

In 1897, a Committee of the Corporation was appointed to report on the improvement of the Bandora Slaughter Houses with the following result :—

BOMBAY, 26th April 1897.

The Committee of the Corporation appointed on 25th January

1897, as per margin, beg to report that, having inspected the Slaughter Houses, buildings and works referred to in the Commissioner's letter No. 17068 of the 26th November last and enquired into the urgency of the various works referred to therein, have come to the conclusion that all the improvements proposed are generally desirable and necessary and that they have arrived at the following conclusions :—

That a Committee, consisting of Veterinary-Major Mills, Mr. Cuffe, Dr. Katrak, Mr. Shroff, Mr. Roughton, and Dr. D'Monte, be appointed to visit the Bandora Slaughter Houses and report the works which in their opinion, are the most urgent of those referred to in the Commissioner's letter No. 17068, dated 26th November, 1896.

The extension of the Beef Slaughter House which has been included in the Budget for the ensuing year.

No. 1.—This work is undoubtedly urgent, and the Committee recommend the Corporation to sanction its being carried out at an early date.

No. 2.—This work is also extremely urgent, and in the opinion of the Committee it should be completed before the setting in of the ensuing rains.

No. 3.—This, too, is urgent, but, in view of the difficulties in the way of compelling the present contractor for the removal of offal to erect bullock stables and huts for labourers and the absolute necessity, from a sanitary point of view, of removing the existing objectionable buildings, the Committee recommend the Corporation to put up sheds and huts in their place at the least possible expense. The Committee are of opinion that no buildings of a permanent nature are necessary, but that sheds of the nature of those erected at the Government Lazaretto, Sewri, sufficiently strong to stand the south-west monsoon will meet all requirements for the present.

No. 4.—The Committee are of opinion that, having regard to the heavy expenditure involved and the difference of opinion as to the remedy to be applied, this matter must stand over for the present.

No. 5.—The question here involved has been referred to the Commissioner with the object of estimates being prepared by the Executive Engineer.

Two large additional sheds for harbouring sheep and goats at a cost of about Rs. 7,000.

Improvement
of Slaughter
Houses.

No. 6.—The Committee concur with their colleague Veterinary-

Putting the cattle inspection sheds in proper order; probable cost, about Rs. 3,500.

Major Mills in the suggestion that side screens of bamboo should be put in in addition to the improvement of the roofing in order to secure sufficient protection for the men and animals while sheltered in the sheds, as such arrangement would tend during the monsoon to keep the floors dry. The work is urgent, and it should be carried out as rapidly as possible.

No. 7.—This work is less urgent than others. The stables when inspected were in a clean and healthy state. Although the expenditure involved is small, the Committee are of opinion that there is no immediate necessity for the proposed outlay.

No. 8.—The Committee strongly urge that, as this is a matter of vital necessity on sanitary grounds, the chawls should be forthwith repaired and would suggest that corrugated iron be utilized for all inside partitions and that the floors be dug up and relaid.

Removal and rebuilding of the five chawls occupied by butchers and sepoys. These are all old and require renewal; they contain respectively 52, 52, 34, 20 and 13 rooms. One of these chawls is in a worse state than the others and should be taken in hand, first. As the work is an extensive one, the remainder can be taken in hand year by year as funds are available. The cost of rebuilding one of the largest of these chawls would probably be not less than Rs. 35,000.

In addition to the matters referred to them for consideration, the attention of the Committee has been drawn to the unsuitability of the bungalow occupied by the Assistant Superintendent owing to the want of ventilation and light, and they have asked the Commissioner to have estimates of the cost of this work prepared.

When the estimates above referred to are received, they will be circulated to the Corporation. As most of the works which the Committee recommend should be sanctioned are urgent and it is necessary that some of them should be completed before the setting in of the south-west monsoon, the Committee recommend the Corporation to sanction the immediate carrying out of the same, subject to the necessary recommendation as to the outlay involved being made by the Standing Committee.

G. W. ROUGHTON.
T. W. CUFFE.
K. M. SHROFF.
N. N. KATRAK.
JAMES MILLS.
D. A. D'MONTE.

I beg to offer the following remarks in regard to item No. 5 of the report. I presume that the figures as to cost were given on an estimate, either approximate or otherwise, framed by the Executive Engineer. I therefore fail to see why a further reference to the Commissioner should be considered necessary

and only means delaying a matter which is of an urgent nature. I am strongly of the opinion that at least one, if not both, of these sheds should be constructed before the monsoon sets in, as it cannot possibly be healthy for sheep and goats, nor conducive to good meat to have them exposed to the inclemency of the weather.

In the rains many sheep are lost, especially Marwar shearlings, from having to stand in the open. They come in on Market-days, *i.e.*, Tuesdays and Saturdays, and those that are passed as fit for food are purchased by the butchers; if dry, they are sent out to graze and brought back at 3 or 4 p.m. for slaughter. If wet, they have to stand fast in the yard up to the hocks in water. These sheep are not at once all killed, but kept often for ten days. The Assistant Superintendent reports that this is a very urgent matter and a cause of constant complaint from the butchers and naturally too.

JAMES MILLS.

The Committee's report was adopted by the Corporation.

It was Proposed by Thomas Blaney Esq., seconded by Mulji B. Barbhaya Esq.—

“That with reference to letter No. 1243 B. dated 11th December 1889, P. W. D. and para. 8* of Government Resolution No. 489 C. W. 2066 same Department dated 2nd Idem, the President be requested to refer Government to para. 5 of the report accompanying his letter No. 236 dated 3rd July 1888 to the effect that the Slaughter Houses at Bandora were erected after the fullest consideration, and that the Corporation do not, under existing circumstances* see any necessity for removing the Slaughter Houses to Matunga.

Proposed Removal of Slaughter Houses to Matunga.

WEIGHTS AND MEASURES.

No. 2583 of 1895.

BOMBAY CASTLE, 22nd June 1895.

GENERAL DEPARTMENT.

TO THE PRESIDENT, MUNICIPAL CORPORATION, BOMBAY.

SIR,—Adverting to the correspondence ending with Government letter No. 2949, dated 23rd August 1893, I am directed to inform you that the Government of India have decided to abandon for the present the idea of prescribing a uniform system of weights and measures throughout India.

* See Report of the Extension Committee.

2. As regards the request made in paragraph 2 of Mr. Cotton's letter No. 2855, dated 24th June 1893, I am directed to inform you that His Excellency the Governor in Council does not consider it necessary to amend at present the City of Bombay Municipal Act, 1888, in the direction indicated, but that the point will be reserved for future consideration.—I have &c.,

J. DEC. ATKINS,

Junior Secretary to Government.

Proposed by Dinshaw E. Wacha, Esq., seconded by Badrudin bin Abdulla Kur, Esq.—

“ That the following be *recorded* :—Letter to the President, No. 2583, dated 22nd June 1895, from No. 4028. the Secretary to Government, General Department, stating that for the present the Government of India have abandoned the idea of prescribing a uniform system of weights and measures throughout India.”

Carried.

POLICE.

In 1794, Sir Frances Gordon who was high Constable of Police, received a salary of Rs. 100 a month. Mr. Henry, Rusterfield who was first European Constable received Rs. 35 a month. Mr. Richard Periera was clerk of the rounds on Rs. 10. There were 31 Constables on Rs. 7½ each per mensem; 3 Havildars on Rs. 7 each and 125 peons or sepoy on Rs. 5 each per mensem. The cost of stationary, oil and candles was Rs. 14 per mensem.

The staff employed for patrol purposes beyond the limits of the Town in 1795 was as under :—

Police staff
in 1795.

	Rs.	Per month.
1 European Constable	55.0	"
1 "	15.0	"
13 Native Constables at Rs. 7-2	97.2	"
42 Peons at Rs. 5	210.0	"
Oil for 4 Chokees	3 2.40	"

In 1796, the monthly establishment of the Sheriff for the Criminal Department was as follows :—

	Rs.	Per month.
1 Marshall	45.0	"
1 Deputy Marshall	30.0	"
1 County Purvooe	30.3	"
1 Havildar	16.0	"
1 Naique	8.0	"
12 Peons	60.0	"
1 Executioner	6.0	"
2 Halalkhore	8.0	"
SHERIFF'S EXTRAORDINARY CHARGES.		
King's, European prisoners allowance	4.2	Per month.
Native prisoners	2.1	"
Marshall's attendance at the quarter sessions	1.0	"
" " for execution	1.0	"
" " " punishment	1.0	"
Deputy Marshall's " quarter Sessions	2.0	"
" " " execution	2.0	"
" " " punishment	2.0	"
Executioner or Hangman—his fee for each body with handkerchief to tie the eyes	2.0	each.
1 Coroner	90.0	Per month.
1 Padree Hindu	8.0	"
1 " Parsi	6.0	"
1 " Portuguese	6.0	"
1 " Jew	12.0	"
1 " "	8.0	"

On the 29th January 1795, the Court of Sessions passed the following resolution :—

Duties of Superintendent of Police in 1795.

“ This Court is of opinion that as the office of Superintendent of the Police is for watching the streets of the Town of Bombay, the charges thereof, ought to be defrayed from the county assessment.

