council should force such a responsibility on them.

The amendment was then put to the vote and rejected.

The Honourable Mr. SETALVAD :—The amendment which stands in my name was on the report of the Select Committee as it originally came before us, but the report, as it now stands, practically embodies the principle of my amendment, so there is no occasion for me to move it. I therefore beg to withdraw it.

The Honourable Mr. JAVERILAL UMIASHANKER YAJNIK moved that in sub-section (1), Section 4, line 59, the words "or without interest" be inserted between the words "interest" and "in the Bank of Bombay."

The Honourable Mr. JAVERILAL said :—The object of my amendment is to enable the moneys of the municipality to remain in the Bank of Bombay without interest for the



time that may be considered necessary. At present it would be illegal to allow their moneys to remain there under such conditions.

The Honourable Mr. TREVOR:—That power is given in the next sub-section.

The Honourable Mr. BATTY:—There is nothing illegal in the depositing of money in any bank; but if sub-section 122 did not exist, it might be a question whether the Corporation might have deposited with interest, at any bank.

The Honourable Mr. LANG:—Section 112 provides that all moneys shall be forthwith paid into the Bank of Bombay, but if that Bank does not give interest, then the Corporation have the power to deposit at interest with other banks or to invest in securities.

The Honourable Mr. JAVERILAL:—After this explanation I withdraw the amendment. Sub-section 1 of the new Section 5 was then adopted as part of the Bill.

The Honourable Mr. JAVERILAL moved that in Section 4, sub-section (2) be omitted.

The Honourable Mr. JAVERILAL:—My speech on the second reading of the Bill explains my views with reference to this amendment.

His Excellency the PRESIDENT:—It is of course a personal opinion of the honourable member that the fifth paragraph in the Statement of Objects and Reasons does not accord with the Bill as it now stands, but we have heard from the Honourable Mr. Batty that it is a matter which is capable of argument. It is possible that the Calcutta Municipality may have wider powers, but it is not perfectly certain that it is so, and the honourable member's objection appears to be that he does not think that this particular sub-section, as it now stands, does comply with the Statement of Objects and Reasons. But I do not think this is a sound argument for rejecting the sub-section if it is a good one.

The Honourable Mr. BIRDWOOD stated that he had a few verbal amendments to make to clause 2, and moved that the word "surplus" should be inserted between the words "such" and "money" in line 61. The amendment was carried.

He next moved that the word "such" between the words "for" and "application" in line 62 should be deleted. The amendment was carried.

He also moved that in line 63, the words "to such purposes" should be inserted between the words "application" and "and". The amendment was carried.

The Honourable Mr. Birdwood further proposed that in line 63, the word "such surplus" should be inserted between the words "all" and "moneys." The amendment was carried. He also moved in the same line that the words "be deposited at interest as aforesaid or which cannot" should be inserted between the words "cannot" and "in." The amendment was carried but was subsequently withdrawn.

The Honourable Mr. HASAN ALI moved the following amendment:—In Section 4, clause 2, line 6, the words "and which could be more favourably invested otherwise" be inserted between the word "aforesaid" and the word "may."

After a brief explanation from the President and the Honourable Mr. Lang, the honourable member withdrew his amendment.

The Honourable Mr. HASAN ALI then moved the subjoined amendment:—In Section 4, clause 2, line 9, the words "and the Commissioner" be inserted between the word "Committee" and the word "may".

The Honourable Mr. SHUTTLEWORTH:—The initiative has to come from the Commissioner: he has to propose and the Standing Committee to sanction. As the section now stands the Municipal Commissioner is relieved of all responsibility and according to sub-section 3 he has only to carry out the orders of the Standing Committee.

The Honourable Mr. BIRDWOOD:—The Commissioner is not a trustee of the Fund. He holds office under the Act, but has no interest in the trust. All he can do, as regards this matter, is to give his opinion, and if the Standing Committee concur in that opinion, then it is for the Corporation to decide. It would be unfair to throw the responsibility on him, and I strongly object to the proposed amendment.

His Excellency the PRESIDENT:—I trust honourable members will see the objection raised by my honourable colleague to the insertion of the words "and the Commissioner." I think the apprehension of the Honourable Mr. Hasan Ali somewhat strained. It is perfectly clear that the Commissioner in the abstract is never backward in giving his advice on any questions that may be raised by the Corporation. He is always most ready to give



his advice if the Corporation want it, and therefore although his name and title may not be mentioned in the sub-section, still it does not exclude him from advising the Corporation with regard to the depositing of money in any other bank than the Bank of Bombay. Therefore I think my honourable friend's apprehension may be set at rest, for the Commissioner is always there and will probably be asked for his opinion.

The Honourable Mr. HASAN ALI :—In the circumstances I withdraw.

The Honourable Mr. CROWE :—Sub-section 2 with the amendment reads: "all such surplus moneys which it is necessary to keep readily available for application to such purposes and all such surplus moneys which cannot be deposited at interest as aforesaid or which cannot" &c. Therefore if the Bank of Bombay are not prepared to allow a profitable rate of interest, under sub-section 1 the Commissioner would not have power then to re-deposit or invest in any other bank. I would suggest that the words "favourable" or "reasonable" might be inserted between the words "at" and "interest" in the 4th or 7th line of sub-section 2,

His Excellency the PRESIDENT :—Reasonable is the most elastic word in the English language.

