


THE



Bombay Government Gazette.

Published by Authority.

THURSDAY, 7TH MARCH 1872.

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

PART V.

PROCEEDING 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 Thursday, the 8th February 1872, at noon.

P R E S E N T :

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 the ADVOCATE GENERAL.
 The Honourable MUNGULBASS NATHOOBHOY, C.S.I.
 The Honourable A. D. SASSOON, C.S.I.
 The Honourable BYRAMJEE JEJEEBHOY.
 The Honourable VENAYEKRAO APPASAHEB, of Koorundwar.
 The Honourable Colonel M. K. KENNEDY.
 The Honourable Sir JAMSETJEE JEJEEBHOY, Bart., C.S.I.
 The Honourable A. R. SCOBLE.
 The Honourable E. W. RAVENSCROFT.

The Honourable Mr. TUCKER presented the report of the Select Committee appointed to consider the "Bill to amend Act. XIII. of 1856." In doing so he said the members of the Committee were unanimous with regard to the principle of the Bill, with the exception of one clause,

Papers presented to the Council.

upon which two members—the Honourable the Advocate General and the Honourable Mr. Munguldass Nathoobhoy—had entertained doubts. Those two honourable gentlemen had expressed doubts as to whether it was fair that officers who had already been discharged should receive pensions or allowances from the fund to be constituted by this Bill, and had wished to be made acquainted with the position of the fund. The honourable gentleman said he had therefore had a statement prepared, showing the assets and liabilities of the fund, from which it appeared that on 31st December last there was a cash balance, bearing interest at 4 per cent., of Rs. 1,81,581-12-5, and capital invested in treasury notes at 5 per cent. of Rs. 87,500, which made in all Rs. 2,69,081-12-5. The average of three years' annual receipts, including subscriptions and interest, was Rs. 24,286-7-1; and the present annual payments to pensioners, including establishment, &c., was Rs. 10,943, so that there was no fear but that with the increased subscriptions which they proposed to legalize the fund would be able to bear what they proposed to put upon it. He had also had a list prepared of the European officers who had taken their discharge from the Bombay Police in the hope of being pensioned under the new Police Superannuation Fund Act. The three superintendents on this list had each paid to the old fund Rs. 604-11-0, and the other man, a first-class inspector, had paid Rs. 367-1-0. These officers being retired military servants, did not come under the Uncovenanted Service Pension rules, and so received permission to subscribe to this fund, as they would not otherwise have had the advantages which the other police officers enjoyed. He hoped he had removed the objections of his honourable friends by what he had just stated, and he would now move that the report of the Committee do lie on the table.

It was agreed that the report should lie on the table.

The Honourable Mr. TUCKER presented the report of the Select Committee appointed to consider 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.” He wished, he said, to make a few remarks with reference to what had occurred in the Select Committee. The Committee had received a letter from Mr. Hope, bringing to notice one or two points which he desired the members to consider, and he wished to explain why they did not think it necessary to make the alterations which Mr. Hope recommended. One of the proposed alterations referred to the calculation of the sum to be paid in discharge of the debt of 15 lakhs incurred to the Government of India. This sum had been calculated in different public offices, with varied results in each calculation. The amount had, therefore, been calculated in another public office after the receipt of Mr. Hope's letter, by which calculation he understood the sum brought out was nearer the figure in the Bill than Mr. Hope's figure, and therefore they had thought it best to adhere to the sum as calculated by the Accountant-General, although it did not quite agree with the figure arrived at by Mr. Hope. Secondly, Mr. Hope pointed out that inconvenience might occur by putting the name of the Controller in this Bill, as he had recommended to Government that there should be no Controller; and Mr. Hope thought it probable that in the larger Act which would have to be passed, reconstituting or reorganizing the Municipal constitution, some inconvenience might be saved by introducing another set of words. But as we thought that it would be easy to provide in the new Municipal Bill that the duties which fall upon the Controller under this or any other Act shall be performed by the officer who may be substituted for the Controller under the new constitution, the Committee had thought it unnecessary to make any alteration. But of course that point would be considered when the clause regulating it came on for consideration before the Council. With these few observations he begged to move that the report lie on the table.

It was agreed that the report should lie on the table.

The Honourable Mr. TUCKER then presented the report of the Select Committee appointed to consider the “Bill for the Regulation of Burial-grounds and Burning-grounds in the territories subject to the Government of Bombay.” The honourable gentleman said the Bill had been under consideration for a considerable time. It was introduced into the Council by his honourable friend Mr. Mansfield, and on his going home last year his name was substituted for Mr. Mansfield's in reference to this particular measure. Since that time the Committee had had few opportunities of meeting, and they now brought up their Report. He would notice that they had made one or two important alterations in the Bill. One was to provide that when any particular place for burial or burning or exposure of the dead was closed another should be provided. The Committee had used the word “place,” although a somewhat ambiguous one, instead of “land,” in order to leave it open for discussion by the Council whether it be sufficient only to provide “land” and not to

provide a "place." On that point several of the members of the Committee wished to reserve their opinion until the question came to be discussed. They had introduced a very important principle into the Bill, namely, the imposition of the duty of providing funds for the maintenance of these places upon municipalities, where municipalities exist, and upon the local funds where they do not. With these observations he begged to move that the report do lie on the table.

It was agreed that the report should lie on the table.

The Honourable Mr. TUCKER now moved that Bill No. 1. of 1872—a "Bill to amend Act XIII. of 1856"—be read a second time.

Mr. Tucker moves the second reading of Bill No. 1 of 1872.

The Honourable the ADVOCATE GENERAL said that he and the Honourable Mr. Munguldass Nathoobhoy had reserved their opinion when the Bill was before the Select Committee as to the propriety of the principle involved in the 8th Section of the Bill, as they had doubted whether it was fair to charge the fund with the pensions of officers who had ceased to be members of the Police force, and who presumably would not have contributed to that fund. But on inquiry it turned out that, although in form this Bill purported to create a new fund, to be raised partly by increased subscriptions and partly by fines and certain moneys arising from the sale of Police property, yet in point of fact the old fund would remain in existence, and would form a large portion of the new fund, and the two funds would form one common fund. So that the officers to be provided for by Section 8 of the Bill would be persons who had actually subscribed to the old fund. The honourable gentleman in charge of the Bill having explained the position of the fund, it appeared to him that there was no reason in point of principle why the 8th Section should not be accepted by the Council. Neither he nor the Honourable Mr. Munguldass, therefore, would now offer any objection to the second reading of the Bill.

HIS EXCELLENCY THE PRESIDENT said it seemed to him that if they repealed Section 17 of Act XIII. of 1856, they would have no power to deal with the fund created under that Act, so that Government would have no power to grant pensions which would fall upon the fund which had accumulated up to the present time.

The Honourable the ADVOCATE GENERAL said it appeared to him that the difficulty arose from the form in which the Bill had been drawn, that form being a repeal of the previous Act, which was the foundation of the old fund. He would submit that the best way of getting out of the difficulty would be to introduce a clause to the effect that the old fund should be transferred to the trustees, whoever they might be, in charge of the new fund, and that both funds should constitute one common fund which, so far as the granting of pensions and allowances would be concerned, would be subject to the terms of the new Bill.

HIS EXCELLENCY THE PRESIDENT said that Section 17 of the Act, which formed the Police Superannuation Fund, directed that a certain amount should be deducted from the pay of every member of the force; and it then went on to say that these moneys should be accumulated and invested so as to form a Police Superannuation Fund, and should be applied from time to time to the payment of such superannuation or retiring allowance as might be ordered by the local Government. Would it be desirable to repeal that? If so, then you will direct that in future there should be other deductions to supply pensions. It appeared to His Excellency that, if this Bill were passed, this Government would have no legal power to deal with the moneys already contributed. It clearly appeared to him that there was a difficulty in the matter which would require to be got over.