“ The Court appoint Simon Halliday Esqr., to be Superintendent of the Police and is of opinion that the office of Superintendent of the Police, and of High Constable, ought to continue to be united in one person as heretofore.”

The Police was augmented in 1839, and the Bombay Government then wanted the Bench to increase the rate of the house assessment in order to meet the extra charges. The Bench however declined to do so, but increased their contribution to Rs. 10,000 annually which Government accepted on 10th October 1839. ..

At the conclusion of the business of the October Meeting of 1871, the Chairman, Mr. John Connon said :—

Dispute about payment of Police charges.

“ I now constitute this meeting into a special general meeting of the Justices of the Peace for the city of Bombay, to consider the Municipal Commissioner's Budget. I believe Mr. Maxwell has a motion to bring forward on this subject, which I now call upon him to do.”

Municipal Commissioner, want of confidence in.

Mr. Maxwell.—I think, that after reading the report of the select Committee—Mr. Hope's—it requires no explanation from me why I have to bring this motion forward. I have lost all confidence in the Municipal Commissioner and the Municipal Officers. I beg Dr. Hewlett's pardon, except those in the Health Department. I allude entirely to those officers who have had the control of the Municipal financial department. I think it is the duty of all of us to defer transacting any business until the action of Government on the report of this committee is made known. There can only be one opinion about it, and I therefore propose—“ That the consideration of the Municipal Commissioner's Budget for 1872 shall be deferred until Government has taken action on the Report of Mr. Hope's Committee, and that this special general meeting be adjourned till the 15th December (1871).

Mr. Hope's Committee.

Mr. Narayan Wasudevji seconded the motion.

Dr. Blaney.—If it is competent to this Bench, I would submit that our very respectful representation should go to Government along with a copy of this resolution in order to show that all business will be suspended during the interval. It is very desirable that Government should know how matters stand with us.

Mr. Narayen.—I think Mr. Hope's Committee have effectually shown that to us.

The Chairman.—Before we conclude about the precise date of this adjournment, I wish, as we are now proceeding in a very irregular and friendly manner, to bring to your notice a letter from the Municipal Commissioner addressed to the Clerk of the Peace. It is not properly part of this meetings business, but it may influence you as to how long you are going to adjourn.

The Municipal Commissioner's letter is as follows:—

To the Clerk of the Peace.

Sir,—I have the honour, to inform you, with reference to the Bench's resolution of 14th June 1871 directing me to restrict any payment for the Police to Rs. 2,96,865, that I have received an order from Government for the payment of the force for September. In this difficulty I have taken legal advice and being advised that it is my duty to pay the Police for the month of September last, I have this day paid the force. I have &c.

ARTHUR CRAWFORD,

Bombay, 21st October, 1871.

Municipal Commissioner.

Mr. Narayen.—Government appears to have already taken charge of the Municipality.

Captain Henry.—Is the Controller here, or any one connected with his department? I understand the Gas Company have a claim against us for a lakh of rupees. If so, they had better at once proceed to law and get whatever little they find left. Mr. Maxwell then altered the date of adjournment to 23rd November 1871 in which form his motion was carried unanimously.

A special general meeting of the Justices of the Peace for the city of Bombay was held in the Durbar Room, Town Hall, on the 16th November 1871, for the purpose (amongst other things) of passing resolutions respecting the payment of the police by the Municipal Executive officials, out of the Municipal Funds for the month of September and October 1871 in defiance of an express resolution of the Bench. There was a large attendance of Justices over whom the Chairman, Mr. Connon, presided. Spectators also formed a numerous body. The following is the report of the proceedings:—

The Police
question of
1871.

The Chairman.—The business before the meeting is, as you are aware, multifarious. The first items on the paper are these:—

1. To require the Municipal Commissioner, the Controller, or other Municipal officers, who are in possession of the documents, to produce the order of Government, and the legal opinion on which they acted in paying the Police for the month of September out of the Municipal

Fund in defiance of the express resolution of the Bench dated 14th June 1871, as well as Sec. 6 of Act II of 1865.

2. To require the Municipal Commissioner to explain his conduct in countersigning the cheque for the payment of the Police, against the orders of the Bench and the provisions of said Section 6 of the Municipal Act.

3. To require the Clerk of the Peace to explain why the Municipal Commissioner's letter of the 21st instant, communicating the fact that he paid away money out of the Municipal Fund against the orders of the Bench, was not immediately circulated to the Justices instead of being kept back till the close of the special meeting of the Bench held on the 25th ultimo &c. &c.

Mr. Maclean.—Perhaps the Officers of the Municipality may be able to produce the accounts called for.

The Chairman.—Well, Mr. Arthur Crawford I suppose is by this time in European waters, and I do not imagine he will produce much at this meeting. I believe I have authority to say that the Controller, Mr. Maidment, has resigned his appointment and that he is also so sick that he cannot attend here to-day. As to the Clerk, Mr. Leslie Crawford, I think every gentleman must be satisfied by this time that he was not at all in fault—whoever else was in fault about the business—and that he did not receive the letter until the morning of our Meeting. I did not see it myself until we met here, and the moment I did see it I thought it of such consequence that I read it at once. As far as Mr. Leslie Crawford is concerned I do not think any gentleman will say that he was in fault and I think his explanation is very satisfactory. As for the other two officers mentioned, it is for this Meeting to decide what steps are to be taken.

Captain Henry.—Are we to understand that the whole of the Municipal office has so entirely collapsed that there is no one here to reply to these queries?

Dr. Hewlett.—No, I am here (laughter and applause.) At least I am here so far that I am unfortunately the only Municipal officer who is in possession of the documents called for; and I have received the permission of Government to read to the Bench this confidential letter from Mr. Acting under Secretary Nugent to the address of Mr. Crawford. (see note Marked *)

* Confidential—Poona 26th September 1871.

My dear Crawford—I have to acknowledge the receipt of your letter of the 24th instant and in reply am desirous to inform you that Government will indemnify you and the Controller for any risk which you and he may incur by the payment, as usual from the Municipal Funds, of the expenses of the Bombay City Police for the current month. Your Sincerely.

A. CRAWFORD Esq.

J. NUGENT.

Mr. Hamilton Maxwell.—Before moving the resolution on the payment of the Police question, I will read a short sketch which I have prepared concerning the proceedings of the Bench of Justices in that matter. The Bench met in October 1870 to consider the Municipal Commissioner's estimate of Income and Expenditure for the year 1871 in accordance with Section 22 of Act II of 1865. The Police expenditure was estimated at Rs. 8,95,280 of which Government paid Rs. 98,955. The Police rate was, in accordance with Sec. 227 of the Municipal Act fixed at 2 per cent. At the meeting of the Legislative Council held on the 5th April (the proceedings of which were only reported in the Government Gazette of the 4th May) it was stated to be the intention of Government to withdraw the contribution to the Police, and although Government did not make any reference to the Bench, the subject was discussed at their quarterly meeting held on 26th April, when the following resolutions were carried :—

Proposed by Mr. Nowrojee Furdoonjee, seconded by Mr. Narayen Wasudeo.—“ That a select Committee be appointed to prepare a memorial to Government remonstrating against the withdrawal by Government of their contribution to the Police Fund of the Municipality and praying for its continuance. The Committee to consist of the following gentlemen :—Messrs. Nowroji Furdunji, Narayen Wasudeo, Dr. Blaney, and Mr. Pherozshah Mehta.”

Proposed by Narayen Wasudeo Esq., seconded by R. N. Khote Esq.—“ That with reference to Section 224 of the Municipal Act, Government be requested to reduce the cost of the Police so as to bring the charges for the six months ending 30th November 1871 down to Rs. 1,23,914, the estimated yield of the Police rate for six months, being an average rate of about Rs. 20,652 a month and that they be informed that the Bench has fixed the revised Grant for Police for the current year at Rs. 3,21,824 of which it is estimated that Rs. 1,97,910 will be expended in the 6 months ending 31st May 1871, that the Commissioner be directed to pay the Police from 1st June 1871 at the above reduced rates of Rs. 20,652 a month only.

“ That the memorial to Government on the subject of the Police Grant as read to the Bench, be adopted and forwarded to Government. ”

This memorial respectfully submitted the case to Government. Reference to the following Government resolution will show, that the request of the Bench to be put on an equal footing with Calcutta and Madras, was most reasonable and coincided with the ideas of Government as then expressed. On the 30th June Mr. Nugent, the Acting under Secretary to Government was directed to acknowledge this memorial with a curt refusal to alter the decision of Government and stated that ample means with good management, had been placed at the disposal of the Bench to meet all obligations legitimately be-

longing to it. There is no doubt, that with good management our means were quite ample, but then there was not good management.

Mr. Nugent's letter was as follows :—

Bombay Castle, June 3rd 1871.

To the Clerk to the Justices of the Peace for the City of Bombay.

