

THE



Bombay Government Gazette.

Published by Authority.

FRIDAY, 22ND FEBRUARY 1884.

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 Governor of Bombay, in the Legislative Department, is published for general information :—

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

The Council met at Bombay on Wednesday the 6th of February 1884, at 12 noon.

PRESENT:

His Excellency the Right Honourable Sir JAMES FERGUSSON, Bart., K.C.M.G., C.I.E.,
Governor of Bombay, *Presiding.*

The Honourable E. W. RAVESCROFT, C.S.I.

The Honourable J. B. PEILE, C.S.I.

The Honourable the Acting ADVOCATE-GENERAL.

The Honourable Major-General C. J. MERRIMAN, C.S.I., R.E.

The Honourable Sir JAMSETJEE JEEJEEBHOY, Bart.

The Honourable SOLOMON DAVID SASSOON.

The Honourable RAO S'AHAB VISHVANATH NARAYAN MANDLIK, C.S.I.

The Honourable C. GONNE.

The Honourable W. M. MACAULAY.

The Honourable BADRUDIN TYABJI.

The Honourable RA'O BAHADUR KHUNDERAO VISHVANATH RASTE.

Paper presented to the Council.

The following paper was presented to the Council :—

1. Observations of the Managing Committee of the Poona Municipality on the Bombay District Municipal Act Amendment Bill as amended by the Select Committee.

The Honourable Mr. PEILE moved the second reading of Bill No. 4 of 1883 (the Bombay District Municipal Act Amendment Bill). He said :—In moving the second reading of the Bill I propose that my remarks shall be brief. This Bill has so much in common with the Local Boards Bill which has been passed

Mr. Peile moves the second reading of the "Bombay District Municipal Act Amendment Bill."

that I shall notice chiefly the points of difference. The constitutional sections are the same in both, but in so far as the case of the Municipalities differs from that of the rural boards, your Excellency made an explicit statement at a previous meeting of the Council of the extent to which the Government is prepared to adopt a different course as to the appointment of Presidents under this Bill. The important advances made by this Bill in localizing and popularizing municipal administration are—first, that it makes the election of a large proportion of members absolute instead of permissive; secondly, that it makes permissive the election of the whole board instead of two-thirds; thirdly, that it abolishes the *ex-officio* President and Commissioners, and withdraws much of the power of interference in the business of municipalities exercised by the central authority under Act VI. of 1873; fourthly, that it gives to the smaller municipalities access to the same privileges as the greater; fifthly, that it relieves municipalities of the legal obligation to pay for police. The system established by it is, as your Excellency has pointed out, more popular than the system in France; it approximates to the system of Germany, where the Crown has a *veto* on the appointment of the burgomaster: it is not yet so popular as the system in England. Yet our system in many respects comes very near to the system in England. Our municipal franchise will be based, as in English municipalities, on rate-paying residence. We are prepared, as in England, to allow women to vote, though not to hold office. Under the English Municipal Corporations Act of 1882, power is given to the Privy Council to disallow any municipal bye-law. The municipal council is not allowed to sell or mortgage, or let out on long lease, any of the borough land without the approval of the Treasury. The municipality is required to make a return to the Local Government Board of the receipts and expenditure of the corporation for each year. So far the Municipal Corporations Act. But further, the municipal council of the borough is charged with the duties of a sanitary authority therein under the Public Health Acts, and a committee of the council has to enforce the provisions of the Elementary Education Act. Under these and various other Acts of Parliament, duties and checks are imposed on the English corporations similar to those imposed on our municipalities under this Bill. But it must be borne in mind that the number of municipal boroughs incorporated under the Municipal Corporations Act is small. Most towns are subject to an urban sanitary authority, and therewith to the close supervision and control of the Local Government Board. That Board, as your Excellency has informed the Council, is in fact a Department of State. The President is appointed by the Crown and has always been a Cabinet Minister, and the members are the Lord President of the Council, all the Secretaries of State, the Lord Privy Seal, and the Chancellor of the Exchequer. Its functions are advice and administrative and financial control, and its powers are very large. Indeed, the tendency of recent English legislation has been in the direction of strengthening the grasp of central control. That no doubt may be overdone, but the necessity of adequate control in the public interest is admitted even where popular freedom is oldest and firmest, and I am glad that the impatience of all interference which showed itself here when the subject was first discussed has been moderated in the light of maturer reflection and increased knowledge.

I have observed a misunderstanding, which it may be well to remove, as to the intention of Government in regard to grants from Provincial funds to local bodies. It has never been proposed that services now maintained at the cost of Government should be transferred to municipalities or local boards without a grant from Provincial revenue. This was made clear in the terms proposed by Government in March 1882, for the transfer of the charge of the Government primary schools to the municipalities. It was stated in a Resolution dated March 23rd, 1882, that "Government proposes to transfer to the... municipality the control of elementary education within municipal limits, together with a grant-in-aid from Provincial revenues, beginning with a sum about equal to the present Provincial expenditure on the elementary schools in the said municipal limits." And then followed certain conditions attached to the continued payment of the public grant, which are similar to those in the English Elementary Education Act. The Resolution is published in the collection of papers presented to Parliament, Part I, page 65. Any other transferred service will be dealt with in the same way.