The Honourable Mr. TUCKER : The defects which your Excellency has pointed out will certainly require to be remedied. From what has been said by the Honourable the Advocate General, it appears his objections have been removed, and I now desire to point out more clearly than I did before the exact state of the income of the fund. I find from a statement supplied by the Accountant General that, up to the end of March, 1871, the amounts received in official year 1870-71 were as follow :—subscriptions, Rs. 8,255-7-2; fines, Rs. 872-15-0; fees for stamping weights and measures, Rs. 3,396-4-0; pound fees, Rs. 9,255-12-9; interest on treasury notes, Rs. 4,550-0-0; interest on current account, Rs. 5,793-2-7; total, Rs. 32,123-9-6,—so that of the total annual receipts of the fund only a quarter or thereabout was raised by subscriptions.

The Honourable Mr. MANSFIELD thought from the figures the Honourable Mr had quoted that the amount directed to be subscribed would be more than was r

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It was agreed that the report should lie on the table.

The Honourable Mr. TUCKER presented the report of the Select Committee appointed to consider 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.” He wished, he said, to make a few remarks with reference to what had occurred in the Select Committee. The Committee had received a letter from Mr. Hope, bringing to notice one or two points which he desired the members to consider, and he wished to explain why they did not think it necessary to make the alterations which Mr. Hope recommended. One of the proposed alterations referred to the calculation of the sum to be paid in discharge of the debt of 15 lakhs incurred to the Government of India. This sum had been calculated in different public offices, with varied results in each calculation. The amount had, therefore, been calculated in another public office after the receipt of Mr. Hope's letter, by which calculation he understood the sum brought out was nearer the figure in the Bill than Mr. Hope's figure, and therefore they had thought it best to adhere to the sum as calculated by the Accountant-General, although it did not quite agree with the figure arrived at by Mr. Hope. Secondly, Mr. Hope pointed out that inconvenience might occur by putting the name of the Controller in this Bill, as he had recommended to Government that there should be no Controller; and Mr. Hope thought it probable that in the larger Act which would have to be passed, reconstituting or reorganizing the Municipal constitution, some inconvenience might be saved by introducing another set of words. But as we thought that it would be easy to provide in the new Municipal Bill that the duties which fall upon the Controller under this or any other Act shall be performed by the officer who may be substituted for the Controller under the new constitution, the Committee had thought it unnecessary to make any alteration. But of course that point would be considered when the clause regulating it came on for consideration before the Council. With these few observations he begged to move that the report lie on the table.

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provide a "place." On that point several of the members of the Committee wished to reserve their opinion until the question came to be discussed. They had introduced a very important principle into the Bill, namely, the imposition of the duty of providing funds for the maintenance of these places upon municipalities, where municipalities exist, and upon the local funds where they do not. With these observations he begged to move that the report do lie on the table.

It was agreed that the report should lie on the table.

Mr. Tucker moves the second reading of Bill No. 1 of 1872. The Honourable Mr. TUCKER now moved that Bill No. 1. of 1872—a "Bill to amend Act XIII. of 1856"—be read a second time.

The Honourable the ADVOCATE GENERAL said that he and the Honourable Mr. Munguldass Nathoobhoy had reserved their opinion when the Bill was before the Select Committee as to the propriety of the principle involved in the 8th Section of the Bill, as they had doubted whether it was fair to charge the fund with the pensions of officers who had ceased to be members of the Police force, and who presumably would not have contributed to that fund. But on inquiry it turned out that, although in form this Bill purported to create a new fund, to be raised partly by increased subscriptions and partly by fines and certain moneys arising from the sale of Police property, yet in point of fact the old fund would remain in existence, and would form a large portion of the new fund, and the two funds would form one common fund. So that the officers to be provided for by Section 8 of the Bill would be persons who had actually subscribed to the old fund. The honourable gentleman in charge of the Bill having explained the position of the fund, it appeared to him that there was no reason in point of principle why the 8th Section should not be accepted by the Council. Neither he nor the Honourable Mr. Munguldass, therefore, would now offer any objection to the second reading of the Bill.

HIS EXCELLENCY THE PRESIDENT said it seemed to him that if they repealed Section 17 of Act XIII. of 1856, they would have no power to deal with the fund created under that Act, so that Government would have no power to grant pensions which would fall upon the fund which had accumulated up to the present time.

The Honourable the ADVOCATE GENERAL said it appeared to him that the difficulty arose from the form in which the Bill had been drawn, that form being a repeal of the previous Act, which was the foundation of the old fund. He would submit that the best way of getting out of the difficulty would be to introduce a clause to the effect that the old fund should be transferred to the trustees, whoever they might be, in charge of the new fund, and that both funds should constitute one common fund which, so far as the granting of pensions and allowances would be concerned, would be subject to the terms of the new Bill.

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The Honourable Mr. TUCKER: The defects which your Excellency has pointed out will certainly require to be remedied. From what has been said by the Honourable the Advocate General, it appears his objections have been removed, and I now desire to point out more clearly than I did before the exact state of the income of the fund. I find from a statement supplied by the Accountant General that, up to the end of March, 1871, the amounts received in official year 1870-71 were as follow:—subscriptions, Rs. 8,255-7-2; fines, Rs. 872-15-0; fees for stamping weights and measures, Rs. 3,396-4-0; pound fees, Rs. 9,255-12-9; interest on treasury notes, Rs. 4,550-0-0; interest on current account, Rs. 5,793-2-7; total, Rs. 32,123-9-6,—so that of the total annual receipts of the fund only a quarter or thereabout was raised by subscriptions.

The Honourable Mr. MANSFIELD thought from the figures the Honourable Mr. Tucker had quoted that the amount directed to be subscribed would be more than was necessary.

The Honourable Mr. TUCKER explained that the fund being in its infancy, there had been fewer calls upon it during the first portion of its existence than there would be in future, for the liabilities in subsequent periods of twenty years would be greater than in the first twenty years.

The Honourable Mr. MANSFIELD asked how long the old fund had been in existence.

The Honourable Mr. TUCKER answered that it had been in existence since 1856, but that it was only now that contributors were beginning to get pensions. He did not think there would be too much capital when the prospective charges on the institution were considered.

HIS EXCELLENCY THE PRESIDENT mentioned that one-third of the old fund was derived from fees which were not spoken of in Act XIII. of 1856 at all, such as the fees for impounding cattle, for stamping measures, &c.

The Honourable Mr. MUNGULDASS NATHOOBHOY said he was not aware that such fees as those mentioned by His Excellency the President were given to the Police Fund by Act XIII. of 1856, and, strictly speaking, he was of opinion that they should be given over to the Municipality, because the Municipality provided the enclosures for impounding cattle, &c.

The Honourable Mr. TUCKER said he was informed by the Police Commissioner that in Act XLVI. of 1860 there was a special clause to the effect that it was the special duty of all Police officers to remove all cattle or other animals found straying on the roads or thoroughfares, and to confine such animals in any public pound; and if these animals were not claimed by the owners within ten days, and a sum paid to the person appointed by the Police Commissioner of eight annas for every goat, sheep, or horse, or one anna for every other animal, and also the cost of feeding such animals found so trespassing, would be publicly sold, and the produce of the sale, after deducting the expenses of keep, should be credited to the Police Superannuation Fund.

