


THE



Bombay Government Gazette.

Published by Authority.

TUESDAY, 20TH FEBRUARY 1872.

 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 Tuesday, the 30th January, at noon.

PRESENT:

The Right Honourable Sir W. R. S. V. FITZ GERALD, G.C.S.I., Governor of Bombay, *presiding*.
 His Excellency the Honourable Sir AUGUSTUS ALMERIC SPENCER, K.C.B.
 The Honourable S. MANSFIELD, C.S.I.
 The Honourable H. P. ST. G. TUCKER.
 The Honourable MUNGULDASS NATHOOBHOY, C.S.I.
 The Honourable the ADVOCATE GENERAL.
 The Honourable VENAYEKRAO APPASAHEB of Koorundwar.
 The Honourable Colonel M. K. KENNEDY.
 The Honourable Sir JAMSETJEE JEJEEBHOY, Bart., C.S.I.
 The Honourable E. W. RAVENSCROFT.
 The Honourable A. R. SCOBLE.

Affirmation of office, &c.,
 taken by the Advocate General.

The Honourable the Advocate General took the usual affirmation of office, and declaration of allegiance to Her Majesty.

Papers presented to the Council.

The following papers were then presented to the Council:—

I.—The following letter from the Government of India :—

From Whitley Stokes, Esq., Secretary to the Government of India; to E. W. Ravenscroft, Esq., Acting Chief Secretary to the Government of Bombay—dated Fort William, 22nd December 1870.

SIR,—I am directed to acknowledge the receipt of your Acting Under-Secretary's letter No. 168, dated 5th November last, to the address of the Secretary to the Government of India, Home Department, and in reply to communicate the following observations.

2. The Bill sent up with the letter under acknowledgment for His Excellency the Viceroy's assent, purports to bring under the general Regulations and Acts in force in the Bombay Presidency certain Villages lately received from the Nizam. It does not appear that under section 47 of the Indian Councils' Act the Governor General in Council has altered the limits of that Presidency so as to make them include those villages. If no such alteration has been made, His Excellency is advised that the Bombay Legislature has no power to deal with the ceded territory; but even assuming this alteration to have been made His Excellency is advised that as the effect of the Bill would be to extend the appellate and the extraordinary original jurisdictions of the High Court at Bombay, the proposed enactment is beyond the powers of the Bombay Legislature.

3. However, before proceeding to communicate the formal refusal to assent to the Bill, the Viceroy is desirous of giving His Excellency the Governor of Bombay in Council the opportunity of offering such explanations as he may have to make on the subject, and I am accordingly to request the favour of an early reply in the sense above indicated.

4. I am to remark that little or no inconvenience will be caused by dropping the present Bill, as the villages in question will be comprised in the Local Extent of Acts and Regulations' Bill now before the Council of the Governor General for making Laws and Regulations.

5. I am, in conclusion, to call attention to the final paragraph of my letter No. 249, dated 16th May 1870, and again request that no Bills may be submitted for the Governor General's assent without the official report of the discussions that have taken place upon them.—I have the honour to be, Sir, your obedient Servant,

(Signed) WHITLEY STOKES,
Secretary to the Government of India.

The following is the reply to the above :—

From the Acting Under-Secretary to the Government of Bombay, to the Secretary to the Government of India, Legislative Department,—dated Bombay Castle, 12th July 1871.

SIR,—I am directed to acknowledge the receipt of Mr. Secretary Stokes' letter No. 992, dated 22nd December 1870, and in reply to state that on consideration of the objections taken by the Government of India to the proposed Act "to bring under the general Regulations and Acts in force in the Bombay Presidency certain Villages received in exchange from the Nizam," this Government considers it advisable that the present Bill should be dropped, and the Villages dealt with as proposed in the 4th paragraph of Mr. Stokes' letter.—I have the honour to remain, Sir, your most obedient Servant,

(Signed) J. NUGENT,
Acting Under-Secretary to Government.

II.—Letter from the Secretary to the Council of the Governor General for making Laws and Regulations, No. 704, dated 21st June 1871, returns with the assent of His Excellency the Governor General signified thereon the authentic copy of the "Bill to provide for the cost of the Police employed in towns and suburbs where Act XXVI. of 1850 is in force."