Sir,—I am directed to acknowledge the receipt of your letter dated the 18th ultimo, submitting a memorial of the Justices of the Peace for the city of Bombay, on the subject of the withdrawal by Government of their contribution to the Police Fund of the Bombay Municipality. In reply I am desired to state that Government decided to withdraw its contribution towards the maintenance of the Police force of the city of Bombay after a full and mature consideration of the circumstances which have been brought to notice in the memorial, and that the Right Honorable the Governor in Council sees nothing in the fact stated which should cause him to alter his former decision. The Governor in Council has further desired me to state, that the numerous advantages possessed by the City of Bombay which has been correctly described by the memorialists as an "Entrepot of vast commerce," and the comparative wealth of its citizens, render it just that it should bear the entire cost of its Police and that it would be inequitable for Government to call upon the inhabitants of less favoured towns and districts of the Presidency to contribute to relieve the city of Bombay from the discharge of an obligation which legitimately belongs to it.

Government have placed at the disposal of the Municipal administration resources which should in their opinion be ample, with good management to provide for the reasonable requirements of the city, and they will be glad to consider any proposals for a reduction of the Police force which may be practicable without impairing its efficiency. I have, &c.,

JOHN NUGENT,

Acting under Secretary to Government.

The resolution of Government of the same date stated that H. E. in Council "cannot recognise any resolution of the Bench of Justices directing the carrying into effect a reduction to which the sanction of Government has not previously been accorded."

The whole case stands thus. The Bench in strict accordance with the Municipal Act passed the Budget Grant for the Police, depending on Government for the Imperial contribution of one fourth of the whole expenditure. The proceedings of the Bench were published in due form in the Government Gazette as required by section 33 of the Act, and no objection having been made by Government, we may presume that the Budget was duly sanctioned. On the 5th April the Government intimated its intention of withdrawing the Government contribution, but

made no reference to the Bench on the subject. The matter was however discussed at the first quarterly meeting of the Bench, and the resolutions I have just read were prepared and forwarded to Government. Government has since, in the most illegal manner without reference to the Bench, ordered the Municipal officers to meet the expenditure. I have no hesitation in stating my opinion, humble though it might be, that Government has acted in a most arbitrary manner in requesting the servants of the Municipality to act in defiance of the order of the Bench, and requiring them to spend the money which the Justices are the sole trustees. The resolution which it is now my duty to propose is as follows :—

“ That this Bench protests against the action of Government in ordering the Municipal officers to pay the Police for the months of September and October, without requesting them to obtain the sanction of the Bench of Justices and in opposition to the resolution of the Bench of the 14th June last, that the conduct of the Municipal Commissioner and Controller in acting in this matter without receiving the sanction of the Bench is highly reprehensible and deserving the severest censure of the Bench.”

Mr. Narayen Wasudeo in seconding the proposition said.—

This act of Government which is only one of a series, in dealing directly with the Municipal exchequer through their own officers and without the consent of the Bench, if followed to its legitimate consequences, might justify us in resigning all control over Municipal finances into the hands of Government. The policy which the Government of India has adopted of forming Municipalities throughout the country, independent of the executive Government, and thus relieving the imperial exchequer of their administration, has been systematically set at naught by the Bombay Government in connection with this Municipality. Under the present circumstances I think, sir, that the most moderate course, we can adopt is to enter our protest against the action of Government as proposed by Mr. Maxwell.

Dr. Dallas.—Our proper game is the Government, and in justice to our own self respect and position before the ratepayers of Bombay, we ought to record our protest. It is the only way we have of expressing our resentment and indignation at the way in which Government has treated us.

Mr. Maclean.—My opinion of the whole matter is this; the fundamental mistake that Government makes is to consider that the Municipal Commissioner and the Controller are under their orders. From the time of their appointment as officers of the Municipality they are the servants of the Municipality and of no body else, and the Government of Bombay has no more right to order them to pay money out of the Municipal Fund than it has to go to the Secretary of any public Company and tell him to use the money of his employers to pay the bills of any other

body. What should we think if Mr. Gladstone, the Prime Minister of England, were to go down and tell the officers of the city of London that they were to take money out of the public purse containing the revenues of the city to make up some deficit in the taxation of the country. No body can be more anxious than I am to uphold the character and reputation of the English Government in this Presidency ; but I must say I think the best way, that that can be done is by speaking straightforwardly and clearly and trying to do ones duty to the people honestly.

Mr. Janardhan.—If we allow the present opportunity to pass away without censuring the Officiating Municipal Commissioner what can we do to prevent Government from ordering him to pay the Police force for November in the same way. The Government has no power whatever to sanction any expenditure from the Municipal Fund any more than it has power to sanction expenditure from any private gentleman's property ; and the Municipal executive authorities had no more right to go up to Government and ask its sanction for expenditure than it had to ask Government to sanction expenditure from a man's private property. It is to prevent this occurring in future that I propose that the name of the Officiating Municipal Commissioner be added to Mr. Maxwell's motion.

The Chairman.—There is no Officiating Municipal Commissioner, Dr. Hewlett is temporarily in charge of the office of Municipal Commissioner.

Mr. Janardhan.—That is the name I substitute.

Mr. Bal Mungesh Wagle.—In seconding that amendment, I must say that if I had known that Dr. Hewlett, as an officer of the Municipality had consulted you on this subject in your capacity as Chairman of the Bench, perhaps I should have moved that your name also be added to the resolution of censure.

Captain Baker.—I think it right at any rate, that the Bench should know, before they pass such a vote of censure on Municipal officer's past, present and to come, including our Chairman, that there is something to be said on the other side. As regards the main question, I am sorry to say I do not agree with the Bench at all, or rather, I should say, with the gentlemen who wish to pass this vote of censure and who seem to think that the Municipal Commissioner must not pay any more money to the Police. I say the Commissioner will deserve a vote of censure from this Bench if he refuses to pay the Police any money, because if he refuses to do so he will destroy entirely the peace and safety of this city and of its inhabitants. I am perfectly astonished that a Bench like this should come forward and absolutely declare that their Municipal officers should not pay sums which are clearly and undoubtedly due to the Police. The money must be paid ; you can settle with Government afterwards whether Government is to pay it back to you or not. The money must be paid and therefore there should be no vote of

censure passed on the Municipal officers. They must obey the orders of Government. ("No" "No") In this matter they must ("No")—for their own sakes and ours too; and the Bench if they like and if they feel themselves strong enough can fight the matter out with Government and get the money back if they can. It seems to me that the Bench are altogether wrong in this matter, and it is very injudicious of us, on such grounds to put ourselves in antagonism with Government and give orders to our own officers, which orders we know they dare not obey.

Mr. Nowrojee Furdunjee.—Sir, I protest against the remarks that have fallen from the last speaker. He says the Bench is wrong and the Government is right. I submit that he takes a totally mistaken view of the main question which we are now discussing. It is a very simple question, and it is, that all money paid by or on account of the Municipality becomes and forms part of the Municipal Funds as soon as it is paid into the Bank of Bombay, which is our own Treasurer, and that no money can be drawn from our Treasurer, the Bank of Bombay without the sanction of the Bench. That is the principle which we must maintain, and which by the motion that has been proposed by Mr. Maxwell the Bench are called upon to maintain. It is utterly absurd to think that Government can at one moment pay that contribution on account of house rate and should then be at liberty to direct that it should be appropriated towards the expenses of the Police. Our duty is to vindicate the authority of the Bench, and it is on that principle that I intend to vote in favour of Mr. Maxwell's proposition.

Mr. Dossabhoy Framjee said.—The Justices who have spoken before me have been, I am afraid, carried away in a wrong direction with motions of offended dignity ("No" "No" and "Yes" "Yes") It is necessary to look calmly and without prejudice on the whole of the Police question before deciding on the proposition before you. You will remember that we thrice went up to Government and told them that we had no funds to pay the Police after the month of August and also that under the advice given to us by our Counsel, we were not going to make any payment beyond the above period. Government in reply clearly pointed out the law which was that the Justices are bound to pay the expenses of the Police. When you thrice, and in the most distinct and emphatic manner declared that you would not pay the Police for September what was the Municipal Commissioner to do? He naturally went up to Government and told them "that he had received your orders not to make any further payment on account of the Police and asked their advice. The reply of Government was decisive. It pointed out to him what his duty was under the law, and this I think is plain. The entire cost of the Police of the city must be paid out of the Municipal Fund. That is no doubt the law. I say that the Government was quite right in ordering the Police to be paid and the Municipal Com-

missioner was justified in carrying out the law, leaving the question of the Government liability to be settled at convenience. For my part I beg to state that Mr. Maxwell's proposition is not called for and unjust to the Government and I will therefore vote against it.

Rao Sahab Mundlik then proposed.—“That in order to prevent a breach of the Municipal Act by the Government of Bombay, a case be laid before Counsel by the Chairman of the Justices to ascertain what steps the Bench ought to take to protect themselves as trustees under the Act, and that meanwhile, all the officers of the Municipality be warned that any recurrence of such irregularity will be visited by dismissal.”

Mr. Percy Leith seconded the proposition.

Mr. P. M. Mehta.—I have a very few words to say on this matter. (cries of “Divide”) while I fully agree with (Renewed cries of “Divide”) shall I go on Mr. Chairman?

Mr. Dossabhoj Framji.—I think sir, Mr. Pherozechah is perfectly at liberty to speak as long as he is in order.