HIS EXCELLENCY THE PRESIDENT: But that clause does not authorise you to grant anything out of that Superannuation Fund.

The Honourable Mr. TUCKER: If the fees can be legally credited to the Fund, they can afterwards be legitimately disposed for the purposes for which the Fund was created.

HIS EXCELLENCY THE PRESIDENT: Very probably the Executive would deal with it, but still the Executive would be doing so without any legal authority. But how about the fees for stamping weights and measures? The resolution of Government is, that if the fees are small, they should be allowed to be thrown into the Police Fund, but I do not know whether that is a different fund from the Police Superannuation Fund.

The Honourable Mr. TUCKER: As these points have been raised, I think it would be better to refer the Bill back to the Select Committee, where the best mode of meeting the objections now taken can be more appropriately considered.

The Honourable Mr. SCOBLE moved that the Bill be referred back to the Select Committee.

Bill re-committed. The Bill was then remitted back to the Select Committee, and the Committee were instructed to return their report on that day week.

The Honourable Mr. RAVENSCROFT moved the second 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." One or two honourable members of the Select Committee, he said, had taken some objection

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

to the principle involved in the 6th section, and he thought it would be better for them to state their objections, and for him to answer them afterwards. At present he did not exactly know what the objections were.

The Honourable Colonel KENNEDY said he opposed the second reading of the Bill. He felt less reluctance in doing so, because the honourable Mover and the honourable gentlemen who had spoken on the Bill at the former meeting had all more or less objected to the principle of the Bill. The Bench of Justices had by a formal resolution decided not to accept the Bill clogged with the conditions which the Government of India wished to impose. A committee of the Justices had subsequently, and under pressure, agreed to accept it on those terms, at the same time throwing upon this Council the responsibility of enacting that the powers which the Bench had hitherto enjoyed should be withdrawn. He did

not think that this Council should accept that responsibility, especially since he thought the committee had no power whatever to agree on behalf of the Justices that the loan should be accepted on those terms. If it were clear that the Bench desired its own humiliation there would be nothing more to say, but it certainly was not clear that they did so. The Honourable Mr. Ravenscroft had said that they had no alternative but to accept the loan except under these terms, but he saw that section 153 of the Municipal Act reads as follows:—

“It shall be lawful for the Justices, with the sanction of the Governor in Council, to borrow on mortgage, as hereinafter mentioned, such sums of money or any part of such sums as may be necessary for defraying any expenses already incurred, or thereafter to be incurred, in the execution of any works under this Act. Provided always that any money borrowed under the authority of this Act shall be borrowed only to defray the expenses of works of a permanent character.”

Then the Advocate General had given his opinion as follows:—

“The object of the loan which the Justices propose to raise on the security of the rates is stated in their resolution of the 12th instant to be in order to obtain a cash credit of not less than 15 lakhs of rupees to be applied to the immediate liquidation of the pressing pecuniary needs of the Municipality. It is not mentioned what is the nature of these pressing demands. If any of them arise out of expenditure which has been incurred in the execution of works of a permanent character in pursuance of the Municipal Act, and remains unpaid, I am of opinion that the Justices can legally contract such a loan as will suffice to satisfy these demands.”

Mr. Hope had stated that a sum exceeding 15 lakhs had been expended upon works of a permanent character, that is to say, the capital had received an advance from revenue, and revenue has now to be recouped. Now, if the 15 lakhs and upwards had been expended upon works of a permanent character, would not the Act enable the Bench to raise a loan, with the sanction of the local Government to pay the money? He thought that all that was to be done was to show that this money had really been expended upon capital account, and if the proper distinction between capital and revenue were held in view, he did not see why money should not be borrowed to recoup revenue expended upon capital account. But even though it could not be shown, as he believed it could, that the full sum of fifteen lakhs had been expended, he would prefer to allow the Bench to raise such sums as they were able to borrow under the existing Act, and to meet the remainder of their liabilities as best they could. Even if the full amount needed could not be obtained, it would be better for the Municipality to accept a small additional liability rather than accept the stringent conditions sought to be imposed upon it. For these reasons he opposed the second reading of the Bill.

The Honourable Mr. SCOBLE: I quite agree with the Honourable Colonel Kennedy in thinking that this Council should not take upon itself the responsibility of passing this Act in its present shape, and thereby placing the Corporation of the Justices of the Peace for the City of Bombay—without their consent so far as I have been able to ascertain, and against their desire so far as it has been expressed—under the provisions of the Local Public Works Loan Act of 1871. I do not stop, Sir, to go into the question whether or not it might be shown by the Municipal Commissioner that there has been an advance out of current revenue for the purpose of establishing permanent works greater than the sum which the Justices are now under the necessity of borrowing. I apprehend that this Council, which conferred upon the Corporation the borrowing powers which it enjoys under Act II. of 1865, might, if it thought fit, confer upon that Corporation the borrowing powers that would be necessary at the present moment to enable it to raise this loan; and therefore I do not see that the Corporation, still less do I see that this Council, is helpless in the matter. But my principal reason for opposing the introduction of this provision in the Act is that I cannot but consider it as a retrograde measure, entirely opposed to what we have been led to understand is the policy of the Government of India in regard to matters of this kind. Sir, I am not enamoured of the provisions in the Local Public Works Loan Act of 1871. That Act was passed after very little discussion, and probably it excited but little discussion simply because there was a clause introduced into it to the effect that nothing in it should apply to the Municipalities of Calcutta, Madras, or Bombay. Sir Richard Temple, in supporting the Bill, gave it to be understood how far its operations were intended to extend. Sir Richard Temple, as appears from the published report of the proceedings of the Viceroy's Council, stated that under the old arrangement mofussil municipalities were prevented from borrowing, except at various rates, in the open market. “The present bill,” he went on to say, “would give them the advantage of having the State for a creditor, and effecting loans at

four and a half to five per cent., rates which, as the Council was aware, could not be elsewhere obtained. The Government of India was always happy to make such advances. The cash balances were high enough to make it easy and safe to do so. No risk of loss to the public would be incurred, but great relief would be afforded to municipalities." Now, Sir, I take it upon the statement of the Finance Minister of India that what this Bill was meant to do was to afford relief and not to put difficulties in the way—that small municipalities were to be benefited, and not large ones hampered; and I apprehend that by bringing the Municipality of Bombay under the provisions of this Act—an Act which requires the Government of India to make rules of the minutest character not only as to the raising of the money but as to its expenditure—it would be a great, if not an absolute bar to the introduction into Bombay of those great improvements for which the public have been clamouring for many years, and which the public—I cannot say expect, but hope, will be ere long brought into effect. We have had it brought to our notice that the water-supply of Bombay is insufficient. We have had it urged upon us that the dams at present forming the reservoir at Velhar, which at present furnishes our water-supply, may, as all dams of that character are liable to do, give way at any time; and that therefore, although at present there is no apprehension of immediate danger, we ought to have a fresh means of water-supply in the shape of supplements to the reservoirs already existing. I ask this Council whether, supposing the cash balances at the disposal of the Government of India were not high enough at the time the Municipality desired to raise a large sum for the execution of those works, it would be practicable to obtain from the Government of India the money which would be requisite to carry out those improvements. Difficulties might probably be raised on the ground of the inconvenience which it might cause to the Government of India, if the cash balances were not flourishing, to grant a large sum for such a purpose. But, as I said before, my great objection to this Bill is not so much the inconvenience that would arise, but the retrogression of policy which the acceptance of these conditions would indicate. It is not much more than fourteen months ago that there was issued from the Supreme Council a minute which revolutionised the administration of this country. I refer to that which is known usually as the decentralisation minute. What Sir, I ask, is the condition which is here imposed upon us but a return to that very policy of centralisation which, not more than fourteen months ago, the Government of India, acting under the instructions of the Government of England, said was a policy which could no longer be carried out either conveniently or advantageously? I have in my hand a despatch which was sent by the Duke of Argyll at the time upon this question. The despatch is dated the 23rd of February 1871, and in the fourth paragraph I find the following:—"You also consider that the Supreme Government is not in a position to deal satisfactorily with local requirements, and does not possess the knowledge necessary for the full and successful development of local resources." Consider the present Bill in the light of this statement. It will make the Municipality of Bombay, when it wishes to borrow money for local purposes, go to the Government of India—a Government which, according to its own admission, is not in a position to deal satisfactorily with local requirements. Later on in the despatch, I find the following:—"I am fully sensible of the great importance of extending the power and responsibility of the several Governments in regard to departments which can be considered as local, and of the anxious deliberation which you have given to this subject." I say that to deprive the Government of Bombay of the control which it at present possesses over the borrowing powers of the Municipality is, instead of extending the powers and responsibility of this Government, to limit these powers in an unnecessary manner. For these reasons I cannot consent to vote for the second reading of this Bill so long as this obnoxious clause forms a part of the measure.