III.—Letter from the Secretary to the Council of the Governor General for making Laws and Regulations, No. 703, dated 21st June 1871, returns with the assent of His Excellency the Governor General signified thereon the authentic copy of the "Bill for imposing duties on the non-agricultural classes in the territories subordinate to the Presidency of Bombay."

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

The Honourable Mr. TUCKER, in moving the first reading of Bill No. 1 of 1872—a “Bill to amend Act XIII. of 1856,” said.—The Bill, of which I am about to propose the first reading, is a measure of very limited scope, and is intended to effect a small but necessary object. It is to amend the law relating to the Bombay City Police Superannuation Fund, and to alter the rules under which pensions hitherto have been granted to the police of the Presidency town. The Bombay City Police Force was originally governed by Act XIII. of 1856, an Act passed by the Indian Legislature, in which certain rules were laid down for the creation of a superannuation fund by certain deductions from the pay of those men of the police who were not otherwise entitled to pensions, under the rules applicable to the Uncovenanted Service, to which were added the aggregate of particular fines and other realizations from the sale of clothing, &c., all of which, when collected together, were to form a fund from which retiring pensions were to be paid. It was found necessary last year to make a considerable reduction in the Police Force of the City of Bombay. This reduction was decided upon at the urgent solicitation of the Bench of Justices, and the discharge of a certain number of officers and men, both Europeans and Natives, was ordered. Now, the Act which originally regulated the pensions of the police of all the Presidency towns had been amended by the Indian Legislature in 1866 so far as it affected the Calcutta Police, and power had been given to the Bengal Government to make rules, under which rules an increased contribution had been levied and pensions granted after shorter periods of service. For example, under Act XIII. of 1856 a man was obliged to serve sixteen years to obtain a pension equal to one-third of his average salary for the five years immediately preceding his retirement, and twenty-four years to get a pension equal to one-half of the average salary of the last five years of his service. By the Calcutta rules these pensions can be granted after fifteen years' service and twenty years' service respectively. It is proposed now to adopt in Bombay the Bengal standard and to shorten the periods of service qualifying for pension. This reform is necessary as the character of the duties which devolve on the police render it expedient that all the men retained in the force should be able-bodied and of active habits, and that there should be an early possibility of retiring for those who have been weakened by exposure, or who, on account of advancing age, have suffered a diminution of physical vigour. I think we shall all be agreed upon this point. To effect this object, sections have been introduced into the present Bill to be substituted for those in Act XIII. of 1856, which it is proposed to repeal. In addition to this alteration in the general law for the government of the police, power has been given to Government to grant pensions to the officers and men who have recently been discharged. It has been considered that the case of these persons is a special one which requires exceptional treatment. They have been got rid of experimentally with the view of diminishing municipal expenditure, and they have very strong claims for consideration. We must all acquiesce in the policy of making some provision for men who have been suddenly thrown out of employ, in consequence of a financial crisis, for no fault of their own, and as it has been ascertained that the fund now accumulated will be able to bear the additional burdens which will be imposed upon it if this Bill should pass, it is trusted that the proposal to confer upon Government power to grant retrospectively pensions to the men discharged at the close of the past year will meet the approval of this Council. The sanction of the Government of India has been accorded to the changes which it is desired to make. I need say no more. I move, sir, the first reading of Bill No. 1 of 1872.

The Honourable the ADVOCATE GENERAL said he wished to make a few remarks upon this measure. The Bill provided for the creation of a new superannuation fund. By one of the sections of the Bill allowances were to be paid in the case of a reduction of the force, although officers had not been in the force for a sufficient number of years to earn a pension. Of course as regarded any future reduction in the force there was no objection to the Act in point of principle, but by the 8th section of the Bill it appeared that members of the police force who had been discharged during the year preceding the passing of the Act would be entitled to a pension from the superannuation fund. He did not know whether the fund would be sufficient to meet these charges, but it was in his opinion hardly fair that the new fund should be charged with pensions to officers who had never subscribed to it, and had been discharged prior to the passing of the Act.