The Honourable Mr. NUGENT suggested that the difficulty might be overcome by deleting the words "be deposited at interest as aforesaid or which cannot" and adding the words "deposited or" between the words "favourably" and "invested" in the sixth line of sub-section 2.

The suggestion was adopted.

The Honourable Mr. HASAN ALI then proposed in Section 4 to add as explanation below clause 2 the following:—"The terms 'favourably invested' shall include the safety of the transaction."

The Honourable Mr. BATTY :—As the money is to be invested in public securities, there is no question of safety.

The Honourable Mr. HASAN ALI after this explanation withdrew his amendment.

The Honourable Mr. JAVERILAL then withdrew the following amendment standing in his name :—In the event of Sub-section 2 of Section 4 being retained to omit Sub-section 4.

Sub-Section 3, Sub-section 4 and new Section 5 were then carried.

The preamble and title of the Bill were then adopted and the Bill as amended approved.

His Excellency the PRESIDENT then announced that the Bill would be submitted for the third reading at 3 o'clock the following afternoon.

*By order of His Excellency the Right Honourable the Governor in Council,*

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

*Poona, 31st August 1893.*



## PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

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

*Abstract of the Proceedings of the Council of the Governor of Bombay, assembled for the purpose of making Laws and Regulations, under the provisions of THE INDIAN COUNCILS ACTS, 1861 and 1892.*

The Council met at Poona on Friday the 1st September 1893, at 3 P.M.

### PRESENT:

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

The Honourable Mr. H. M. BIRDWOOD M.A., LL.D., C.S.I.

The Honourable Mr. A. C. TREVOR, I. C. S.

The Honourable Khán Bahádúr DORABJI PADAMJI.

The Honourable Mr. JOHN NUGENT, I. C. S.

The Honourable Mr. T. D. MACKENZIE, I. C. S.

The Honourable Mr. P. M. MEHTA, M.A.

The Honourable Mr. HERBERT BATTY, I. C. S., M.A.

The Honourable Mr. A. T. SHUTTLEWORTH.

The Honourable Mr. GANPATRAO DAMODAR PANSE.

The Honourable Mr. VISHNU RAGHUNATH NATU, B.A., LL.B.

The Honourable Mr. W. H. CROWE, I. C. S.

The Honourable Khán Bahádúr A. D. HASAN ALI BEY EFFENDI.

The Honourable Mr. NAVROJI NASARVANJI WADIA, C.I.E.

The Honourable Mr. JAVERILAL UMIASHANKAR YAJNIK.

His Excellency the PRESIDENT said:—Gentlemen, I may take this opportunity of announcing to you a circumstance as to which I am sure you will join with me in feeling the deepest regret. I refer to the death of the Honourable Mr. Justice Telang of the Bombay High Court, of which I have just heard from my honourable colleague on my right, the Honourable Mr. Birdwood. It is scarcely necessary for me to say with what sincere grief this announcement has been received by myself and my colleagues, and I am sure all of you gentlemen here will share in that grief. Most of you knew Mr. Telang far better than I did, and I feel sure that your entire sympathy is, as is also that of myself and my colleagues, with his bereaved family. It is almost unnecessary for me to add how deeply not only the Government, but all people, must feel the great loss which the High Court has sustained by his death and also how severe is the loss that has fallen on the department of learning by the decease of such a great scholar. Gentlemen, I need say no more than that we have to mourn the loss of a deeply reed scholar, a great lawyer, and a wise judge.

The Council then proceeded to consider the Bills and Orders of the day:—

(1). A Bill to further amend the law relating to the Municipal Government of the City of Bombay—*Third reading.*

The Honourable Mr. BIRDWOOD then proposed the following amendments of the Bill as it stood amended in Council on the 31st August, 1893:—

In section 2, line 6, to omit the "comma" after the word "prescribed".

In section 3, line 3, to omit the "comma" after the word "therein".

In section 4, line 7, to omit the "comma" after the word "Bombay".

In section 4, sub-section 2, line 13, to insert a "comma" after the figure "112".

These amendments were accepted by the Council.



The Honourable Mr. BATTY :—I propose that the word “of” be added in section 5, sub-section 2, line 1, after the word “all” and the addition of another “of” in the same sub-section, line 4, after the word “all”. I think the addition of the word “of” will make the meaning of this section clear. I think there was some misapprehension that this section was not properly expressed.

The Honourable Messrs. Birdwood, Mehta, Nugent and Crowe thought that the addition of the words proposed by the Honourable Mr. Batty would not improve the section.

The Honourable Mr. Batty then withdrew his amendment.

The Bill was then read a third time and passed; and the Council adjourned *sine die*.

*By order of His Excellency the Right Honourable the Governor in Council,*

C. H. A. HILL,

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

*Poona, 1st September 1893.*