The Honourable the ADVOCATE GENERAL: Sir,—My Honourable friend Mr. Scoble has addressed you upon the second reading of this measure, but notwithstanding what has fallen from him, I see no reason why this Bill should not be read a second time. The objection taken is that the Government of India, after being applied to for a 15 lakh loan, which is the second loan for a similar amount which has been applied for within a short time, has made it a term of its consent that the borrowing powers now conferred upon the Justices by Act II. of 1865 should be repealed, and that henceforth when money is required for the purposes of the Municipality, the Corporation must take the necessary steps for the purpose under the Local Public Works Loan Act which was passed last year. The loan which the Corporation had been compelled to make an application to Government for in the present instance, was not for any of the purposes stated in their special Acts; but, as far as the greater portion of the money was concerned, it was to meet certain debts which had been incurred for current expenditure. It is true that a portion of it, about three

lakhs and a fraction, as I gather from my honourable friend Colonel Kennedy, has been paid for public works.

The Honourable Colonel KENNEDY: About fifteen lakhs, according to Mr. Hope's statement.

The Honourable the ADVOCATE GENERAL: The contention is that the whole amount should be considered as borrowed for permanent works, because, in making up the accounts it would go to capital account. I think there is a great difference between a debt which has been incurred in respect of permanent works, and money which may properly enough, as a matter of account, be put to capital account. In my opinion, in respect of every debt that has not been incurred for permanent works, the Justices have no power, under either of their Acts, to borrow, and it is only a portion of the 15 lakh loan that can be properly said to be debt incurred for permanent works. All I can say in answer to my honourable friend is that if the whole of the 15 lakh loan is money required to pay for debts incurred for permanent works, there is no reason why the Justices should not, under their existing borrowing powers with the sanction of the local Government, raise the money without applying to the Supreme Government. Why did they not take that course? When the Municipality did not take the course of borrowing under their old powers, I can only suppose that the fifteen lakhs did not belong to that class of debt; and I must take it that at least about twelve lakhs of this fifteen is required for purposes for which the Justices have no borrowing powers. It must be remembered that this is not the first time that the Municipality have come to the Government of India to borrow money outside their Act. I do not say whether it is their misfortune or their fault that they have been unable to keep out of debt, but if they were obliged to incur debt they were not careful to see that that debt should have been incurred for such works as they were authorised to borrow money for. That being the state of the facts as I understand them, my honourable friend Mr. Scoble endeavours to get over the difficulty by saying it is quite competent to this Council to enlarge the borrowing powers of the Justices so as to enable them to contract loans for any purpose whatever. It may be so, but I certainly for one should most strenuously oppose any measure brought in here to enlarge the borrowing powers of the Justices for any purpose except for works of a permanent character. They have already considerable powers conferred upon them—a power which corresponds to the powers conferred upon several corporations in England; but nothing would be more dangerous than to give general borrowing powers to this Corporation wholly irrespective of the purposes to which it would apply the money. Anything of the sort would be most absurd. I presume that if such an application were made to this Council on behalf of the Justices it would not meet with success. There is another point from which this restriction may be looked at. After all it is not a question which affects the Bench of Justices so much as it affects the local Government. The Justices have no unrestricted borrowing powers. It is not as if, because they are about to execute works of permanent character, they could go into the market and borrow upon a mere resolution of their own. They must come to the local Government, and in effect the terms on which the Supreme Government have agreed to grant this loan are a restriction upon the power of our local Government, and is a matter that appears to me much more for the consideration of the local Government than for the consideration of the Justices. My honourable friend said that those terms were terms which were imposed without the consent of the Justices. As far as I can gather from their proceedings, the question of the loan was put before them, and certainly they have not negatived the borrowing of the money upon those terms. They may consider them hard—and I must say it would have been more generous for the Government of India to have left the power of borrowing as it is, and to have relied upon our local Government to act as a sufficient check upon any improper exercise of those borrowing powers. My recollection of the last resolution on the subject by the Bench is that they left the matter to the local Government to make the best bargain they could for the Justices. My impression therefore is that the Justices themselves are very much to blame for the necessity arising that they should go to the Government of India at all in the matter. I therefore think that from the nature of the transaction, and looking at the circumstances under which this money has been applied for, the Justices can hardly blame any one except themselves that this second check is sought to be put upon them by the Supreme Government, for this is the second time that an application has been made for an extraordinary loan.

His EXCELLENCY THE PRESIDENT: I would only add a few words to what has been said. It appears to me that we must look upon this matter from a very practical pounds, shillings, and pence point of view. About six weeks ago Mr. Hope urged upon me that immediate action should be taken, because he represented that there were large debts due to con-

tractors and others on which heavy interest had to be paid, and he represented that it was absolutely necessary that the money should be obtained at the shortest possible date in order to clear away the debts and provide a working balance. Now practically what is recommended by the Honourable Colonel Kennedy and the Honourable Mr. Scoble is that we should on our own authority pass a special Act, which would then have to go to the Government of India for the assent of the Governor General. I think they must see the probability, from the correspondence which has been placed before them, there would be of the Act being negatived by the Government of India, and the Municipality being thus left in the same embarrassed position as now; and when all this has been done, which would probably occupy some weeks, the only practicable course left would be that we should pass a bill exactly similar to that now before the Council. If that were done, the Municipality would probably not receive for two or three months the money which the Municipal Commissioner represented to be necessary to have at once. The money is wanted, and is wanted immediately, and this is the only means of obtaining it. I must say I feel very strongly the force of many of the remarks that have been made by the speakers who have preceded me, but I hope the Council will now pass this Bill and give the Municipality at once the money of which they are in so much need. My honourable friend the Advocate General thinks this is a matter which rather concerns the dignity and position of the local Government than of the Municipality. I refrain, because I do not think this is the proper place to do so, from making any remarks upon the attitude which, I grieve to say, has been taken up by the Government of India with reference to the local Government. This is not the only instance in which that attitude has been taken up, especially with reference to financial questions, but I forbear from expressing what I think upon this subject lest I should appear to be as wanting in respect to the Supreme Government, as they have failed in respect (and I use that word advisedly) to us. These circumstances will probably have to be considered by the highest authority, and, looking to the wide scope of the inquiry entrusted to the Committee that sat during the last Session, may possibly attract the attention of Parliament. I therefore think it best not to refer to considerations regarding the action of the Supreme Government, indicating as my honourable friend the Advocate General has pointed out, a desire to place restrictions upon the local Government which neither the circumstances of the case nor the public interests require. I would only point out therefore to my honourable friend Colonel Kennedy, that I think he is in error in supposing that the borrowing powers of the Municipality under the present Act could be had recourse to in order to relieve the Municipality from its present state of embarrassment. Obviously in the first place there is a portion of the expenditure which even the greatest ingenuity could not class as being upon works of a permanent character. I will take for instance the Panwell Brickworks. In order to their efficient working a lakh and a half have been expended upon them, portions of that upon machinery, puddling mills, and various things of that kind, which obviously were never contemplated by the Legislature at the time it was proposed to give the Municipality the power of borrowing for works of a permanent character. There are other items of a similar character; and I think the opinion of the Honourable the Advocate General—and I hope he will not think it presumptuous for me to say so—is clearly correct, that when expenditure is once made from current income, they cannot have recourse to the power given by the Municipal Act to borrow money for works of a permanent character to recoup it. The honourable gentleman referred to some words in the clause saying that they might borrow for expenditure already incurred. That I apprehend clearly means expenditure already incurred, but which has not been paid. When once you have paid for the works, even though they be of a permanent character, it appears to me perfectly clear that it is not competent for the Municipality, even with the consent of the local Government, to borrow to defray the expense. I would also point out that part of the proposal of Mr. Hope proceeds upon the footing that it will place a cash balance of 2½ lakhs in the hands of the Commissioner to enable him to go on and not exhaust his funds. Clearly that could not be said to be for permanent works. I will conclude these observations by saying that I think the Council will do best to proceed at once to the consideration of this Bill in detail, and thus relieve the Municipality from its difficulties.