I will next make some remarks on section 38, which is challenged as interfering with the independence and self-respect of municipalities. Honourable members have read what the Select Committee has written about this section, and perhaps the same objection will not be felt to the section which the Select Committee has substituted for that which was originally drawn. It seems to me a most reasonable statement that "It is impossible to foresee at the time of giving sanction everything which may result

from the imposition of the tax sanctioned, and it is unreasonable that the Governor in Council, when his sanction is once given, should be bound to perpetuate it and unable to withdraw it, although the municipality may be levying the tax in a way to cause popular discontent or injury to public interests and may turn a deaf ear to the remonstrances of Government." It has been said that the section is intended to give power for the abolition of octroi. Now, there is no intention of abolishing octroi, which in its legitimate form is a very good method of raising municipal funds. But it is also a method which is particularly open to abuse, and I cannot think that the power to address advice and remonstrance when the levy has once been sanctioned is as strong a power as the Government ought to possess. More than three-fifths of the municipal taxation in this Presidency are now raised by octroi, and while I admit that steady progress is being made under the advice of the commissioners in rectifying the octroi schedules and making efficient arrangements for refunds, and that much less black-mail of this kind is now levied in the towns of British India than in many of the Native States, yet the reform is admittedly not yet complete. Now, I need not tell any member of this Council that in order that the Government may be able easily to raise the public revenues needed to carry on an administration of progress, and in order that the country itself may be able to bear without suffering the strain laid on it by the large foreign remittances which India has to make in payment for services and material obtained from abroad, it is a first necessity to keep on expanding the dimensions of her trade. The greatest economy in the transport of commodities is necessary to enable her to retain a command of foreign markets. If our municipal corporations were to plant themselves astride of the routes of trade, and levy transit duties which would make it impossible to trade at a profit, they would be doing what in them lies to thwart the best hopes of their country for a purely selfish object. I have said that the octroi income of our municipalities forms more than three-fifths of the whole municipal taxation. It amounts to more than 15 lakhs per annum. In Madras there is no municipal octroi at all. Octroi is not in the list of taxes which Madras municipalities may levy under the new Bill. The same is the case in Bengal. In the North-West Provinces and Oudh Municipalities Act of 1883 municipal boards are allowed, with the previous sanction of Government, to impose an octroi on goods or animals brought within the municipality for consumption or use therein, and the local Government has power to abolish or reduce that or any other tax leviable under the Act. In Bombay octroi is levied by 135 municipalities out of a total number of 164 without any such legal restriction. It will be seen, then, how important this matter is, and how careful we should be lest Bombay should share with some Native States the bad distinction of levying imposts on trade in transit. I am unable to admit that there is any humiliation to the self-respect of municipal boards in the reservation by Government of power to suspend the levy of octroi, or of any other tax which, though unobjectionable in the abstract, is levied in an objectionable way, until the objection is removed.

As in the case of the Local Boards Bill, it is suggested that it would be more convenient to amalgamate this Bill with the principal Act. I admit that there is more reason in this suggestion as applied to this Bill than as applied to the Local Boards Bill. Nevertheless the subjects are not confused. If any one wishes to study the law as to the constitution of municipal boards, their duties, their method of conducting business, and the control exercisable by Government, he will go to the Amendment Act. If he wishes to see the provisions about the municipal property and fund, the application thereof, and the long chapter on general conservancy, he will go to the original Act. Perhaps the changes in the law will be made more intelligible by being collected in a distinct Act at first. Of course what remains of the original Act, with the minor amendments in its sections, will be reprinted in a form convenient to the public, and no doubt, at some not distant date, the two Acts, with such amendments as may be found desirable, will be consolidated into one. I now move that Bill No. 4, a Bill to amend the Bombay District Municipal Act, as amended by the Select Committee be read the second time.

The Honourable RAO SÁHEB V. N. MANDLIK :—Sir, I have a few observations to make on the Bill as we have it now amended. With regard to those sections of the Bill which relate to what I may call the procedure in reference to our municipal law, I think that the amendments that have been made in the Select Committee are, with few exceptions, such as will meet with the approbation of the Council. But in regard to the constitution, I am sorry to see that you are not going upon any definite principle beyond what the Council has done with reference to the last Bill. As I understood the matter in reference to local boards, it was said that the progress of the people in the different parts of the Presidency

and especially in the outlying districts, had necessarily not been uniform; and it was expected that this Council should accept tentatively a law like the Local Boards Act. But I must say in regard to municipalities that we have had much larger experience of the working of municipalities, extending over, in some cases, more than thirty years; and from the reports received from several districts it seems to me that the Council might have safely classified the municipalities, at least experimentally, and have given certain definite status to one or more large municipalities in the Presidency. I think the experience of Bombay, so far as it has gone, is a guarantee that the same measure might be extended, with such safeguards, such additional checks—as this Council thought proper to impose, at least to one or more places in each division. I received only two days ago a paper from the Secretary of the Committee of the Poona Municipality, stating the leading points of complaint in reference to the present Bill in this way:—

- “1. The constitution of the bodies must be based on more liberal principles. 2. That the bodies must be classified according to population and revenue and intelligence. 3. That the presidents of first class bodies should be elected, those of the second class appointed non-officials. 4. That the powers of the twice-president should be defined by the Act. 5. That the financial independence should be guaranteed. 6. That Government should publish all rules made under the Act before finally passing them. 7. That the sections relating to conduct of business should be more precise.”