Mr. Mehta.—While I fully agree with the first portion of the resolution proposed by Mr. Maxwell, I cannot agree with the latter portion of it, which blames the Municipal officers for what they have done with respect to this matter. I fully concur with Mr. Maxwell that the conduct of Government though not strictly illegal, is most unconstitutional, and it is equally clear to me that under Act II of 1865, the Municipal Commissioner and the Controller of Accounts could not have done anything more than pay out of the Municipal Funds the Police expenditure for September and October. Section 224 of the Act says “The executive power and responsibility of this act shall be vested in one Commissioner.” Taking these two sections together it is clearly the duty of the Commissioner to pay the expenditure of the Police force, although the fund is under the financial control of the Bench. Under these circumstances it is very unjust to censure the executive officers for what is clearly their executive responsibility. I go further and say that after the opinion of Mr. Green there is great doubt thrown upon the matter and in a case of doubt I do not think the executive officers deserve to have a formal vote of censure passed upon them.

Mr. Maxwell's resolution was then put to the Meeting and carried by a large majority—45 voting for and 8 against it.

Mr. Janardhun's amendment to bring Dr. Hewlett's name within the scope of censure was then put and lost.

The Rao Sahab's resolution was then put to the meeting when 30 Justices voted for and 10 against it. The result was received with cheers.

The Chairman.—That resolution appears to be carried. You can cheer as much as you like, but I beg to tell you that I decline to submit any opinion to counsel, and I will leave the chair

whenever you like. I consider it insulting to Government and to any future Municipal officers, and you may find another Chairman to carry out your opinions.

Mr. Connon then left the chair. Everybody appeared taken by surprise, and there was a dead silence for a few moments followed by a brief period of confusion, which lasted till the Chairman was asked, on the motion of Captain Henry to resume his seat.

The Chairman who on re-entering the room was greeted with cheers, said: I ought perhaps to apologise to you, gentlemen, for leaving the chair so abruptly but really it was not in any fit of temper that I went away. I acknowledge to you that I made a mistake in putting that resolution but Mr. Mundlik overpersuaded me with his ingenious and facile tongue. What you had to do after passing such a resolution as Mr. Maxwell proposed was, to pass resolutions as to these three officers only; but this is a warning and a menace both to the Government of Bombay and to all present and future officers of the Municipality which ought certainly to have been given notice of, and I must beg of you to reconsider it. Personally I distinctly decline to have anything to do with it. I should properly have remained here until some one moved that I do leave the chair, but it was out of respect to you that I left it. The resolution was carried, and I would not leave you to move such a proposition. I do not resign the Chairmanship to which you did me the great honour of appointing me, because it would lead to inconvenience, and until you can find some gentleman to conduct this business more satisfactorily I shall remain. As to this resolution, I think, I was in error in allowing it to be put. The full extent and limit of the paper before you was to pass such other resolutions in respect to the past conduct of these three officers but the resolution that has been passed is a warning and a menace as to the future. Therefore with the greatest respect to the majority here present, who have voted this resolution, I acknowledge with shame and confusion of face (a laugh) that I ought not to have put it. And I now, with the greatest deference say, I will not act upon it. If any gentleman likes to move that I do leave the chair, now is the time to do so.

Captain Henry—Perhaps Mr. Mundlik will withdraw his resolution.

The Rao Sahab.—I am sorry to say I am obliged to defend what your goodself has done as our Chairman in justice to myself as well as to the gentleman who seconded me. If I were called upon to explain the reason why I put in the name of the Chairman in preparing the case, all I can say is, that I simply put it as the only official form in which the Bench of Justices can act by means of a single individual. I do not for one moment say that it is the duty of the Chairman to draw up a case. The Corporation has its Solicitors and they will draw it up. I

do not mean this resolution, Mr. Chairman, as a menace to the Government of Bombay, from whom I have received the Commission of Peace. At the same time I do say that it is a protection against future acts of this kind, for we have been told at this very meeting that some such action may be taken for the very next month.

A poll was then demanded on the resolution of Mr. Mundlik with the following result.

For the Rao Sahib's Resolution	26
Against	42

majority 16

The resolution was thereupon declared as lost.

Section 224 of the Bombay Municipal Act of 1865, directed that the annual expenses of the Police of the city should be paid out of the Municipal Fund, and accordingly from the first July of that year, the municipality became liable for the expenses of the Police. But it was represented to Government that the act did not provide for the levy of a Police rate until the 1st January 1866, and that there were no funds to pay for the Police during the last six months of that year. Government were accordingly pleased to direct that the section above quoted should take effect from 1st January 1866.

A proposal to reorganise the city Police was submitted to the Corporation in 1893. The Honorable Mr. P.M. Mehta C.I.E. was appointed by Government as a member of the Committee. The whole of the proceedings which is very extensive, as well as the Honorable Mr. Mehta's minute thereon will be found in the "Police file" kept by the Municipal Secretary.

The following report of the Committee of the Corporation summarises the ultimate decision arrived at:—

BOMBAY, 10th November 1900.

The Committee appointed by Corporation Resolution No. 982, dated the 22nd April 1895, and last re-appointed by Corporation Resolution No. 429, dated the 14th April 1898, for enquiring into the adjustment of Police Charges between Government and the Corporation, have, since submission of their Report which was approved and adopted by Corporation Resolution No. 9422, dated the 19th January 1899, had the following papers referred to them by the Corporation Resolutions noted against them:—

(1) Government letter, Judicial Department, No. 3404, dated the 16th May 1899, referred by Corporation Resolution No. 2242, dated the 19th June 1899.

(2) Government letters Judicial Department, No. 678, dated the 26th January 1898, and No. 8585, dated the 27th

December 1898, with Commissioner's report thereon, referred by Corporation Resolution No. 6514, dated the 5th October 1899.

(3) Government letter, Judicial Department (to the Commissioner), No. 8801, dated the 4th December 1899, with Commissioner's report thereon, referred by Corporation Resolution No. 10982, dated the 18th January 1900.

(4) Government letter, Judicial Department, No. 8966, dated the 22nd December 1899, referred by Corporation Resolution No. 12177, dated the 8th February 1900.

(5) Government letter, Judicial Department, No. 836, dated the 15th January 1900, with Commissioner's report thereon, referred by Corporation Resolution No. 925, dated the 23rd April 1900.

(6) Government letter No. 625, dated the 27th January 1899, with Commissioner's report thereon, referred by Corporation Resolution No. 4305, dated the 12th July 1900

2. With regard to the first of these six references, the Committee beg to observe as follows :—

At the date of the Committee's Report above referred to, the only point which remained unsettled between Government and the Corporation was as to the correctness of the Police accounts as made out by the Accountant-General and forwarded by Government to the Corporation with Mr. Vidal's letter No. 1412, dated the 24th February 1896 (*vide* para 7 of the Report). To this the attention of Government had been drawn in the President's letter No. 974, dated the 30th April 1896, which pointed out :

- (1) That Government had included charges on account of Harbour, Dock and other Police for the year 1892-93 and the first half of 1893-94, though the final decision to levy them was of so late a date as December 1895, and
- (2) That, on the other hand, Government had not given the Corporation the benefit of the Government of India's orders as to the local Government paying one-fourth of the total annual cost of the Police charges which were passed so far back as 1891.

The reply of Government, contained in Mr. Secretary Edgerley's letter No. 3404, dated the 16th May 1899, is to the effect that the accounts are correct, and that "if *both* suggestions of the Corporation were acceded to, coupled of course with the extension of the first to items ultimately excluded, as well as to those ultimately included, the Corporation would, in the opinion of Government, lose considerably by their proposals being accepted."

3. The Committee are of opinion that neither the original proposal of Government nor the one which they suggest in the above letter is just or equitable. It will be remembered that,

when Government first addressed the Corporation in March 1891 on the subject of the increase of the Police force, the Municipal contribution towards the cost of the City Police had averaged approximately $8\frac{1}{2}$ lakhs per year less a sum of Rs. 90,000, contributed by Government. It will be thus seen that the Government contribution was just a little more than 25 per cent. of the burden borne by the Corporation. When in the above-mentioned letter Government hinted to the Corporation that they might withdraw their contribution altogether, that body appealed to the Government of India on the subject. The reply received from the Government of India fixed the Government contribution at not less than Rs. 90,000 and not more than 25 per cent. of the total charges, and the Corporation were entitled to believe that, when the local Government fixed the amount to be contributed by them at 25 per cent. of the total charges, the Resolution would come into force from the year in which the new policy of augmenting the Police force rendered it necessary for the Corporation to pay more than the $2\frac{1}{2}$ lakhs, approximately, which they had paid up to 1891. It seems to the Committee, therefore, that so far as equity is concerned the Corporation might justly expect to have the decision of the Government of India made applicable from the time when this question was first raised in 1891, and that the adjustments of accounts should proceed, so far as the percentage of deduction is concerned, upon that basis from that year.

4. With regard to the time from whence Government should charge in the total cost of the Police the new items which have been introduced, the Committee are of opinion that the charges in respect of them should not be made till the date of the decision when it was finally settled that they were chargeable against the Corporation. It will be remembered that, when in the letter of 25th March 1891 the Corporation were suddenly informed that the total cost had risen from Rs. 3,50,000 to Rs. 6,92,000, the Corporation pressed Government to inform them how they had arrived at that amount, pointing out that the increase to the cost of the City Police, which was the occasion of that letter, was not more than Rs. 1,00,479. The information that the increase was due to the inclusion of heads which had never been included before, and which Government had repeatedly declared should not be included in the accounts, was not given to the Corporation till some time after. The Corporation then raised the question whether Government were entitled to charge heads of the character above described. The questions that were thus raised were settled by a compromise, and the Committee think that under such circumstances equity would require that the compromise should not be brought into operation except from the date of its accomplishment.