HIS EXCELLENCY THE PRESIDENT said that the only remarks which should be addressed to the Council on the first reading of a Bill ought to be on points affecting the principle of the measure, and that remarks on particular clauses were more properly to be considered when the Bill came on for discussion in detail. The question at present was whether the Bill should be read for the first time—that was, whether the Council should have an opportunity of considering the question.

The Honourable the ADVOCATE GENERAL said his observations involved a principle of the Bill, but as he had been reminded by His Excellency that remarks on the point he mentioned would be more appropriate on the second reading, he would postpone his observations.

The Bill read a first time and referred to a Select Committee. The bill was then read a first time, and referred to a Select Committee, composed of—

The Honourable The ADVOCATE GENERAL,
The Honourable Mr. RAVENSCROFT,
The Honourable Sir JAMSETJEE JEJEEBHOY, Bart.,
The Honourable Mr. MUNGULDASS NATHOOBHOY, and
The Mover.

The Committee was instructed to report next day.

The Honourable Mr. RAVENSCROFT, in moving the first reading of Bill No. 2 of 1872, a “Bill to secure the payment to Government of certain additional sums of money by the Corporation of the Justices of the Peace for the City of Bombay,” said—

Mr. Ravenscroft moves the first reading of Bill No. 2 of 1872.

Sir,—I have to solicit your permission to introduce an Act numbered No. 2 of 1872, entitled, a “Bill to secure the payment to Government of certain additional sums of money by the Corporation of the Justices of the Peace for the City of Bombay.” I do not think it will be necessary for me to go into any details of the causes which have led to the state of embarrassment into which, I regret to say, Bombay has been allowed to drift. The report of the committee of which Mr. Hope was such an able president shows very clearly and fully the facts and figures as far as they could be ascertained; and that report proves that, in round figures, a sum of about 15 lakhs of rupees has been found to be deficient. What, therefore, this Government had to do, was to find the best means of meeting this deficiency; and that matter has, I think, been arranged by the Bill under discussion. At the same time it will be necessary for us to pay the penalty which the extravagance and mismanagement has entailed on the Justices, the Municipality, and the Government. If the Council will refer to the Statement of Objects and Reasons, they will see that the Government of India, to whom this question was referred, lay down as one of their stipulations for the granting of this loan, “that this Council should cancel all the existing borrowing powers of the Municipality, leaving it, should it require a loan, to obtain it under the conditions and subject to the stipulations of Act XXIV. of 1871,” that is to say, compelling the Municipality to go in future to the Government of India for loans instead of, as hitherto, to the local Government. If you will refer to the 9th section of this Act XXIV. of 1871, you will see that nothing contained therein shall be deemed to include the Municipalities of Madras, Calcutta, or Bombay, whose borrowing powers had been conferred upon them by special Acts. It is clear, therefore, that the action which the Government of India have thought it proper to take, places the three Municipalities of Bombay, Calcutta, and Madras, on altogether different footings. It allows the two former to retain the liberty they at present enjoy—that is, of going to their own local Governments,—whereas it takes the same right away from the Municipality of Bombay. This is practically saying that Calcutta and Madras may be trusted, while for its extravagance and imprudence Bombay must be deprived of privileges it has enjoyed up to this time conjointly with the other Municipalities. There are a good many who say—and I place great reliance upon their judgment—that the Bombay Municipality has been merely unfortunate, and that in point of fact it is no greater a sinner than either Calcutta or Madras. Whether this be so or not, I have not had sufficient experience of other parts of India to enable me to form an opinion; but this I know, that the withdrawal of this privilege from Bombay will grate most harshly upon the feelings of some of our most worthy citizens; and will cramp energy, and cause delay. For these reasons, I, as an individual, would be only too happy if any means could be discovered by which the Municipality