I must say that I cannot agree with all that appears there. I think that as regards the rules for the conduct of business, they must be settled in the same manner as they are settled at our Corporation here, and only made law with the sanction of the Government. But in reference to the other recommendations, I think the advance in the substantive portion of the municipal law is not very perceptible. I bear in mind what the Honourable Mr. Peile said with regard to the wishes of the Government of India as enunciated in the Resolution of the 8th of May 1883. They are, even in Bengal, giving much larger definite substantive powers to certain large municipalities. I see no reason from the reports submitted to Government why we should not be more liberal. But looking at our Bill, we can hardly say that in regard to municipalities we have made larger advances in municipal administration. Why is more power withheld? I think that the progress that has been made in the new Act is an augury for future progress. But I do not see any reason why some provisions might not be inserted in this very Bill, if it so pleases the Council, showing that we are prepared to invest certain large municipalities in this Presidency with certain definite powers, at least as far as the financial management and responsibility is concerned; because, it seems to me, merely regulating procedure and the administration of a certain amount of funds which the municipalities are empowered to raise can hardly be said to be a material element in the progress of municipal administration. It is only when the people are invested with certain powers and are competent to exercise those powers that they may be said to have made some progress. At the present time, the very best answer to any enquiry for the non-success of municipalities is we have no power and very little control. I do not see why half a dozen such places as Poona, Karáchi, Ahmedabad, Belgaum, &c., the central stations in each division, should not have some such privileges as this memorial to the Council from Poona asks. I do not think that there are any grave issues involved. If the people show that they appreciate that power, let them have it. If they are not fit for it, I do not think any person here would be willing to contend that they should have more, or that there should be an extension of any more substantive powers such as these. I think that a Local Board such as that in England would not prove beneficial to any great extent in this Presidency. There is no doubt a tendency to centralisation in England: but I think the case of England is altogether different. We have hardly the machinery for carrying out the work, as they have in such an efficient state as England. We have in a measure to create what we are legislating for. I think we have the materials at hand, and all I shall ask for is that these materials may be fairly tried by the Council. I think it would have been very desirable if all our municipal laws had been thrown together; and I think that at some early date the desirability of these Acts being put together into one might well be discussed by this Council.

The Honourable BADRUDIN TYABJI:—May it please your Excellency,—The provisions of the scheme of local self-government for this Presidency, both in regard to the urban as well as the rural populations, have been so fully discussed by the public, in the press, and by members of this Council, and my own views have been so freely expressed

on previous occasions, that I think I might perhaps have been justified if I had recorded a silent vote on the second reading of this Bill, as I did in favour of the second reading of the Local Boards Bill. The importance of the subject is, however, so great, and the principles on which it rests are so far-reaching, that I trust the Council will pardon me if I detain it for a few moments with the observations which I now propose to make. I fear that my silence on the occasion of the second reading of the Local Boards Bill has given rise to some misapprehension, both in regard to the views I really entertain on the subject and in regard to the reasons which have induced me to accept that measure, as finally settled by the Select Committee, with a considerable amount of satisfaction. I may at once say that I look upon both these measures as fairly liberal, as trying to steer the middle course and to hit the golden mean as far as practicable—neither so sweeping or radical on the one hand as entirely to dislocate existing machinery or to imperil the success of the whole scheme by prematurely forcing it upon an unappreciative people, nor so illiberal, on the other hand, as to retard the progress, the development, and the final consummation of the just, generous and enlightened policy of His Excellency the Viceroy. I must frankly admit, however, that I fully sympathise with those who think that a more liberal constitution—than is made obligatory under the Bill—might well be applied to the more advanced portions of this Presidency, by enhancing the proportion of elective members and by the exclusion of official chairmen. My opinions on these important points were fully expressed on the first introduction of these measures, and they were again embodied by me in the memorandum which I have annexed to the Report of the Select Committee; and I need scarcely say that they have remained unchanged. If, therefore, I support this Bill as amended by the Select Committee—as I now do with much pleasure—it is because I am satisfied that the scheme embodied in it, when taken in connection with the pledges and assurances of Government, is, or at all events can be made, perfectly consistent with the views I have always entertained and expressed on the subject. Some of my friends, however, for whose opinions on matters of this kind I have the highest respect, seem to think that the obligatory part of the scheme is not sufficiently liberal. Now I am much afraid that in coming to that conclusion they have entirely lost sight of the enormous proportions of the territories for which we are legislating; they have omitted to consider that, vast as those territories are, their vastness itself is surpassed by the diversities of races, creeds, and nationalities by whom they are inhabited, and that those diversities are further diversified by the different degrees of civilization, moral and intellectual development, and political advancement which they have respectively attained. I fear that many of our critics have reasoned as if the Presidency of Bombay consisted of a small compact area, peopled by one single race, and possessing exactly the same qualifications and capacity for political self-government. Nothing, however, could be further from the truth. And yet some have taken the most backward districts of the Presidency and have thence contended that the minimum of half for elective members, as laid down in the Bill, is a dangerous leap in the dark; while others, taking the most advanced districts, have gone to the opposite extreme and have declared with equal confidence that it is a very inadequate step in the direction of popular institutions. Both these arguments are based upon pure fallacies. The Bill, while providing a general constitution for the average localities, lays down no such hard-and-fast rules at all. It is and it has been purposely made elastic enough for both purposes—to provide a suitable constitution for districts not yet sufficiently advanced to elect half of their own members, and to confer greater electoral power upon others which may show themselves worthy of that distinction. Now, as the Government have pledged themselves to apply these provisions in a fair and liberal spirit, I, for one, am content to accept their assurances with perfect confidence. Unhappily, however, the past history of this Presidency is not without instances where similar assurances have on previous occasions been either entirely ignored or lost sight of. And this, no doubt, is the chief reason why the Bills, even as amended by the Select Committee, have been received with less satisfaction by the people than might otherwise have been the case. This absence of satisfaction, however, is not founded upon anything contained in the Bills themselves, so much as upon an uneasy feeling that, however honourably and scrupulously your Excellency and the members of the present Government may fulfil their assurances, they have no binding force at all upon your Excellency's successors. This no doubt is a great evil, but I am convinced that the remedy is entirely in the hands of the people themselves. They have only to prove themselves worthy of more liberal institutions, and, after what has passed in this Council, it will be impossible for any Government to resist their just claims. But be that as it may, inasmuch as it is obviously impossible to lay down any one constitution that shall suit the varying requirements and circumstances of the different