5. While, therefore, the Committee are of opinion that their claim in regard to the dates when the two matters should be brought into the account is founded upon equitable considera-

tions, they cannot but realize that the power of fixing the amount of Government contribution is legally vested in Government. Any resistance, therefore, to the way in which accounts have been adjusted by them would have little chance of success. They, therefore, recommend that the Corporation should in this matter give way to the demand of Government and allow the accounts to be adjusted in the manner which Government propose.

6. The Committee will next deal with reference No. (6), which is relative to the question of the debit to the divisible account of rents for buildings occupied by the Police, whether belonging to the Municipality or to Government. The Committee agree with the Commissioner that the general principle on which Government base their demand for a fair rent for lands and buildings belonging to them and used for Police purposes is a sound one, and that the same principle should be applied in cases of lands and buildings belonging to the Corporation, the rents of these being now fixed anew in accordance with existing values. The Committee also agree with the Commissioner that, in view of the power vested in Government by Section 62 (a) of the Municipal Act, it will be futile to ask Government to exclude from the account the rent of lands which were handed over by Government with a specific condition that no rent should be charged for them, or without any stipulation for the payment of rent. The Committee accordingly recommend that Government be informed that although it appears that in some cases land was handed over by Government on an express stipulation that rent would not be charged, and in other cases no stipulation was made for the payment of rent, yet, since the whole system of levying contribution from the Municipality for Police charges has now been put on a new basis, the Corporation will not object to rent charges being added to the divisible account, on the understanding that the rents of lands and buildings belonging both to Government and the Municipality may be fixed anew in accordance with the values now prevailing. For the settlement of details the Commissioner may be instructed to put himself in correspondence with Government and report to the Corporation the result arrived at, Government being further informed of the issue of these instructions to the Commissioner, with an intimation that it appears that in some of the cases in List B received with Judicial Department letter No. 625, dated the 27th January 1899, Municipal land has been shown as Government land and in others the ownership of the land is doubtful, and that Lists A, C, and D are accepted by the Corporation.

7. The remaining references to the Committee, viz., Nos. (2), (3), (4), and (5) are in respect of Statements of Accounts received from Government, which the Commissioner will be able to deal with on receiving the orders of the Corporation on references Nos. (1) and (6). It will be for the Commissioner on receipt of the Corporation's orders to make out the account with

Government, and submit through the Standing Committee any proposals which may be necessary for additional grants or for increase in the monthly payments to Government by the Corporation.

C. T. BURKE.
P. M. MEHTA.
D. E. WACHA.
K. M. SHROFF.
COWASJEE HORMUSJEE.
ACCACIO G. VIEGAS.

Proposed by the Hon'ble Mr. Pherozeshah M. Mehta
C. I. E., seconded by Mr. Cowasjee Hormusjee :—

“ That the Report of the Committee appointed by Corporation Resolution No. 2242, dated the 19th June 1899, to report as to the Police Charges payable by the Corporation, be approved and adopted.

2. “ That the President be requested to address Government, as recommended by the Committee and that a copy of the report be forwarded to the Commissioner for necessary action.”

Carried.

The Police charges from 1865 were as under :—

In	Rs.
1865	1,06,035-15- 2
1866	3,56,481-10- 9
1867	3,54,660- 5- 0
1868	3,51,543- 7- 7
1869	3,77,468- 8- 8
1870	3,53,368- 0- 0
1871	3,59,125- 7- 7
1872	3,19,966- 0-11
1873	3,61,437-15- 7
1874	3,69,640-12- 9
1875	3,44,269-13- 7
1885-86.....	3,59,223- 6- 6
1895-96.....	5,00,000- 0- 0
1902- 3.....	5,00,000- 0- 0

LICENSE DEPARTMENT.

Official Year.	No of Inward letters.	No. of Outward letters.	No. of Notices issued.	No. of Summonses issued.	No. of Warrants executed.	No. of Licenses issued.	Revenue from License Fees.	Actual expenditure for office establishment.	REMARKS.
							Rs. a. p.		
1889-90	2,311	17,980 *		
1890-91	5,518	5,588	3,323	2,676	212	3,235	36,417 8 0	12,396	Mr. Douglas Bennett was Superintendent of Licenses.
1891-92	2,733	8,823	4,247	4,663	397	4,110	46,383 0 0	12,396	
1892-93	3,275	7,001	4,925	4,165	402	4,833	54,996 8 0	18,296	
1893-94	5,349	9,428	5,505	3,239	357	5,407	60,507 8 0	13,344	
1894-95	5,228	10,808	5,809	3,162	346	5,701	63,914 8 0	18,544	Mr. Sorabji B. Master Suprintendent of Licences.
1895-96	5,208	10,314	5,995	3,931	422	5,880	65,048 8 0	12,344	
1896-97	9,812	8,710	5,589	2,339	281	5,130	56,462 8 0	15,464	
1897-98	15,633	9,420	5,893	2,115	320	5,750	63,741 8 0	14,844	
1898-99	14,601	9,207	5,697	1,904	250	5,583	60,646 8 0	15,468	
1899-1900	17,827	12,114	5,935	2,339	310	5,831	63,732 8 0	16,016	
1900-1901	17,111	11,222	6,167	2,140	322	5,912	63,669 0 0	16,297	

* While under the Health Department.

TOWN DUTY.

YEARS.	Gross Revenue from Town Duty.	Amount Refunded.	Net Revenue.
	Rs. a. p.	Rs. a. p.	Rs. a. p.
1882- 3.....	11,41,222- 5-11	4,76,871- 8- 0	6,67,350-13-11
1883- 4	12,39,449- 7- 8	5,68,330-15- 0	6,71,118- 8- 8
1884- 5.. ...	14,35,382-14- 3	6,81,187- 7- 0	7,54,195- 7- 3
1885- 6.....	13,69,919-14- 3	6,82,889- 2- 0	6,87,030-12- 3
1886- 7.....	19,91,035-15- 6	9,82,127- 8- 0	10,08,908- 7- 6
1887- 8.....	21,06,806-11- 7	10,94,464-10- 0	10,12,342- 1- 7
1888- 9.....	15,60,916-11- 6	8,77,560- 2- 0	6,83,356- 9- 6
1889-90.....	12,61,316-12-11	5,74,881- 6- 0	6,86,435- 6-11
1890-91.....	17,67,747-13- 4	8,11,653- 0- 0	9,56,094-13- 4
1891- 2.....	20,35,537-12- 9	12,65,998- 6- 0	7,69,539- 6- 9
1892- 3.....	19,46,727- 2- 9	9,80,306-14- 0	9,66,430- 4- 9
1893- 4.....	18,20,953-11- 8	9,74,765-15- 0	8,46,187-12- 8
1894- 5.....	16,13,164- 6- 0	7,56,257- 0- 0	8,56,907- 6- 0
1895- 6.....	16,81,667- 3- 7	8,00,287-15- 0	8,81,379- 4- 7
1896- 7.....	15,30,411- 2- 1	7,86,771- 1- 0	7,43,640- 1- 1
1897- 8.....	17,29,700-15- 7	7,37,804- 5- 0	9,91,956-10- 7
1898- 9.....	22,55,540- 4-10	12,62,536-15- 0	9,92,953- 5-10
1899-00.....	26,83,002-13- 1	12,04,975-10- 0	14,83,027- 3- 1
1900- 1.....	30,84,008-10- 4	18,66,982- 2- 0	12,17,026- 8- 4

LEGAL OPINIONS &c.

SMALL CAUSES COURT JUDGMENT IN THE CASE OF ACQUISITION OF LAND AT MATHEW ROAD.

In the Bombay Court of Small Causes—Municipal Appeal
No. 2 of 1890.

Monday, 4th August 1890.

The petitioner is the owner of an oart in Girgam, which on its north side and at its north-western corner, abuts on the Mathew Road close under the French Bridge over the B. B. & C. I. Railway. On 7th December 1888, the Municipal Commissioner for the purpose of widening the Mathew Road under the powers given him by section 299 of the Bombay Municipal Act, 1888, gave the petitioner notice of his intention to take by compulsory purchase, under section 301, some of the vacant ground of this oart at this corner, and on 4th February 1889, possession was actually taken by the Municipality of the land, the subject of this petition, which it is not disputed, amounts in all $304\frac{4}{9}$ square yards. The petitioner not being satisfied with the sum offered him by the Municipality, has now filed this petition, under section 504, for the purpose of determining the amount of compensation to be paid him under section 301 of the Act, for the land so taken. The particulars of his total claim for Rs. 9,583-4-11 may be summarized thus :—

Value of $304\frac{4}{9}$ square yards of land at Rs. 23					
per square yard	...	...	...	...	Rs. 7,002 0 0
Compound wall demolished and set-back to present boundary	...	...	...	...	" 826 0 0
Value of 40 trees on land taken	...	...	...	...	" 686 0 0
Additional of 15 per cent. for compulsory taking	...	...	...	...	" 1,202 0 0
11 months' interest at 5 per cent. per annum on the above	...	...	...	...	" 367 4 11
					<u>Rs. 9,583 4 11</u>

As to the value of the wall there seems to be no dispute, as to the value of the trees very little, and the petitioner admits that two of the cocoanut trees were past bearing and the four betelnut trees had not yet begun to bear, and the respondent calls no evidence to contradict him either as to this or as to the value of

bearing trees; I should therefore allow the claim in respect of the wall in full, Rs. 826, and Rs. 682 out of the Rs. 686 claimed in respect of the trees, deducting half of the value claimed for the old cocoanut trees, which, though no longer yielding fruit, can still yield leaves and toddy, and $\frac{1}{5}$ th of the value claimed for the young betel trees which, though not actually remunerative, yet would soon have become so.