could be extricated from its present difficulties, and at the same time be left in possession of those privileges which Calcutta and Madras still enjoy. But I am afraid no such means exist. This deficiency of 15 lakhs is, I am sorry to say, an undoubted fact, which can only be met in one of two ways. One of these is to go to the Government of India and say, Will you advance us this money? and the other is to attempt to raise it ourselves under the provision of section 253 of Act II. of 1865—in other words, to allow the Justices the sanction of Government which is requisite under this Act to raise loans. The words of the section are—“It shall be lawful for the Justices, with the sanction of the Governor in Council, to borrow on mortgage such sums of money as they shall require;” and then it provides that any money shall be borrowed only to defray the expense of works of a permanent character. From this it is perfectly clear, as far as I can judge, that money can only be raised under this section when it is required to defray the expense of any permanent works already completed or in progress. The question then arises—Are these 15 lakhs, which are proved to be owing, required to pay for the execution of permanent works, which have been constructed, or are they not? On the answer to this question must depend our powers to raise money. To the best of my belief we cannot say this is the case. It has been urged by some, and those on whose opinion I place much reliance, that during the period in which these 15 lakhs of debt have been contracted, works which cost more than 15 lakhs have been constructed; and that therefore the provisions of this section have been met. But I must say I do not think that this meets the difficulty. It is quite true that during the period in which this debt was contracted, works which cost more than 15 lakhs have been constructed; but then, as a matter of fact, these works have been paid for out of current revenue; and I believe that at this moment only 3 lakhs are owing for the construction of works of a permanent nature. These 3 lakhs the Government of Bombay can undoubtedly raise, or sanction the Justices in raising, under section 253 of Act II. of 1865. But as regards the residue, it has, in my humble opinion, no authority. It would be utterly absurd to raise one portion of the loan under one Act, and then to go to the Government of India with reference to the other 12 lakhs. I may add that I do not think the Government of India would sanction any such proposal, because when they did hear that the Justices were negotiating a loan, on other terms except their own, they at once telegraphed to say that if these negotiations did not come to a termination, their previous offer would be withdrawn. Under these circumstances there was no alternative. We must either have said to the Justices—“Accept the money on these terms,” or, “You have chosen to get into debt, and must yourselves find means of getting out of it.” In my opinion, from the explicitness of the terms laid down by the Government of India, I think that though they may seem to be harsh and likely to retard the material progress of Bombay, it would be better to accept them at once than to protract the discussion. I will read a letter which it is proposed to send to the Government of India—

HIS EXCELLENCY THE PRESIDENT—I would suggest to the honourable gentleman that it is not consistent with the courtesy observed between two Governments that before a letter is despatched and in the hands of the Government to which it is addressed, it should be read even before a meeting of the Legislative Council. I would suggest to the honourable gentleman that the letter should be published as soon after the Government of India has received it as it can be, but in the mean time I think some exception would be taken by that Government if we were to read it now, when it has not been remitted to them.

The Honourable Mr. RAVENSCROFT—After what His Excellency has pointed out I think it will be sufficient to say that although the terms of the Government of India are harsh, the only means by which we can relieve the Municipality of their difficulties is to accept those terms which are embodied in this Bill, which I now beg to propose may be read a first time.

The Honourable Mr. SCOBLE,—I would ask the honourable member in charge of the Bill whether the Bench of Justices have expressed any opinion as to the conditions upon which this loan is to be granted?

The Honourable Mr. RAVENSCROFT,—I believe that the Committee representing the Bench expressed an opinion.

The Honourable Mr. SCOBLE,—But there has been no expression of opinion by the Bench of Justices?

The Honourable Mr. RAVENSCROFT,—It was understood that the Committee represented the Justices.

The Honourable Mr. TUCKER,—I may say that it was mainly because the Justices had expressed no opinion, and apparently because the matter had not been formally brought before them, although their Committee agreed to accept the loan, that Government has thought it necessary, for the interests of the town, to make a representation on the subject to the Government of India. I may say, I believe, on the part of Government, that we were very reluctant indeed to see a different position assigned to Bombay than was given to the other Presidency Municipalities. No reason has been alleged for this invidious—if I may so term it—distinction which has been made by the Government of India. Only so late as last year they passed the Public Works Loan Act, especially excluding from its operation all the great Presidency towns and Municipalities. Unless something has happened to cause them to change their minds, it is not apparent why Bombay should now be placed upon a different footing from Calcutta or Madras. I doubt the policy which would restrict the Municipality to one source of supply and which would make the State its sole banker. A time may arrive when even the Imperial exchequer may not be in a condition to grant loans, and when important works for sanitary or other purposes may be urgently needed, and which could not be deferred without great injury to the town and its inhabitants. The public welfare, then, might be endangered and general prosperity checked, because the Municipality could not avail itself of its credit and borrow funds for the execution of the required works from its own citizens or from banks or other capitalists. We have not rejected the offer of the Supreme Government because, as the Honourable mover has remarked, we could see no other way of extricating the Municipality from its present difficulties, inasmuch as the whole sum wanted could not be raised under the powers given by the Municipal Act, but we have respectfully protested against the withdrawal of these powers, and we hope to receive a favourable answer before the time comes for the passing of this Bill.