parts of this vast Presidency, and as it is equally impossible to lay down within the four corners of the Bill itself a number of different constitutions for each one of those different parts, because their circumstances and requirements must vary from day to day, it follows that the utmost that we can do is to frame a general scheme that shall suit the circumstances of this Presidency taken as a whole—that is to say, to lay down a constitution for the average taluka, district or municipality, leaving the places which are more advanced or less advanced than such average areas to be specially dealt with under the wide discretionary powers left to Government. These are the reasons which have induced me to support the scheme as amended by the Select Committee; and viewed in this light, I confess I cannot see how it can be fairly argued that the Bill in its present form is not sufficiently liberal. As I have already said, the scheme is so framed as to admit of the constitution of the boards being adjusted to the exact circumstances of each locality, and therefore if it does not work properly it will not be the fault of this Council, but of the authorities who will have to put it into execution. While, therefore, I think that this Council will have fairly discharged its duty if it passes this Bill as amended by the Select Committee, it is impossible not to feel that a grave responsibility rests upon the Executive Government, and that the success or failure of the whole scheme of local self-government in this Presidency will almost entirely depend upon the manner and the spirit in which the wide discretionary powers conferred upon Government are exercised. I have no reason to believe that the Government will act in any grudging or illiberal spirit; on the contrary, I am satisfied that they are sincerely desirous of satisfying the legitimate aspirations of the people of this Presidency as far as practicable. I earnestly hope, therefore, that they will give a cautious but fair trial to the various forms and grades of constitution which were mentioned and discussed by me on the first reading of this Bill, and which have received the support of such influential and experienced organs of native public opinion as the East India Association and the Poona Sarvajanic Sabha. Adopting for their general guidance the constitution as laid down in the Bill for the average localities, I trust the Government will see its way to test the capacity of the people of this Presidency for local self-government by introducing suitable variations into that constitution, according to the circumstances and peculiarities of each place, by trying in some places the effect of an equal number of elected and of nominated members, in another place giving the majority to the elected members, appointing official chairmen in some and non-official in others, while giving to some boards at least the power of electing their own presidents. Again, though the power of appointing a certain proportion of the members rests directly with the Government, I trust the Government will not rely exclusively upon the advice of the local officers, but that they may feel sufficient confidence in some public bodies or local associations to ask them to suggest the names of properly qualified citizens for appointment by Government. This would not only be a graceful course for Government to adopt, but it would secure the best advantages of the elective principle combined with those of nomination. For I must frankly admit that, having regard to the peculiar circumstances of India, I am no blind admirer of any one system, either of election or of selection. They have each their peculiar advantages—no less than their peculiar disadvantages. Now, on the first reading of this Bill I made some strong observations upon the evils resulting from nominations by Collectors. I said that members so nominated would often be the creatures of the Collectors, and could hardly be expected to vote in opposition to the wishes of the authorities by whom they were appointed. I believe those observations to be well-founded. I believe they will be borne out by the experience of all independent observers in the mofussil. But they were not intended to be of universal application. It would be as untrue to affirm that all members appointed by Collectors would be devoid of independence and public spirit as to say that all members elected by the people are likely to be paragons of virtue and possessors of all that can adorn a public citizen. All I intended to say, and all I do say, is that mistakes are likely to occur under both systems, and that the fact that a person is nominated by Government is no more a guarantee that he is a fit person, than the fact that a person is elected by the people is a guarantee that he is unfit for his position. Your Excellency on that occasion attempted to refute my argument by pointing to the non-official members of this Council, and inquiring with seemingly crushing force whether they are not independent men. Your Excellency was no doubt taking advantage of what we lawyers should call the doctrine of estoppel! For of course it would not lie in the mouth, of either myself or of any of my honourable colleagues to stultify ourselves by proclaiming our own unworthiness for a seat in this Council. We are estopped from making any such allegation! But I go further and say that no body of electors could perhaps have chosen men of more sturdy in-