As to the value of the land, I think it should be assessed on the basis of a frontage value. That is the principle followed in the *Municipal Commissioner vs. Patel Hadji Mahomed* (I. L. R. 14, Bombay 292). It is true that was a case under section 163 of the old Bombay Municipal Act, III of 1872 and IV of 1878, not like this case under section 301 of the present Bombay Municipal Act III of 1888. But the principles enunciated by their Lordships in the judgment of the High Court in appeal from this Court at paras. 297 and 298 of the report seem to me to apply also to a case under the present Act. That is therefore an authority by which I am bound in deciding this case, and I must accordingly hold that frontage value must be paid for this strip of land, the greatest width of which at the north-west corner, fronting the angle between the B. B. & C. I. Railway and the line of the French Bridge, is about 25 feet, whence it narrows to a point westward immediately after turning the corner towards Back Bay and to about 12 feet at its eastern extremity towards the Breach Candy Road.

As to the additional 15 per cent. for the compulsory sale, there seem to me to be two difficulties in the way of the plaintiff's claim. It was argued that this additional 15 per cent. would be covered by those words of section 301 of the Bombay Municipal Act (III of 1888) which provide that "a compensation shall be paid.....to the owner of.....land acquired.....under section 298 or 299 for the value of the said land and for any loss, damage or expense sustained by such owner in consequence of the order made by the Commissioner under either of the said sections." Now the plaintiff's first difficulty is that section 299, under which this land was acquired, does not contemplate the making of any order, and in fact none was made by the Commissioner. So that even if the additional 15 per cent. on the value of the land is a loss, damage or expense sustained by the owner in consequence of its compulsory sale, yet inasmuch as to enable him to recover such loss, damage or expense, it must have resulted from an order made by the Commissioner and none was or could be made by him under the section (299), in virtue of which in the present instance the owner was compelled to sell his land, it follows that he cannot claim the additional 15 per cent. as such loss, damage or expense. It was contended by Mr. Brown, for the petitioner, that the notice given to the owner by the Commissioner under section 299 of his intention to take possession of the land implied an order to vacate it. I doubt the soundness of this contention, for suppose the Act provided a

penalty for resisting an order of the Commissioner to vacate the land, I apprehend, before the Commissioner could enforce the penalty, he would have to show that he had actually given the order, and it would not be enough for him to suggest that there was one implied in a notice that he would on a certain day take possession. So, on the other hand, if there be benefit to be derived from the order of the Commissioner, I think it lies on the person claiming that benefit to show that the order has been made.

But it was further argued the Legislature must have meant something, and on the strict construction of section 301 they would be taken to mean nothing, by the reference to a loss sustained by the owner in consequence of the order made by the Commissioner under section 299. I should therefore treat the word "order" in section 301 in reference to section 299 as equivalent to "notice."

This argument, no doubt, derives some force from the fact that in section 298 (1), providing that Commissioner may require a building to be set back, in any order which he issues under section 345 or 346 which those sections contemplate the issue, not of an order, but of a notice disapproving, approving or conditionally approving, subject to prescribed terms any proposed buildings, the word "order" has certainly been used as equivalent to notice.

But the plaintiff is then confronted with his second difficulty in the ruling of the High Court in the case to which I have already referred, the *Municipal Commissioner vs. Patel Hadji Mahomed* (I. L. R. 14th Bombay, 292). As I understand the concluding remarks of their Lordships in that judgment, they then lay down the principle as applicable to a case under the present as under the former Municipal Act, that unless the addition of 15 per cent. to the value of the land be expressly directed by the Act, it cannot be taken as an element in computing the compensation to be paid for land taken in a compulsory sale under the Act. I therefore consider that I am bound by the rulings in that case to disallow the claims for the additional 15 per cent. on the value of the land in this case.

It now only remains to determine the value of the land taken, and on that in a great measure will depend the claim for interest.

There was unfortunately no evidence of actual sales in this neighbourhood nor even of shop rents on the Mathew Road. Mr. Morris's calculation of the value of the petitioner's land from the rent of shops on other land in the neighbourhood seemed to me illegal in this respect. Having found from the rents of some shops in the neighbourhood, situated on the Breach Candy Road just at its junction with French Bridge, the value of the land on which they were built to be about Rs. 47 per square yard, he went on to say that he took about half the value of that land

to be the value of this land, and therefore considered the petitioner entitled to Rs. 23 per square yard. But on what principle he took $\frac{1}{2}$ rather than $\frac{1}{10}$ to represent the proportionate value of land on the Mathew Road as compared with land on the Girgaum Road did not appear.

Equally fallacious to me, appeared Mr. Burder's equally ingenious calculation on the other side, which proved that the nearer you got to the Breach Candy Road on the Mathew Road, the less was the value of the land.

It is clear that a shop site with a frontage such as those taken by Mr. Morris as the basis of his calculation, just at the junction of two important city thoroughfares, like the Breach Candy Road and the Road through Girgaum over French Bridge, is no fair criterion of the value of the land with a frontage on a by-way like the Mathew Road, especially when that is at so much lower a level as to have the dead blank of the retaining wall of the French Bridge for its front abuttal and the B. B. & C. I. Railway line to the side. It is also clear that the nearer you rise to the level of the French Bridge, and the nearer you get to the junction of the two important city thoroughfares, the more desirable does the land become as a shop site. The land in suit is a curved piece consisting of portions of the front compounds of three small bungalows, the nearest of which to the nearest of the shop on Breach Candy Road taken by Mr. Morris as the basis of his calculation, is yet separated from it by two other small bungalows and their compounds. The petitioner's three bungalows are respectively numbered 213, 214 and 215. The first of these is the nearest to Breach Candy Road, the second the next nearest and the third the furthest. For the reason I have stated, I think the petitioner's land would decrease in value the further you go along the Mathew Road away from the Breach Candy Road end. I think, therefore, the fairest system of valuation is to take, not the same rate for the whole land, as the Engineers on both sides have done, but a higher rate for that taken from No. 213 and a lower rate for that taken from No. 215 than for those taken from No. 214. Now there were taken from No. 215, 188 square yards, from No. 214, 84 square yards, and from No. 213, 32 square yards, and a fraction which Mr. Morris put at 16, but which to make up the admitted total of $304\frac{4}{9}$ square yards, we must take to be $\frac{4}{9}$ square yards.

The petitioner's surveyor, Mr. Kanga, calculated the value of the petitioner's land to be Rs. 18 per square yard, having found the value of land within $\frac{1}{4}$ mile radius on the Breach Candy Road, to range between Rs. 15 and 20. This, I think, much more nearly represents the true value than Mr. Morris's Rs. 23, which for the reasons I have given cannot be accepted. But having regard to the fact that there is other land on the Mathew Road intervening between the petitioner's most desirable plot and

the Breach Candy Road, and to the consideration I have indicated as showing that the land at this corner decreases in value as you go further from the Breach Candy Road, I do not think Mr. Kanga's highest valuation of Rs. 18 for Mathew Road sites, ought to be put on the petitioner's $32\frac{4}{9}$ square yards in No. 213; I should therefore value these at Rs. 17 per square yard. Then for the 84 square yards in the same line, but further from the Breach Candy Road, I should allow Rs. 15 per square yard, while for the 188 square yards at and round the corner in the angle between the railway and the bridge, I should not allow more than Rs. 12 per square yard. We thus get Rs. 4,067-9-0 as the total value of the land. This sum *plus* Rs. 326 for the wall, and Rs. 632 for the trees already allowed, makes Rs. 5,025-9-0 as the full amount of compensation due to the petitioner. The offer of Rs. 5,256, contained in the Municipal Commissioner's letter of 26th March 1889 was an offer of a lump sum in full of all demands made without prejudice, and the petitioner cannot therefore rely on it as an admission binding the Municipality not to pay less than that sum. I therefore award the sum I have now found Rs. 5,025-9-0 as the compensation payable under section 301 of the Bombay Municipal Act, 1888. Possession was taken by the Municipal Commissioner on 4th February 1889, and the purchase money then became payable, but in spite of the petitioner's letter of demand of 19th February 1889 and two subsequent reminders on 7th and 21st March, no offer of any payment was made till that of 26th March 1889. The petitioner is therefore entitled to interest on his purchase money from 4th February to 26th March 1889. Had he accepted the offer then made of a lump sum greater than the sum now awarded, and more than sufficient to cover the amount of the interest now allowed, no further interest would have accrued due. As he refused that offer and took these proceedings for the purpose of making an unsuccessful attempt to have that sum increased, no subsequent interest should be allowed. As the sum now awarded with the interest allowed is less than the lump sum in full of all demands originally offered, it follows that the present proceedings were unnecessary, and the petitioner should therefore not be allowed his court costs of the petition. Moreover, as he has put the Municipal Commissioner to the expense of resisting the claim which he has failed to establish for a sum greater than the lump sum offered to him, the petitioner must pay the respondent's professional costs for two full days of hearing, Rs. 90.