The Honourable the ADVOCATE GENERAL wished to make a few remarks on the memorandum of the Municipal Commissioner, No. 6029 of 1871, which had been placed in his hands by the Honourable Colonel Kennedy. In that memorandum Mr. Hope stated that works of a permanent character had been executed to the extent of considerably over 15 lakhs of rupees, and then detailed the expenditure, but still Mr. Hope did not say that a debt of 15 lakhs of rupees was due in respect of these works. He understood from Mr. Hope's

memorandum that 15 lakhs had been paid in some way or other for permanent works. He certainly demurred to the conclusion of Mr. Hope that, because works of a permanent character had been constructed to the extent of 15 lakhs of rupees, therefore the Municipality might borrow to that extent, whether the works had been paid for or not. The important point was whether any of the debt incurred upon permanent works was still subsisting unpaid when the application was made for the loan. And then, as to the other document which his honourable friend had handed to him—the letter of the Committee of the Justices of the Peace to the Honourable Mr. Ravenscroft, Acting Chief Secretary to Government, he observed that that Committee said they accepted on behalf of the Bench the offer of the loan by Government on the terms of Act III. of 1870. It was true that at the end of the letter the Committee drew attention to the fact that the borrowing powers of the Municipality were controlled by the Local Government, and they submitted there were no grounds for putting the Bombay Municipality on a footing different from Calcutta and Madras. He agreed that there were no such grounds, and that it would have been more generous for the Imperial Government to have allowed Bombay to remain on the same footing as those municipalities; but he would observe that that submission did not at all affect their acceptance of the offer of the Government of India. In other words, it quite bore out his understanding of the Committee's letter,—viz., that they did accept the terms offered by the Government of India, though they considered them to be rather hard. But that these terms were accepted without the consent of the Justices the document shown to him by his honourable friend Colonel Kennedy did not prove.

The Honourable Colonel KENNEDY said he would like to make a few remarks in explanation. His point was as between capital and revenue—that was to say, that permanent works had been constructed out of current revenue, and therefore the money which ought to have been devoted to current purposes was applied to works of a permanent character. He wanted to show that current revenue had a right to be recouped for advances made. He still held to his opinion that the Committee of the Justices had no authority from the Bench to accept the loan, but on the contrary that they accepted it after a resolution had been passed absolutely declining it.

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.

No alteration was made in Section 1.

Respecting Section 2—

The Honourable Mr. SCOBLE said this Section provided that for the repayment of the loan the Municipal Commissioner should pay monthly into Her Majesty's Treasury a sum of Rs. 9,840. He would ask how that sum had been calculated. He must confess that he had not calculated it himself, but he had been informed that there was a difference between the calculation made by Mr. Hope and the amount mentioned in the Bill, and that the sum of Rs. 9,840, paid monthly, would be something more than simple interest upon the loan and the repayment of principal. He certainly understood that the Government of India wanted no more than simple interest upon the amount advanced.

The Honourable Mr. RAVENSCROFT said the instructions of the Government of India had been that this Bill should be drawn up in exact conformity with the previous Bill, and accordingly the interest in this case had been computed in the same way as it was in Act III. of 1870. The plan was that the interest to be paid during each year was added to the principal, and interest was allowed to the Municipality upon each payment as it was made monthly. If Rs. 9,840 were paid monthly, the debt would be cleared off in nineteen years and seven months, and this was as near as the Accountant General could bring it.

The Honourable Mr. SCOBLE then formally moved that in line 15 of the second section the sum of Rs. 9,375 be substituted for Rs. 9,840.

The Honourable Colonel KENNEDY: I should be happy to support the honourable Mr. Scoble, but unfortunately his calculation is quite as incorrect as the other. I hold in my hand a calculation, which I have proved to be correct, and the figures brought out by it are Rs. 9,766. As instalments are paid monthly into the Treasury interest is allowed monthly by Government to the Municipality. The peculiarity of the Bill is that interest is to run annually, and that instalments shall be paid monthly, so that when one month's instalment is paid we allow interest upon that to the Municipality.

HIS EXCELLENCY THE PRESIDENT asked by whom the calculation had been made.

The Honourable Colonel KENNEDY answered that he had had it calculated two or three times in his office.

The Honourable Mr. MUNGULDASS NATHOOBHoy said that in the Select Committee there was a good deal of discussion on this subject, and it was said that as the Municipality did not pay the first year's instalment with the full amount of interest, they should pay compound interest on the balance which would remain unpaid. For the sake of the Bombay Municipality he would have wished that the Government of India might not charge compound interest, but as he was told this could not be arranged, there was no other alternative but to agree to the larger sum mentioned in the Bill, and supposing this Council were to reduce the amount of the monthly instalment, he feared the Government of India might refuse to sanction the Bill, and the consequence would be that the Municipality might have to wait some months more before they could obtain the pecuniary relief which the Municipality required. He would therefore not take the risk of delay for the sake of a few thousand rupees, as the Corporation is now obliged to pay interest to the creditors at exorbitant rates.

His EXCELLENCY THE PRESIDENT said it seemed to him that the obtaining of the money was such an immediate necessity that the Council needed scarcely to delay over the calculations. If the lesser amount were to be paid, it might happen that twenty years hence, when the last monthly instalment came to be paid, Government might tell the Municipality that it had still something to pay, and the question could then be adjusted by competent authorities. At the present moment it appeared to him that it did not matter much whether the smaller or the lesser sum were paid in. It was clear that the loan and interest were to be paid annually, and sooner or later the loan, with interest at 5 per cent., would have to be paid.

His EXCELLENCY THE PRESIDENT then asked Mr. Scoble whether he would press his motion.

The Honourable Mr. MUNGULDASS NATHOOBHoy said the difference between the calculation was so small that he did not think there should be any division.

The Honourable Mr. SCOBLE said that after what had fallen from His Excellency the President and the Honourable Colonel Kennedy, he did not think it worth while to press his motion.