dependence, of more enlightened views, and of higher qualifications than my honourable and distinguished friends who so worthily represent the Hindu, the Pársee, and the European communities of Bombay. But I trust your Excellency will pardon me for remarking that this is not due to any inherent goodness in the system of nomination, but to your Excellency's personal desire to discharge your high functions in a manner at once creditable to Government and beneficial to the public. But it would be idle to deny that it was not always so with your Excellency's predecessors; neither is there the least guarantee that it will be so with your Excellency's successors. Indeed, it is impossible to scan the lists of the members nominated by Government to seats in even such worshipful, dignified, and learned bodies as the Bench of Justices, the Municipal Corporation, and the Senate of the University of Bombay, without wondering for what mysterious qualifications utterly unknown to the public, some gentlemen were selected, while others possessing infinitely superior qualifications were entirely left out in the cold. I make these observations in no carping or disparaging spirit, but when the advantages of a system of nomination are blazoned forth to the detriment of the rival system of election, it is just as well to bear in mind that if the people do sometimes make mistakes in electing wrong men for their representatives, if they are sometimes led astray by other considerations than the moral or intellectual qualifications or the personal fitness of the candidates—I say in such cases it is but fair to bear in mind that such mistakes are not peculiar to electors, and that they are just as likely to occur under a system of selection as of election. I hope, therefore, that while the working of the elective principle will be carefully watched by the officers of Government, it will be watched in a generous, sympathetic, and indulgent spirit; in a spirit to show that it has succeeded, rather than in a spirit to prove that it has turned out a failure. Very much will depend upon the instruments employed by Government to watch the working of the scheme. The prospect will be cheerful or gloomy, according to the tint of the glasses used for examination. Another point which has given rise to much discussion is the question of check and control. Now, I entirely agree with what has fallen from the Honourable Mr. Peile on this subject. I believe these provisions to be salutary. I believe them to be necessary. On the principle that prevention is better than cure, it is our duty to see that sufficient safe-guards are provided to render any flagrant maladministration impossible. It by no means follows, however, that because these powers exist, they will or ought to be exercised on every occasion that a difference of opinion may spring up between the local boards and the Government officials. That would be an intolerable abuse of power, and if it became frequent, would necessarily work its own cure. The existence, however, of these provisions will operate as a powerful deterrent; and the knowledge that a serious dereliction of duty will entail penal consequences, so far from impairing the independence or efficiency of the local boards, will have just the opposite effect; it will ensure careful administration of the funds, and a just regard to the interests of the public. The sight of the schoolmaster's rod does not destroy the efficiency of the school, but rather adds to it; and if these provisions deserve the name of "bludgeon clauses," as I think they undoubtedly do, they ought at least to produce the same effect upon the local boards as the policemen's bludgeons do upon intending malefactors. The only other point on which I wish to touch is the power of Government to make rules. I have already expressed a very strong opinion that such powers ought not to be allowed except in cases of absolute necessity, and even then in mere matters of detail. Now, as a member of the Select Committee it became my duty to study the provisions of the Bill very closely, and I am bound to state that after the most rigid scrutiny I am unable to point out anything which might be properly and advantageously and without serious complications embodied in the Bill itself, and has yet been left to the discretion of Government. However reluctant, therefore, I may feel to support powers of this kind, in this particular case I cannot see that any option is left to me. I trust, however, that in exercising the power the Government will always bear in mind that they are in reality legislating, and that too on most important points, and that, as in all legislation affecting the welfare of the people, the people themselves ought to be consulted. I hope, therefore, that Your Excellency will give us an assurance that no rules will be finally passed without first publishing the drafts and inviting criticism from the public and especially from the members of this Council. The importance of public criticism has been remarkably illustrated during the progress of these very measures, for the Council will remember that the whole of Sind was at first entirely excluded from the benefit of the general scheme, and was treated as an exceptionally backward province. Thanks, however, to the discussion in this Council, all those exceptional provisions have been completely removed from the Bill, and Sind now stands on exactly

the same footing as any other part of the Presidency. I have now done. I fear I have trespassed too long upon the patience of the Council, but the paramount importance of the subject must be my sufficient excuse. In conclusion, I cannot help expressing a fervent hope, even at the risk of being rebuked by Your Excellency, that after these Bills have been fully matured, after they have been fairly put into operation, after the people of this Presidency have shown their capacity, and their aptitude for free representative institutions, in regard to which I, for one, have no misgiving whatever, that Your Excellency may be able to lay the inhabitants of this Presidency under yet another, a greater and a deeper, obligation, by pressing upon the attention of His Excellency the Viceroy the importance and the necessity of improving and enlarging, not merely the constitution, but the functions of this Council. That would be a fitting crowning of the edifice we are raising to-day, and while it would be a lasting monument to Your Excellency's government, it could not fail to be of permanent benefit to the people of this country.