The Honourable Mr. MUNGULDASS NATHOQBHOY said—Sir, it is a matter of deep regret to find that during the last three years this Council has, on the application of the Bombay Municipality, been called upon to sanction measures for raising loans from the Government of India to the amount of thirty lakhs of rupees in order to extricate the Corporation from its pecuniary difficulties. In 1869 the Council sanctioned a loan of 15 lakhs; it was required, not for the purpose of erecting permanent works for the benefit of present and future generations, but for the purpose of liquidating debts incurred for current expenditure, and for providing a working cash balance. We are now asked to sanction another loan for the same amount, the bulk of which is again required for a similar object. The result of these loans is disastrous to the majority of the rate-payers of Bombay, who are suffering from heavy taxation and who will have to bear additional burdens to discharge this loan for the next twenty years. I therefore sincerely hope that in the new Municipal Bill which is shortly to be introduced in this Council, such stringent provisions will be made as to render a recurrence of such evils impossible.

HIS EXCELLENCY THE PRESIDENT said—I would only say a few words, in much the same tone as the honourable gentlemen who have preceded me. Certainly the Government has been very adverse to the passing of such a Bill as this, but it was practically the only way in which the money could be raised, so as to relieve the Municipality of Bombay from their pressing difficulties. We were advised, as has been pointed out by the Honourable the Chief Secretary, that it was impossible to raise the sum required by the Municipality under the general borrowing powers given by the Municipal Act. Of course it would have been in the power of this Government to have sanctioned a loan to be raised by the Municipality from the public by a special Act, but after the intimation we received from the Government of India it was quite clear that if this Council did pass such an Act, it would not receive the sanction of the Supreme Government, and therefore the only method by which the money could be obtained was by accepting the terms which have been imposed by the Government of India. I may say that I am not without hope that the Government of India, when the earnest but respectful protest which we have felt it our duty to make is presented, will reconsider their determination, and relieve the Municipality of Bombay from what the Honourable Mr. Tucker very justly calls the invidious as well as onerous conditions which they have thought fit to impose; and I think it may be fairly pointed out to the Government of India that the conditions which they impose upon the Municipality are

practically a repeal, by the mere authority of the Governor General, of a special provision of the Governor General's Council. Only last year the Governor General's Council determined that the provisions of the Municipalities' Act should not apply to the Municipalities of Calcutta, Madras, and Bombay, and looking to the independent spirit that has been on more than one occasion manifested by the Council of the Governor General, it seems to me to be not improbable that this Act would not have been passed by that Council if that clause had not been inserted. That clause forms part of the Act; and now this action on the part of the Supreme Government is practically the repeal of a special enactment of the Council of the Governor General. As I have said, I am not without hope that the Supreme Government may see fit to reconsider their determination, and more particularly because the Act referred to provides that money shall only be borrowed subject to certain rules which shall be made by the Governor General in Council, and which may from time to time be amended and altered by the same authority. It may be observed however, that although this Act has been passed, up to the present time no conditions and no rules whatever have been promulgated by the Government of India under the Act, and thus the stipulation thus peremptorily imposed upon the Municipality is that they must accept the loan in entire ignorance of what the conditions, not are, but may be, under which it is contracted. I find, further, that the rules under which loans shall be made stipulate the manner of making application for loans, inquiries to be made in relation to such loans, the manner of conducting such inquiries, the cases in which Government may make loans with the sanction of the Governor General, the manner of imposing such conditions, the time of making loans, the inspection of all works carried out by loans, the instalments by which loans shall be repaid, the interest to be charged, the manner and time of repaying both loan and interest, the sum to be charged against the fund, the cause of effecting the loan; that on any omission to pay either the interest or the loan power is given to attach all securities, and the manner of the disposal of them. That of course opens a field for conditions of such stringency that it seems a great hardship, I must confess, to call upon the Municipality to accept a loan in this way, when the Justices do not know positively what rules the Governor General may think fit to lay down. And then by the 5th section I find that if a loan be made under this Act, and if either instalment or interest is not paid according to the conditions laid down by the Governor General in those rules which have not yet been promulgated, the Local Government may attach the funds, rates, taxes, duties, or property on the security of which the loan was made, and that after such attachment no person, except an officer appointed by the local Government shall in any way deal therewith, but that such officer may do all such acts therewith as the municipal officers might have done if no such attachment had taken place—which is practically to say that, if there is any delay in the payment of any instalment, it shall be in the power of the local Government to appoint an officer who shall immediately supersede the Municipality, and have control over all its property. I must confess these are conditions so stringent that I hope after the earnest but respectful protest which Government has thought it its duty to make, the Government of India will not insist upon their stipulations. At the same time the money is wanted, the interest is accruing day by day at an exorbitant rate; and therefore it appears to me necessary for this Council to pass an Act such as is now before us, and rely upon the forbearance and consideration of the Government of India to relieve the Municipality from the conditions which they threaten to impose.