It was then agreed that the section should stand part of the Bill without alteration.

Sections 3, 4, and 5 having been passed without alteration,

The Honourable the ADVOCATE GENERAL said in reference to Section 6, that he noticed that the saving clause was limited to loans upon the mortgage of rates and taxes, whereas the existing loans had been borrowed not only upon the security of rates and taxes under Act II. of 1865, but also of market fees, under Act IV. of 1867. He was of opinion therefore that the saving clause should be extended to mortgages made under both of the Acts, and he would move that the words "of rates and taxes" be omitted, and the words "or loan" substituted.

The substitution moved by the Honourable the Advocate General was agreed to, and the clause as amended stood part of the Bill.

The Honourable Mr. TUCKER said that the Bill contained no provision which secured the immediate repayment of the two lakhs of rupees which had already been advanced by Government, or the replacement of the sums which had been diverted from the Sinking Fund; and from the recent proceedings of the Bench of Justices it seemed desirable that these payments should be made obligatory in a manner that would admit of no future dispute. The existing Municipal Acts expressly require the setting apart of the Sinking Fund, but in the present position of affairs some effectual guarantee of the appropriation of the moneys advanced to the replacement of the amount which should have been at the credit of this Fund appeared to be necessary.

HIS EXCELLENCY THE PRESIDENT said the point to which the Honourable Mr. Tucker has drawn attention is this:—This Bill places 15 lakhs at the disposal of the Municipality, but contains no provision whatever as to their application for any particular purpose. The Municipality have to redeem certain Government notes that have been pledged with the Bank of Bombay, and they have to repay the loan of two lakhs which was advanced by the Government out of the balance belonging to the Government of India, and there is no provision at all in this Bill that the 15 lakhs shall be applied to these or any other purposes. The Municipality, in their resolution, have spoken of loans which were advanced out of the cash balances as a matter to be adjusted hereafter between the Government and the

Municipality, but I do not think it likely we shall receive the assent of the Government of India to this Bill unless it is distinctly provided that the loan of two lakhs is to be repaid immediately out of the money which will be advanced under this new Act. It is quite true, as my honourable friend suggested, that that might be inserted in the new Municipal Act, but I do not think the Government of India would be satisfied with that. I think we should make provision that the Government of India be repaid out of this 15 lakhs.

The Honourable Mr. TUCKER: The only way to do that is to give notice of a new Section before the third reading of the Bill.

The Honourable the ADVOCATE GENERAL mentioned that this Bill had been framed upon the model of Act III. of 1870, according to the express direction of the Government of India, and in that Act there was no appropriation clause.

The Honourable Mr. TUCKER: But the Supreme Government could not object to our making more secure the repayment of the money they have advanced.

The Honourable Mr. RAVENSCROFT thought any difficulty might be avoided by directing the Accountant General to pay the Municipality 13 instead of 15 lakhs.

The Honourable Colonel KENNEDY said that would not do, because the Supreme Government had agreed to advance 15 lakhs.

The Honourable Mr. TUCKER then gave notice that he would propose a clause which would secure to the Government of India the payment of the two lakh loan, and make compulsory the appropriations he had mentioned.

HIS EXCELLENCY THE PRESIDENT then adjourned the Council.

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

JOHN NUGENT,

Acting Under-Secretary to Government.

Bombay, 8th February 1872.

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 20th February 1872, at noon.

P R E S E N T :

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 the ADVOCATE GENERAL.

The Honourable MUNGULDASS NATHOOBHOY, C.S.I.

The Honourable A. D. SASSOON, C.S.I.

The Honourable BYRAMJEE JEJEEBHOY.

The Honourable VENAYEKRAO APPASAHEB of Koorundwar.

The Honourable Colonel M. K. KENNEDY.

The Honourable SIR JAMSETJEE JEJEEBHOY, Bart., C.S.I.

The Honourable A. R. SCOBLE.

The Honourable E. W. RAVENSCROFT.

Before proceeding with the business, HIS EXCELLENCY THE PRESIDENT said :—

H. E. the President's remarks
on Lord Mayo's Assassination.

The adjournment of the meeting last Tuesday will make it necessary to suspend the Standing Orders with regard to some of the matters that will come before us to-day. It was my first impulse, when the melancholy information was received on Monday, to take the earliest opportunity of myself expressing, and giving the other members of the Council the opportunity of expressing, the deep feelings of sorrow and regret with which these tidings had been received among us. But in truth I could not trust myself to express what I felt; the blow was far too recent and too heavy for me to trust myself to express either my own feelings or those which I am sure are shared in by every member of the Council. And even now, after a week has elapsed, whatever I say—the warmest tribute of private friendship—is as nothing before the universal testimony which is borne by every class of the community to the worth of the deceased nobleman,—the voice of sorrow is weak and passionless in the presence of the grief which has darkened every corner of the land. I will not attempt to give utterance as to my own feelings, and the sentiments entertained by the Council in regard to the irreparable loss we have sustained; but the long official intercourse I have had with Lord Mayo requires me to say that I am certain that the Queen and the country never had a more upright and more devoted servant. He was remarkable at once for the independence of his own opinions, and the care and consideration with which he weighed the opinions of others. He spared no pains or labour to satisfy himself where his duty lay; when he ascertained that, without looking to the right or to the left, he was prompt and fearless in taking the path that duty pointed. The ways of Providence are often inscrutable to our limited view, and we are perplexed when we thus see a noble spirit, devoted to the service of his country, thus suddenly struck down by the hand of an assassin. We must bow our heads in silence, being sure that, while his friends will long lament him, among every class of people his memory will be long preserved as one who ever devoted himself to the interests of the people whom his Sovereign had committed to his charge.

After a short pause, the Honourable Mr. TUCKER presented to the Council the Paper presented to the second Report of the Select Committee on Bill No. 1 of 1872, Council. a "Bill to amend Act XIII. of 1856." The Select Committee, he said, had added a section to the Bill under which poundage fees levied under the

provisions of section 28 of Act XLVIII. of 1860 are directed to be paid to the Bombay City Police Fund, and had also provided for the transfer of all the moneys and securities at the credit of the existing fund to the fund to be created by this Bill. With the view of effecting this object a few words had been added to Section I.

It was agreed that the report should lie on the table.

The Honourable Mr. TUCKER observed that as a Standing Order in Council provided that the Report of the Select Committee should be before the Council seven days before the consideration of a Bill be proceeded with, he submitted for the consideration of His Excellency the President that the Standing Orders be now suspended, to allow the Bill to be read a third time and passed that day.

The Standing Orders suspended in order that Bill No. 1 of 1872, be read a third time and passed.

HIS EXCELLENCY THE PRESIDENT directed that the Standing Orders be suspended.

Bill No. 1 of 1872 considered in detail.

The Council then proceeded to consider Bill No. 1 of 1872 in detail.

On the motion of the Honourable Mr. TUCKER, the words in the seventh, eighth, ninth, and tenth lines of section one, "any payments or investments of money which shall have been made or ordered to be made in accordance with the said sections and," were ordered to form part of the section, and the section as amended stood part of the Bill.

In section three the words "paid and" were inserted in the tenth line between the words "shall be" and "transferred."

The Bill read a third time and passed.

The Honourable Mr. TUCKER moved that the Bill be read a third time.

The Bill was then read a third time and passed.

Bills and Orders of the day.

The Honourable Mr. RAVENSCROFT moved that 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" be read a third time.