The Honourable Mr. MACAULAY :—Sir,—As I do not share the fears of danger which might result from a more liberal measure, I am disposed to go further in some respects than the Select Committee have recommended. I think it would have been well if the municipalities could have been classified as recommended in the paper which has come from the Poona Municipality. There are no doubt great differences between the more advanced and backward municipalities. The more backward would probably be better under the presidency of a nominated chairman, whereas many of the more advanced municipalities could find among their own number a chairman who, I think, would be fully equal to the place. It would seem like fault-finding, simply for the sake of finding fault, if I were to urge some objections previously urged. Therefore, I will follow in the footsteps of speakers who have spoken before me, and say that I accept this measure as now amended, simply with the promises which have been made by Your Excellency and the honourable mover of the Bill that the powers of control of the other provisions will be liberally interpreted. The success or failure of the measure will depend entirely on the way in which the executive officers choose to interpret them and I would urge the Government to keep a watchful eye to see that their officers give effect to their liberal views. With regard to the powers proposed to be invested in Government, I am quite sure that Your Excellency and the members of your Government are sincere in your promises; and I will only ask before the rules are brought into force that they should be published with a view to their being discussed by the public. If this is done, it would remove from my mind and from the minds of others the gravest objections in giving to the Government the power of framing rules which have an important bearing on the people.

The Honourable Mr. PEILE :—Sir,—I am glad to find that the Honourable Ráo Sáheb Mandlik is the only dissentient from the principles of the Bill. I would willingly have deferred further remarks until the Bill is considered in detail, but as no notice of amendment affecting principles has been given, and these cannot be further discussed hereafter, I will say a few final words on one or two points. I regret that after all that has been said, the honourable member is not satisfied that this Bill adequately extends the independence of the municipalities. I cannot see how that contention can be made good, either absolutely or relatively. The honourable member has based his remarks on a memorandum just sent in by the managing committee of the Poona Municipality, and I will follow the same course. The memorandum makes representations under various heads. One is that financial independence should be guaranteed. Now, in all the Bills for other Provinces which have come under my observation, there are restrictions on financial independence which are not found in this Bill. In those for Northern India the budget estimates are subject to the control of central authority. In the Madras Bill the Collector is constituted ordinarily president ex-officio, though there may be a variation, and the election of the whole corporation is not provided for. And now look at Act VI. of 1873, and consider the ex-officio president who is the Collector, and whose duty it is to preside at all meetings, and who has the power of suspending the operation of any resolution carried against a minority not less than two-fifths, and of referring the matter to Government, whose decision is final; and, again, consider the power of the Collector-president in town municipalities, where he is empowered to overrule the whole body of commissioners, and compare this with the complete independence secured in this Bill to the corporation in its meetings and its budget estimates, guided by its elected vice-president. Then the honourable member suggests that a more definite status, more substantive powers should be given in the Bill to some of the larger municipalities. He cited the example of Bombay. But I cannot see that the constitution as given in the Bill differs very materially from the municipal constitution of Bombay, and in the one case we are dealing with a new experi-

ment, whereas in the other the constitution has advanced to what it is in the course of years. Half of the Bombay commissioners are elected by the ratepayers, corresponding with the elective minimum in this Bill; the other half is partly elected by the justices, who are in fact nominees, and partly appointed by Government; and the other half in this Bill is to be nominated by Government, and half of them must be non-officials. The honourable member has referred to Bengal as an instance of the grant of substantive powers to some of the larger municipalities. Well, I have the Bengal Municipal Bill here, and I find, among other things, that the Commissioner is empowered to make such alterations in the Municipal estimates as may seem to him fit, and such a clause as the following:—

“Notwithstanding anything contained in this section, the local Government may lay down such rules as it may think fit, limiting or regulating the powers of any municipality in respect to the expenditure of money for purposes which are provided for in the budget estimates of the year.” And again, “If any work is estimated to cost above five thousand rupees, the local Government may require the plans and estimates of such work to be submitted for its approval.” Our municipalities are subjected to no such restrictions of their financial independence as these. These views as to the grant of substantive powers are connected with the suggestion made from several quarters for the classification of municipalities. The Poona Managing Committee makes two proposals which I will take together: that the municipalities should be classified, and that the presidents of the first class should be elected, those of the second class being nominated non-officials. Now, whatever the merits of a classification may be as subsidiary to the Act, it appears to me that the insertion of such a provision in the Act would be contrary to the principle of elasticity approved by the Viceroy in Council and adopted by every local Government in India. Any such complication would sooner or later become a restriction. For instance, I can see no reason why a small municipality should not be as competent to elect its president as a large one. The action taken must be the result of a study of each municipality. A specimen of what is meant by more definite powers is to be found in the following proposal of the East India Association, of which the Honourable Ráo Sáheb Mandlik is Chairman:—“We suggest that the Collectors of Poona, Thána, Ahmedabad, Surat, Broach, Sholápur, Belgaum, Dhárwár, Ahmednagar, and Ratnágiri, be totally disqualified by law from becoming president of municipalities.” This is hardly a grateful remembrance of the services of such Collector-presidents as my honourable friend Mr. Hope and others whom I could name. But some of those who are most advanced seem doubtful of the effect of their own proposal. This is what Mr. Javerilal Umiashanker Yajnik says on the subject of non-official presidents:—“I would suggest that the law may well vest in the larger municipalities, such as those of Poona, Ahmedabad, Surat, Broach, Thána, Sholápur, Belgaum, Ratnágiri, Ahmednagar, and Dhárwár the right of electing their own president. In the rest the presidents may be nominated by Government. I do not shut my eyes to the fact that when the real nature of the work to be done by the president comes to be understood, even capable men will rather shrink from it than undertake it. Still I maintain that the vesting by law in the larger municipalities the right of electing their president—a right of which the exercise may for a time be held in abeyance—will work salutary results. If these larger municipalities do not find men able and willing to take up the post of president to-day, they may be trusted to find such men five or ten years hence, as public spirit develops. For my part, I cannot see what harm can come by conferring on the large municipalities the power to choose their president. It is quite possible that for some years to come they may confine their choice of president to the Collector or his Assistant, but surely they may be looked forward to, at no distant date, to elect their president from the non-official members. I should, therefore, propose that municipalities such as those I have named above, and which may be specially mentioned in the law, should have the right granted them by law to choose their own president. In the case of the rest of the municipalities, the president may be appointed by Government. What is wanted is the recognition of the right. Its exercise may be left to time and circumstances.” Now, in one sense, the right of electing their president is given by the Bill to all municipalities, to be exercised when, and held in abeyance until, the Governor in Council directs; and this proposal would take away from the smaller municipalities a right given to them by the Bill. But the meaning must be that the election of a president should be made obligatory in certain cases, so that certain municipalities must elect, whether there is a non-official fit for election or not. In such case it is contemplated that a municipality should fall back on the election of the Collector. It is doubtful if they would, but if they did, the Collector might as well have been nominated until there is a non-official fit for election. But observe the remarkable