The order on the petition will therefore be that the respondents do pay to the petitioner the sum of Rs. 5,025-9-0 with interest at 5 per cent. per annum from 4th February 1889 to 26th March 1889, but without costs, and that the petitioner do pay to the respondent, his professional costs, Rs. 90.

***Ex-parte* THE MUNICIPAL CORPORATION OF THE CITY
OF BOMBAY.**

**Re REFERRING BUDGET TO TOWN COUNCIL FOR
FURTHER CONSIDERATION.**

CASE FOR THE OPINION OF COUNSEL.

By Section 34 of the Bombay Municipal Acts of 1872 and 1878, as amended by Bombay Act VI of 1882, it is provided that, on or before the 20th of November in each year, the Municipal Commissioner shall lay before the Town Council an Estimate of the proposed expenditure of the Municipality for the year commencing on the 1st of April then next succeeding, in such detail and form as the Town Council shall from time to time by order in that behalf direct, and that the Town Council shall forthwith proceed to consider the said Estimate, and shall have power to approve or to reject or to alter all or any of the items entered therein, provided that no alterations are to be made which are inconsistent with the provisions of any Act for the time being in force for the regulation of the Corporation.

By Section 35 the Town Council, with the assistance of the Municipal Commissioner, are required every year to prepare a Budget containing the estimate of expenditure as approved by them, and also an estimate of the Municipal income available for the purpose and proposals as to the amount of rates, taxes and duties necessary to be levied for the purpose of meeting such expenditure, and for providing, at the close of the year, a cash balance of not less than one lac of rupees, and the same section further provides that, at a Special General Meeting of the Corporation to be held on or before the 10th day of January in each year, the Chairman of the Town Council shall lay before the Corporation the said Budget, and that such Budget shall be printed and circulated to the members of the Corporation fourteen days before the holding of the said Special General Meeting.

Section 36 is the section upon which arises the question on which Counsel's opinion is now sought. It runs as follows:—

“It shall be in the discretion of the Corporation to pass the said Budget or to refer it to the Town Council for further consideration, or finally to reject or modify any items entered in the Budget of which they may not approve. But no proposal involving further expenditure or the levy or abolition of taxes shall be submitted to the Corporation without having been first left with the Secretary to the Town Council not later than six days before the Special General Meeting held in accordance with the preceding section.”

At the adjourned Special General Meeting of the Corporation held on Monday, the 30th January 1888, for the further consideration of the Budget Estimates for the ensuing year commen-

cing 1st April next, a resolution was moved to the effect that the Estimate of the expenditure for the Fire Brigade be sanctioned, whereupon an amendment was proposed as follows:—

“That the Detailed Statement No. 7, containing the Budget Estimate for the Fire Brigade, be returned to the Town Council, with a request that they will provide the Corporation with fuller explanation under this head, &c., &c.”

Upon this a question was raised whether, under the terms of Section 36 of the Acts, the Budget, if referred back to the Town Council at all, must not be so referred back as a whole. It was thereupon brought to the notice of the Chairman of the Corporation that, at an adjourned meeting held on the 27th January 1883 when the Budget Estimates for 1883-84 were under discussion, it had been proposed that such Budget Estimates be referred back to the Town Council with a request that the expenditure be reduced, &c., and that, upon that occasion, the presiding authority ruled that “if this proposal had been made when the Budget Estimates were first presented and the proposition had been to refer back the Budget as a whole, the motion would have been in order. The Corporation had, however, already discussed one-half of the Budget, namely, the income, and had fixed the same, and the mover of the amendment was out of order.” Following this precedent, the Chairman of the Corporation ruled, though with some reluctance, at the meeting held on the 30th of January last, that Section 36 does make it incumbent on the Corporation to refer back the whole Budget, if at all, and that the first part of the amendment was not in order. The amendment, so far as it related to the referring back of the Estimate, was withdrawn, and the original motion was passed; but, before the meeting, separated, it was decided that Counsel’s opinion be obtained upon the point whether, having regard to the words of Section 36, it is competent to the Corporation to refer back to the Town Council any one or more particular section only of the Budget Estimates, it may think fit, which may come under consideration of the meeting at a period many days later than when such Estimates were first placed before the Special General Meeting.

Counsel will find that by Section 67 of the Municipal Acts, it is provided that at the Special General Meeting to be held in accordance with Section 35, or on any adjournment thereof, the Corporation shall fix the rates at which the rates, taxes, tolls, and duties leviable under the Act shall be levied for the year commencing on the 1st day of April next ensuing, and that the rates shall be fixed before the 15th of January in each year, and shall not be altered before the next succeeding month of January. The rates in question, of course, form a most important part of the proposals contained in the Budget.

In accordance with this section the rates at which the rates, taxes, tolls and duties leviable are to be levied for the next year

were duly fixed prior to the 15th of January last, when considering the Budget Estimates of Income.

It need hardly be pointed out that, if referring back the Budget to the Town Council as provided in Section 36 necessarily involves referring it back as a whole, and if by virtue of such reference it were open to the Town Council, when reconsidering it, to alter portions already dealt with and decided on by the Corporation, or if, after reconsideration by the Town Council on its again coming before the Corporation, it were to be open to the latter to re-open questions already disposed of by them when it was originally before them, the most serious inconvenience might be the result. With regard to this latter question, it is presumed that, at any rate, the Corporation would be bound by Rule 20 of their Rules (sent herewith) for conduct and regulation of business at their meetings, and would not be able to re-open a question until after the lapse of three months from the date when it was disposed of. The Rules in question are the Rules now in force under Section 18 of the Act.

Counsel is requested to advise the Corporation—

1. If the Budget be referred to the Town Council by the Corporation for further consideration under Section 36, is it competent to the Corporation, when so referring it, to limit the Town Council, so far as any alteration or revision of the Budget is concerned, to any specific item or items?
2. Is it competent to the Corporation to refer to the Town Council, for further consideration under that section, a specific portion or portions only of the Budget?
3. If the Budget be referred to the Town Council for further consideration with special reference only to certain specific items or portions of it, would it be competent to the Town Council to revise it as a whole, and alter other portions (a) which had already been disposed of and passed by the Corporation or (b) which had not, at the time of such reference to the Town Council, been taken into consideration by the Corporation?
4. When the Budget has been reconsidered by the Town Council upon such a reference from the Corporation, is it open to the Corporation, when it comes back to them, to treat the whole Budget *de novo* and to re-open portions of it already decided upon by them prior to such reference (a) within, or (b) after the lapse of three months from the date of such decision?
5. When can the Budget or a portion of the Budget (if Counsel thinks the latter admissible) be referred to the Town Council by the Corporation for further consideration? Must such reference be before the Corporation proceed to decide definitely on any portion, or may it be at any time during their consideration of the Budget as occasion arises, or may any references of portions be reserved till after the remainder of the Budget is disposed of?

6. Having regard to Section 67 of the Act, it is presumed that the rates therein referred to, having once been fixed by the Corporation, cannot, after the 15th January, be altered either by the Corporation or Town Council, whether the Budget be or be not referred by the former to the latter for further consideration. Is this so?

And to advise generally.

OPINION.

1 & 2. In my opinion the Corporation, under Section 36, must either—

- (a) pass the Budget;
- (b) refer the whole Budget back to the Town Council for further consideration; or
- (c) itself reject or modify all or any of the items entered in the Budget, and has no power to refer back part of the Budget for further consideration, though, of course, they can ask for further information, &c.

The scheme of the section seems to be, that first the Corporation should consider the Budget as a whole, and whether it should be referred back or not. Then that they should fix the taxes, &c., so as to produce a sufficient income, and then scrutinise the expenditure items and accept, reject, or modify them. The section does not in terms enact that the Budget shall, if referred back, be referred back in the first instance; but it seems to be implied that this course must be adopted, for the Budget cannot, as a whole, be referred back after some of its component parts (*e. g.*, the determination of the taxes and income) have been irrevocably settled, and there is in the section no provision for referring back the Budget piece-meal.

If the section could be read as authorising a partial or piece-meal referring back of the Budget (and I think it cannot be so read), the Town Council could only, I think, deal with the part referred back to them.

3. As before pointed out, I think that the Budget cannot be referred back after it has been partially dealt with. If it were then referred back, it would be for the purpose of having a new Budget prepared. This consequence shows almost to demonstration that it is too late to refer it back after it has been partially settled.

4. If the whole Budget is referred back at a later stage, than the stage at which I think that it is competent for the Corporation to refer it back, this extraordinary consequence would follow. The Town Council could recast the Budget, for there is nothing in the Act to prevent their doing so (except, perhaps, that the concluding clause of Section 34 might prevent their dealing with the taxes after they are fixed), while the Corporation would be bound, by the resolution they had already passed, for three months at least.