The Honourable the ADVOCATE GENERAL,—I would ask whether the first reading of this Bill should not be postponed. The terms laid down by the Supreme Government seem rather hard, and their effect will be to deprive Bombay of the power of borrowing which it now enjoys, and place it in an invidious position in comparison with the other Presidency Municipalities. I gather from what has been said by His Excellency that a representation is to be made to the Government of India, and that there is some prospect that the terms may be relaxed. Perhaps, therefore, it would be well to wait until we know the result of that representation. I would observe that if we urge that the borrowing powers which the Municipality at present possesses are not unfettered,—that it must be dependent upon the sanction of the local Government whether a new loan is granted—and that the restriction thus put upon the powers of the Justices to borrow is sufficient for the protection of the Supreme Government—our representations may be of some avail. I apprehend that on an application to our Government by the Bench of Justices for a loan for any purposes for which they are authorised to borrow

money, our Government would take into consideration, in dealing with the question whether they would sanction it or not, the fact that the Municipality has already had two exceptional loans, amounting to thirty lakhs, from the Supreme Government under special Acts of the Legislature—the Act of 1870, and the Bill we are now considering for a first time. The question however of the repeal of the Municipality's borrowing powers appears to be one that affects the Local Government more than the Justices; for the Justices have already restrictions put upon the exercise of their borrowing powers which I apprehend are sufficiently stringent.

The Honourable Mr. SCOBLE,—SIR,—This Bill is as unpalatable to me, as I am happy to see it also is to all the members who have spoken upon the subject; but having regard to the absolute necessity of devising some means of liberating the Municipality from its present embarrassment, and considering that interest is accruing on the debts now due, I think it would be more advisable not to postpone the first reading of this Bill. I hope that the representations which I understand are to be made to the Supreme Government, as well as the expression of opinion of the members of this Council to-day, which they may gather from the report of these discussions, may induce the Government of India to modify its requirements before this Bill, with its obnoxious final clause, is passed by this Council. I will therefore vote for the first reading, hoping that when the Bill comes on for future discussion it will do so under more favourable conditions than it does to-day.

The Honourable Mr. TUCKER,—I think it would be better to proceed with the Bill through the preliminary stages, because then in the future we shall be in a better position to do quickly what may be necessary.

The Bill read a first time and referred to a Select Committee.

The Bill was read a first time, and referred to a Select Committee, composed of—

The Honourable Mr. TUCKER,
 The Honourable Mr. MUNGULDASS NATHOOBHOY,
 The Honourable Colonel KENNEDY,
 The Honourable Sir JAMSETJEE JEJEEBHOY, Bart., and
 The Mover.

It was directed that the report of the Committee should be presented within three days.

His Excellency the President then adjourned the Council.

By order of Excellency the Right Honourable the Governor,

JOHN NUGENT,

Acting Under-Secretary to Government.

Bombay Castle, 30th January 1872.