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

The Honourable Mr. TUCKER: On the last occasion that this Bill came before the Council, I gave notice that I would propose an additional section to it, the object of which at first was to render certain and inevitable the immediate payment of three of the principal liabilities for the discharge of which the loan has been granted. It has been remarked that there was scarcely any necessity for the first three clauses, as it would naturally be the duty of the Municipal Commissioner and of the Controller and of the Worshipful Bench of Justices to see that these particular sums were paid. But considering what has taken place in the recent discussions between Government and the Bench, and the remarks which from time to time have been made at the meetings of the Justices, it appears to me that it is not desirable that there should be any room for doubt upon the point, and that it is expedient that the Legislature should distinctly provide for the appropriation of these moneys in a manner that will admit of no evasion or delay. I desire to say nothing which shall at all aggravate the feeling of hostility which of late has been exhibited by that august and important body, the Bench of Justices, towards the Executive Government of this Presidency; but I feel it my duty to remark that on one particular occasion not long ago, a majority at a somewhat limited meeting evinced a desire to repudiate, and in fact did repudiate, a distinct obligation. I do not think I am using too strong a term when I select the word repudiation to characterise their proceeding, because when two persons have agreed to devote a certain amount of money to a particular object, and one of these persons, without assigning any reason, or giving in exchange any equivalent consideration, suddenly withdraws his contribution, the act amounts to the repudiation of a just liability. This is what a majority of the Justices at a particular meeting did with respect to the contribution promised by the Bench to the carrying out of the Contagious Diseases Act, on the faith of which certain expenditure had been made by Government and certain liabilities incurred. Individual members of the Corporation sought to justify the action of the majority, by asserting that they were following the example of Government in withdrawing its contribution to the Municipal Fund on account of the Police. There was, however, really no true analogy between the conduct of Government and the behaviour of the Bench in these two distinct matters. In exchange for the Police

Mr. Tucker proposes a new Section.

contribution of one lakh of rupees, the Government relieved the City of Bombay and the rate-payers, whom the Bench are supposed to represent, from taxation by which an addition of three and a half lakhs of rupees might have been added to the Provincial Exchequer. They therefore gave to the city a great deal more than they took away, while the Bench simply withheld what they had promised to pay, and gave nothing in exchange. As such proceedings have been tolerated and approved by a small section of the Justices who were sufficient to command a majority at a meeting, it is necessary that the Legislature should take effective measures to secure the proper appropriation of the sums which the Government of India have advanced. These observations which I have made refer more particularly to the three first clauses of the additional section which I wish to add to the Bill. The fourth clause, which refers to the replacement of the moneys which should have been set apart for the Drainage Fund under section 8, Act II. of 1865, was simply added by me to elicit an expression of opinion from the Council as to the necessity of making good the amount which should have been contributed and retained for expenditure on drainage works, but which has not been so paid or retained. In the correspondence that has taken place between the Government and the Justices, we have expressed our opinion that the diversion of these funds from their legitimate object and the non-compliance with the provisions of section 8 of Act II. of 1865 might be condoned, and that the sums which should have been appropriated, and which were not appropriated, need not be replaced. We expressed this opinion in a letter to the Justices, and in reply the Worshipful Bench by a vote signified their concurrence in our views. The decision of this important matter does not rest, however, with the Executive Government, but depends on the verdict of this Council, and it was for the purpose of obtaining a declaration of the opinion of this Council that I added the 4th clause of the new section to the preceding ones. I personally am of opinion that the non-compliance with the law which has taken place may be condoned and indemnity given for the past, and that the Corporation may be relieved from the obligation of contributing a reserve fund for drainage in the past; and if a majority of the Council are of that opinion I shall readily withdraw this clause and support any amendment which may be proposed, which will carry out the views of the Executive Government and the Bench. It has, however, been suggested to me that the alteration of section 8 of the old Municipal Act should be left to the new legislative measure which is about to be introduced in supersession of the statutes by which Municipal affairs are now regulated, and if it be the opinion of the Council that the consideration of the propriety of maintaining and replacing the amount due to the Drainage Reserve Fund be deferred till the introduction of the new Municipal Bill, I shall not object to that course. All that I wish is that the Council should pronounce a decision on the matter. I conclude, Sir, by moving the addition to the Bill of the section of which I have given notice.

HIS EXCELLENCY THE PRESIDENT: It is moved by the Honourable Mr. Tucker that the following section be placed between sections 5 and 6 of the Bill as it at present stands:—

“It shall be the duty of the Municipal Commissioner to discharge out of the moneys which shall be advanced to the said Justices under this Act, the following liabilities of the said Justices, at the times hereafter specified:—

- “1. The amount due for principal and interest, on account of the sum of two lakhs advanced to the said Justices by the Government of Bombay on the 3rd November 1871.
- “2. The amount due for principal and interest in respect of a cash credit advance made to the said Justices by the New Bank of Bombay (Limited) on the security of certain Government promissory notes belonging to the Sinking Fund created under section 257 of Act II. of 1865, for the repayment of moneys borrowed under the provisions of the said Act, or of Act IV. of 1867.
- “3. All sums due for principal and interest to the said Sinking Fund at the time of the passing of this Act which sums should have been set apart under the provisions of section 257 of Act II. of 1865, but which have not hitherto been so set apart.
- “4. The amount due for arrears of principal and interest to the Drainage Fund in respect of the annual payment directed to be reserved by section 8 of Act II. of 1865.

“The first of the liabilities above enumerated shall be discharged by the Municipal Commissioner at the time when he shall receive the moneys payable to the said Justices under the provisions of this Act, and the remainder shall be discharged by the said Municipal Commissioner within one month from the same date. The Municipal Commissioner shall report to Government through the Accountant-General the due payment and discharge of the aforesaid liabilities at times above specified, and in any case of any default being made in discharging any of the above liabilities as aforesaid, the Chief Secretary to Government or other officer acting in that capacity is hereby empowered to, and shall put in force for the purpose of securing the due discharge of the said liabilities, the provisions of section 3 of this Act.”

One point I wish to bring to the notice of the Council. Honourable members are aware that an application was made at the desire of the Bench for a loan from the Government of India to enable the Justices to carry out a proposal that had been made to them for the improvement of the water-supply of the city, by the construction of certain works known by the Justices as the Toolsee reservoir scheme. A reply has been received from the Government of India sanctioning the advance of 4 lakhs, with this intimation—that this sum may be advanced either under the powers of this Act, or may be advanced as a loan under the Act for the Municipal loans passed by the Government of India last year. It has proved impossible, owing to the provisions of the Municipal Act, that the opinion of the Bench of Justices should be obtained to decide whether that loan should be advanced under this Bill or under the provisions of the Bill I have alluded to. Therefore, I am inclined to think that it would be well if a short clause were added to this Bill to the effect that whereas certain works in connection with the Toolsee scheme were proposed by the Bench of Justices, and that the Government of India have intimated that they are willing to advance a sum of 4 lakhs of rupees for that purpose, it be enacted that such loan, if granted, shall be subject to all the provisions and limitations of this Act. If that clause be added, it would be necessary to alter the first few words of the clause which the Honourable Mr. Tucker has now moved. Supposing the Council were of opinion that it is desirable to make provision now in case the Bench of Justices decide that they prefer this loan given to them under this Bill instead of under the provisions of the Bill passed by the Governor General in September last, the clause would require some alteration.

The Honourable Colonel KENNEDY asked whether, in the event of the clause which His Excellency had indicated being added, the money for the Toolsee scheme would be available at once, or whether they would have to wait for the publication of the rules to be made under the Public Works Loan Act.