discrepancy. While the East India Association wishes to disqualify the Collector from the office of president of the large municipalities by law, Mr. Javerilal comforts himself with the reflection that these same municipalities will elect the Collector for the next five or ten years. This illustrates the difficulties into which we should fall if we attempted to substitute complicated provisions for the simple machinery of the Bill. The other suggestions of the Poona Managing Committee are that the powers of the vice-president should be defined by the Act, and that the Government should publish the rules made under the Act. The powers of the vice-president are very definitely described in the Bill, and we have distinctly stated that he is intended to preside at all meetings of the Corporation except when the president, for special reasons, thinks fit to preside in person. As to rules; these are for the most part to be made under this Bill by the municipalities themselves. Government has power to make rules only for regulating the elections, and there is no objection whatever on our part to the publication of these before they are finally passed. With these remarks I will leave the question of the second reading to be put.

His Excellency the PRESIDENT :—Gentlemen,—This debate and those which preceded it upon these important measures have, I think, been conducted in a spirit with which we may be well satisfied. There has been a frank expression of the views of those who differ from the Government in certain points, and I think there has been on the whole a tone of candour and conciliation which is most agreeable to those charged with the responsibility of Government. It has given proof of the spirit which animates this Council; and, if I may be permitted to say so, I have listened with the greatest pleasure to the speech of the Honourable Mr. Badrudin Tyabji—a speech which I wish had been addressed to a much larger audience. Its breadth of view, complete candour, independence of thought, and, at the same time, public spirit is, I think, highly creditable to this Council. It is a responsible duty to nominate members of this Council, and one which, I think, every one filling the office of Governor must exercise with thought and a sincere desire to bring to this Council true representatives of popular feeling. At the same time, it is most gratifying that honourable members can combine the fullest expression of independent views, such as my honourable and learned friend has brought into the committee, advocating, I am quite sure, the more advanced principles which he was prepared to support, and yet, at the Council, giving credit to the Government for the liberality of their intentions and his approval of the principles of the Bill. Now, I think the speeches of my honourable colleague would well deserve to be republished in pamphlet form as being explanatory of the principles on which this Bill is based and the intentions of the Government in introducing it. I trust they will not pass away with the enactment of this measure, for I think they should remain as an enduring explanation. It was necessary that we should protect ourselves from misrepresentation, and he has done so effectually, for it would be unfortunate if any ground were left to a section of the public or the newspaper press to assert that there was any intention whatever on the part of the Government to deny to the newly constituted bodies full liberty to manage their own local affairs, subject only to those restrictions which in all countries rest in the Government. It has now been clearly stated what is the practice in the most advanced countries of Europe; and I have myself in my lifetime been witness how it has been often necessary for the central Government to resume and assume larger powers over local authorities. Local bodies in this country are subject to prejudice and popular pressure; and whether a central Government be despotic or representative, it is absolutely necessary that the eccentricities and prejudices of local bodies should be controlled. There is a word which I must confess is new to me in this connection, and which has been much used in the discussion on this question. It is a description of a certain class of clauses as the “bludgeon clauses.” My honourable and learned friend says that the bludgeon of the police is wholesome when kept in reserve. Well, I can add to that by saying that the bludgeon of the policeman is only a terror to evil-doers; and I am sure that no municipality of enlightened views need fear the exercise of the “bludgeon” clauses on the part of the Government. But occasionally municipalities are either wrong in their views or subjected to local prejudices which prevent their being liberal in their acts. I have had brought to my notice certain municipalities who were most reluctant to impose any local taxation whatever, except octroi, which of course is a tax on articles of consumption and the necessaries of life, and where others have imposed a house-tax in accordance with the opinions of the Government of India, that house-tax has been levied in the most unfair manner. For instance, a rupee upon each house, of whatever size, so that the poor were taxed in an infinitely larger proportion than the rich. Whatever may be said about bludgeon clauses, it is unreasonable that Government should not have the power of over-ruling such eccentricities and injustices as that. The classifica-