HIS EXCELLENCY THE PRESIDENT was unable to say. To him it was difficult to understand how a loan could be made subject to the conditions of a certain Act when those conditions had not only not been published, but had not even been settled. It certainly occurred to him that it would be impossible to arrange for the payment of the loan under the Public Works Loan Act till the conditions to be made under that Act were published. Of course that would be a point for the consideration of the Justices when they met on Monday.

The Honourable Mr. RAVENSCROFT here read the telegram from the Government of India mentioning the conditions on which the loan should be granted.

The Honourable Colonel KENNEDY : Then if this new section be added to the Bill the money will apparently be available at once.

The Honourable Mr. RAVENSCROFT : Yes, in the same way as the fifteen lakhs are available.

HIS EXCELLENCY THE PRESIDENT said he only suggested to the Honourable Mr. Tucker that it might be advisable to add something to the Bill which would bring that advance under the operation of this Act if the Bench of Justices, after full consideration, decided to take it under this Act instead of under the Act of the Government of India. The point had been brought before him by the Municipal Commissioner, who was anxious that some such provision should be added to the Bill, and he only now suggested it for the consideration of the Council.

The Honourable Mr. TUCKER thought it would be better to get the opinion of the Justices first.

HIS EXCELLENCY THE PRESIDENT: It would be perfectly possible to pass a short Act placing the loan under the provisions of this Act, and stating the instalments by which it should be paid off.

The Honourable Colonel KENNEDY thought it would be advisable to introduce such a section.

The Honourable Sir JAMSETJEE JEJEEBOY was of opinion that the loan should be taken under this Bill.

HIS EXCELLENCY THE PRESIDENT: I understand the Honourable the Advocate General to say that he could without much difficulty devise a section without mentioning the amount of the instalments.

The Honourable the ADVOCATE GENERAL said it could be done if it were thought desirable.

HIS EXCELLENCY THE PRESIDENT: I should think the proper way would be to say that any loan granted shall be subject to the same rules and conditions as the 15 lakh loan, and then to say that it shall be the duty of the Accountant General to calculate in the same proportion what the instalments shall be, and in the next place to give power to the Governor in Council to declare what the instalments shall be.

The Honourable Mr. RAVENSCROFT: I think, with reference to the fourth clause, that there is some objection to entering it in the Bill, for we need not go into the question of condoning that debt just now, and I think it would be advisable to hold it over till the general Bill is under consideration. If we add these four lakhs to the other liabilities of the 15 lakhs, the Justices will not be left with any surplus. With the exception of this fourth clause I would support the new section, and as regards the fourth clause I would suggest that it be omitted.

HIS EXCELLENCY THE PRESIDENT then read the following sections, which had been drawn up by the Honourable the Advocate General, and which His Excellency thought would meet the difficulty:—

The Advocate General proposes two new sections.

- (1). Whereas the Government of India has signified its willingness to grant a further loan of four lakhs of rupees to the Corporation of the Justices of the Peace for the City of Bombay for the purpose of carrying out certain works for the improvement of the water-supply of the City of Bombay by the construction of a reservoir at Toolsee, it is hereby enacted, that in case such loan of four lakhs of rupees shall be granted the same shall be secured and repayable in the same manner and within the same period, and shall be subject to the same rights and remedies as are hereinbefore provided with regard to the said loan of fifteen lakhs of rupees.
- (2). It shall be lawful for the Governor in Council, before such loan of four lakhs of rupees is advanced, to fix the amount of the monthly instalments by which such loan shall be liquidated, and the times at which the same shall be paid, and it shall be the duty of the Municipal Commissioner to pay out of the municipal fund the instalments so fixed, and at the respective times appointed for payment of the same.

The Honourable Mr. TUCKER asked if such a clause could be introduced without previous notice. According to his recollection of the Standing Orders, it was necessary that notice should be given of such clauses.

HIS EXCELLENCY THE PRESIDENT said he would suspend the Orders in this case.

The Council then proceeded to consider the section proposed by the Honourable Mr. Tucker.

On the motion of the Honourable Mr. TUCKER, the introduction to the clauses in the section was altered so as to read thus:—

“It shall be the duty of the Municipal Commissioner to discharge out of the sum of fifteen lakhs mentioned in the first section of this Act the following liabilities of the said Justices at the times hereafter specified.”

The Honourable Mr. TUCKER then intimated that as it appeared to be the opinion of the Council that the fourth clause should not be inserted, he would withdraw it.

The Honourable Mr. SCOBLE said he was extremely glad for several reasons that the Honourable Mr. Tucker had agreed to omit the fourth clause of his proposed Section. In the first place, he was glad of it because if the debt to the Drainage Fund were to be made repayable out of the 15 lakhs, a loan of 15 lakhs would be insufficient for

Mr. Tucker withdraws the 4th clause of his new section.

the purposes for which it was intended to be applied. The calculation of 15 lakhs did not include repayment of that debt, and in order to pay that it would be necessary that the loan should be increased from 15 lakhs to Rs. 19,76,000, according to a statement made by the Municipal Commissioner. He was also glad that the Honourable Mr. Tucker had not pressed the fourth clause, because the question whether or not this Council had the power to condone the non-payment by the Justices of this money, was a question which would require more consideration than he for one should be able to give to it on such short notice, and he thought the time for the discussion of that point would be when the general Municipal Bill came on for consideration. Though he regretted that there should be any necessity for an appropriation section, there could be no doubt whatever that the sums mentioned in the first three clauses ought to be paid out of the amount advanced under this Act. The fourth clause having been omitted, the section was now, he thought, unobjectionable.

It was then agreed that the section proposed by the Honourable Mr. Tucker Mr. Tucker's new section should be added to the Bill as Section six, the fourth clause agreed to. being omitted.

The Honourable the ADVOCATE GENERAL moved the introduction of the Sections which had just been drawn up by him, and read by His Excellency the President. He pointed out that the sections were merely permissive, and would not bind the Justices to accept the money under this Act, nor bind the Government of India to give the money under this Act.

The first section proposed by the Advocate General agreed to. It was agreed that the first of the sections proposed by the Honourable the Advocate General should stand part of the Bill as Section seven.

The Honourable Mr. SCOBLE said that as he understood, the whole of the four lakhs would not be required at once for the Toolsee water scheme, and if that were so it might be advisable to introduce into the second section proposed by the Honourable the Advocate General some words which should only make the instalment payable proportionate to the sum actually advanced, because if only two lakhs were to be advanced this year, and the remainder not for several months, it would be manifestly unjust that instalments for the full amount should be paid at once. He would therefore suggest the introduction of some words by which the Government of Bombay should make rules fixing the instalment in relation to the sums advanced.

The Honourable the ADVOCATE GENERAL said that to meet the suggestion made by his honourable friend he would propose that after the words "four lakhs of rupees" there should be inserted the words "or any part thereof;" and that after the words "by which such loan," there should be inserted the words "or such part thereof as may be advanced."

It was then agreed that the clause as amended should stand part of the Bill as Section eight. The clause as amended stood as follows:—

"It shall be lawful for the Governor in Council before such loan of four lakhs of rupees, or any part thereof is advanced, to fix the amount of the monthly instalments by which such loan, or such part thereof as may be advanced shall be liquidated, and the times at which the same shall commence to be paid, and it shall be the duty of the Municipal Commissioner to pay out of the municipal fund the instalments so fixed, and at the respective times appointed for the payment of the same."

The words "other than the loans made or that may be made under the provisions of this Act" were inserted after the word "Justices" in line 14 of Section IX.

The Bill was then read a third time without further alteration, and the preamble and title having been agreed to, the Bill was passed.

His Excellency the President then adjourned the Council.

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

JOHN NUGENT,
Acting Under-Secretary to Government.

Bombay Castle, 20th February 1872.

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