tion of municipalities for varied powers existed under the Act of 1873 ; and when we come to examine the matter, we find not only no occasion for preserving that distinction, but that it would work extremely ill. There are places in this Presidency eminently fitted for the administration of their local affairs, while there are some larger towns which are not so far advanced and not so fit for self-government. I said, speaking from memory on a former occasion, that Government had found unofficial gentlemen who, they judged, were well adapted for the office of president in twelve municipalities, and I am glad to say that I understated the number. Already the department has a list of fifteen gentlemen qualified for the office of president. Among these municipalities are some which are very small, and also one or two of the largest. Honourable members have reminded us that a comparison made between the working of the Acts in England and here is unfair. But that comparison was forced upon us because the question has been again and again put to us why Her Majesty's subjects here should not have the large measure of public liberty which they enjoy elsewhere. Therefore we have been obliged to point out that that liberty has been the growth of many centuries ; and, in the second place, that we have very closely and as far as circumstances permitted, followed the analogy and experience of England in this matter. Honourable members have very justly pointed out that the members of the present Government of Bombay are credited with liberal intentions in the administration of these Acts, but that they had no security that their successors would follow their example. Gentlemen, there is nothing so difficult in the administration of an Act than to withdraw concessions once made to popular Government. With this responsibility we must not be premature in making such concessions. I say that this Government establishing, as I hope it will do, a liberal procedure in the administration of its Acts, it would be absolutely impossible for any Government to withdraw it except in the case of proved and conspicuous failure. I do not think that any apprehensions need be entertained on that score. This Government is not independent. It is under the power of a superior authority ; and that superior authority is ruled by public opinion in England. You, therefore, see how very difficult it would be, and what little chance the Government here would have, if it had the disposition, to withdraw liberal concessions made to the people of this country. I believe that there is nothing less deserved than the imputation of illiberality made against the local officers. I have taken great pains to make myself personally acquainted with the personal feelings of the officers. There is not a district in the Presidency I have not visited, and some I know very well, and I assure you that there is no expression which I have heard more frequently from the district officers than one of regret that they could not get the people to take more interest in their local affairs. The district officers would most gladly receive the assistance of their unofficial neighbours. Nothing, therefore, is more unfair, more unjust, in my experience, than to speak of the officers of the Civil Service as being narrow-minded and having a desire to exclude the people from the management of their own affairs. As the Honourable Mr. Peile has said, there are gentlemen now high in the service whose names are household words in the districts where they are best known for their liberality and for the zeal with which they gave themselves to the true interests of the people. Even now in cases of distress in the districts with which they were formerly connected they sometimes make handsome subscriptions for the relief of the people with whom for many years they have ceased to be connected. I do not believe that there is any such feeling on the part of the people of this country as of distrust of the liberality of their officers. On the contrary, I believe that these officers of Government have the confidence of the people, who believe that they will obtain justice if they can get the ear of a European officer. The Honourable Mr. Peile spoke truly when he said that the Government will be most glad to make known the rules they have occasion to pass for the expression of public opinion upon them, and I cannot believe that any who may take our place in future days will be insensible to the advantages of a free expression of public opinion. Glad indeed shall I be if in the course of time the use which has been made of the powers given to the people will justify and encourage the Government of the day to enlarge them. Some of us who have framed and launched these measures cannot remain to watch their fruits or extend the powers which are afforded by them. But in looking back to the part which we have ourselves taken we shall not, I am persuaded, have any cause to be ashamed of the machinery which we have provided, and we cannot be wrong in not embarrassing our successors by conceding more in the first place than we are well assured is justified by experience and conviction.

Bill read a second time and considered in detail.

The Bill was then read a second time ; and the Council proceeded to consider it in detail.

On the motion of the Honourable Mr. PEILE, the following amendment was agreed to :—In Section 5, paragraph 3, line 27, after the word “ Act ” the following words and figures were inserted :—“ or has been abolished under Section 16 of that Act.”

The Honourable the ACTING ADVOCATE GENERAL :—I have a merely verbal alteration to propose in Section 20 to make it in harmony with Section 37 of the Local Boards Act. It is simply this—to omit the words at the end of that section “ for monies due to the Government ” and substitute “ such monies had been the property of the Government.” That makes the wording of the two Acts identical on that point.

The amendment was carried.

The Honourable Ráo Sáheb MANDLIK moved that the words “ No female and ” be omitted from Section 21.

The amendment was carried.

The Honourable Mr. PEILE :—The amendments made being merely verbal alterations, I beg leave, as it is in accordance with the rules of this Council, to move that the Bill be read a third time,

The Bill read a third time.

The Bill was then read a third time and passed.

His Excellency the PRESIDENT then adjourned the Council.

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

C. G. W. MACPHERSON,
Under Secretary to Government.

Bombay Castle, 6th February 1884.