5. In my opinion the Budget, as it must be referred back as a whole, cannot be referred back after a portion of it has been definitely settled.

6. This is clearly so.

7. As the Corporation has the power of itself finally settling all the items in the Budget, there is no reason for supposing that the legislature intended that it should have the power of remitting items for the reconsideration of the Town Council or of indirectly bringing about that result by remitting the Budget partially settled to the Town Council. Exactly the same object would be gained by the Corporation obtaining further information from the Town Council or Commissioner, and acting itself upon it. If I am in error in thinking that a partially considered and partially settled Budget cannot be referred back, then there are no provisions in the Act directing how such partially fixed Budget is to be dealt with either by the Town Council or by the Corporation when it again comes before them. It is mere guess-work to consider what the result of such action would be. I can therefore only guess that, if that procedure were allowable under the Act, the legislature would have provided that it should not be open either to the Town Council or the Corporation to review the items already passed by the latter before such reference.

CHARLES F. FARRAN.

BOMBAY, 9th February 1888.

ALLEGED MALPRACTICES AT ELECTIONS.

No. 17316 OF 1897-98.

BOMBAY, 9th October 1897.

TO THE MUNICIPAL SECRETARY.

SIR,—In reply to Corporation Resolution No. 8520 dated 5th July 1897, expediting report on certain malpractices at Municipal Elections, I have the honor to state that such malpractices as the hustling of voters by the agents of candidates and the false personification of voters not entitled to vote can be prevented by the candidates themselves.

The following is an instance of what frequently happens during the afternoon of the 'Polling Day.' A carriage drives up to the 'Polling Place' with one or more voters inside. On alighting, they are immediately surrounded by several candidates' agents, who pull them about until one or more of the agents succeed in carrying off the voter or voters to the tent or *mandap* provided by the candidate for the accommodation of his clients and the filling up of his voting papers.

Many complaints have been received during the elections from the voters as to the way they have been treated by the candidates' agents, but beyond remonstrance with the agents and speaking to the candidates themselves there is no legal power of interference.

This malpractice takes place chiefly outside the polling place, and the police might possibly be able to exercise some further check on it. The false personification is a more serious matter, and its prevention requires careful consideration.

A member of the Corporation has suggested that only one agent and one voter for each candidate should be allowed into the polling place at a time, but the provisions of section 28 (j) of the Municipal Act will not permit of this course being adopted.

Under paragraph 11 of the instructions issued by the Commissioner to Polling Officers (copy of which is forwarded herewith), if another voting paper is subsequently tendered in the name already initialled in the Election Roll (see para. 10), the 'Polling Officer' is to receive it and save in case of objection (see para. 12) is to dispose of it in the manner prescribed in the last preceding clause, i.e., para. 10. The consequence of this is that several people have at times represented one voter.

Counsel's opinion was taken on the matter and runs as follows :

"Where a vote offered by the person really entitled to vote is refused by the Polling Officer on the ground that he has already received a vote from a person alleging himself to be the person enrolled in that name, does this amount to an improper refusal of a vote [section 33 (1)] ? "

The opinion given by Mr. Macpherson on the 24th January 1895 (after the last general election) was to this effect :

"I do not think a refusal by the Polling Officer under such circumstances would be an improper refusal. On the contrary I think refusal would be the right course for the 'Polling Officer' to adopt, as the vote first accepted would be rightly accepted in the absence of challenge. The person really entitled to vote would have his remedy under the word 'For any other cause' in section 33 (1) by application to the Chief Judge of the Small Causes Court."

It will therefore be necessary to make an alteration in the existing instructions to Polling Officers.

From the above remarks it will be seen that the prevention of these malpractices rests entirely with the candidates, and it is surely not too much to expect that gentlemen aspiring to a seat in the Corporation will at the ensuing general election prevent the hustling of voters outside the 'Polling Place' and co-operate with the Municipal Officers as far as possible in checking the presentation of false votes.

As regards large *mandaps*, such as the one erected in B Ward at election time, I would suggest that in future only election officials and two electors on behalf of each candidate be allowed

to remain in the *mandap*. The voting paper being filled in, the elector would pass into the 'Polling Place,' where he would be met by an official who would direct him where to record his vote. The two abovementioned electors on behalf of each candidate would then have an opportunity of challenging under section 28 (j). The false personification is now remedied by scrutiny of the votes and the rejection by the Commissioner of one or more of those presented in the same name.

I forward herewith a copy of the opinion of the Municipal Solicitors, dated 27th September, on the points referred to them and propose to alter the Polling Officer's instructions accordingly and take an early opportunity of amending the Act as suggested.—I have, &c.,

P. C. H. SNOW, Commissioner.

GENERAL ELECTIONS OF COUNCILLORS UNDER THE CITY
OF BOMBAY MUNICIPAL ACT, 1838.

WARD ELECTIONS.

Instructions to Polling Officers.

On Monday, 25th January 1892, the Polling will commence at 9 A.M. and close at 6 P.M. (Bombay time) precisely. Polling Officers are to be present at the Polling place during the whole of that time.

2. Each Polling Officer will be provided with—

- (1) a complete alphabetical extract from the Ward Roll containing the names of all persons whose votes can be received by such Polling Officer ;
- (2) a locked box in which unchallenged voting papers are to be deposited as they are received (*see* Clause 10) ;
- (3) forms of challenge and a list for recording challenged votes (*see* clauses 12 and 13).

3. No persons but the Polling Officers, and other persons specially authorized by the Commissioner in this behalf, are to be allowed to enter behind the polling tables.

4. Besides the Polling Officers a clerk will be stationed at each polling place with a stock of voting papers available for issue to such persons *entitled to vote* as may require them.

5. No voting paper is to be received by the Polling Officers unless it is one supplied by the Commissioner for the Ward in question from his office or under the last preceding clause.

6. It will be observed that in column 6 of the voting paper the names of those persons are entered, for whom *alone* votes can be received. The Polling Officers will decline to receive votes tendered for any other persons.

7. No voting paper is to be received unless it is signed (in the manner prescribed in the voting paper) *in the presence of the Polling Officer*.

8. No voting paper is to be received unless the name of the person who signs it under the last preceding clause is enrolled in the Ward Roll :

(a) provided, however, that where the name of a Joint Stock Company is enrolled, the Secretary, Agent or Manager of the said Company may vote on its behalf irrespectively of the fact of such person voting also or being entitled to vote in his own individual capacity ;

(b) provided also that where the name of a Company (other than a Joint Stock Company) or firm is enrolled any person who holds a *special* power-of-attorney in that behalf (duly stamped with a stamp of one rupee) may sign for such Company or firm irrespectively of the fact of such person voting also or being entitled to vote in his own individual capacity.

Instructions
to Polling
officers.

9. If a person is enrolled in the Ward Roll as a voter, not only in his own individual capacity, but also as the representative of an undivided family or of an association or of trustees, he can vote in every such capacity.

10. Immediately on a voting paper being received and signed, the Polling Officer is to attest it and enter the consecutive number in the first column of the voting paper. He is also to enter the number with his initials against the name of the voter in the Roll and save in case of objection (*see* clause 12) is to drop the voting paper into the voting box.

11. If another voting paper is subsequently tendered in a name already initialled in the Roll as above, the Polling Officer is to receive it and save in case of objection (*see* clause 12) is to dispose of it in the manner prescribed in the last preceding clause.

12. No questions except the two following or either of them are to be put to a voter, and neither of these questions are to be put *unless the Polling Officer is required to put them*, either by a person whose name is entered in column 6 of the voting paper or by two persons whose names are enrolled in the Ward Roll :—

(a) Are you the person enrolled in the Ward Roll as follows ? (Read the whole entry from the Roll.)

(b) Have you already voted at the present election or at any election being at present held for any other Ward ?

When one or either of these questions has been asked, the voting paper shall not be received until the question has been answered, and the answer to such question or questions shall be recorded by the Polling Officer under his signature in writing. When the voting paper has been received, duly signed and attested, the Polling Officer shall, besides writing his initials and the number of the voting paper against the voter's name in the Ward Roll as directed in clause 10, also write against the said name

the word "challenged." Such voting papers, together with the answers recorded as herein prescribed, shall be placed in a separate packet and not in the voting box, and the Polling Officer shall direct the parties to any such challenge to appear within three days after the poll before the Commissioner.

13. As soon as may be, after 6 p. m., the Polling Officer shall make a list of the challenged cases if any, and shall forward the list with the challenged voting papers and the recorded answers in a sealed packet to the Commissioner. He shall at the same time forward the voting boxes with their contents to the Commissioner.

H. A. ACWORTH,

Municipal Commissioner
for the City of Bombay.

MUNICIPAL OFFICES :

BOMBAY, *January 1892.* }

30, ESPLANADE ROAD,
BOMBAY, *27th September, 1897.*

To P. C. H. SNOW, Esq.,

Municipal Commissioner.

SIR,—We have the honor to state that, having regard to the opinion of Mr. Macpherson referred to by the Assessor and Collector, we agree with the latter in thinking that para 11 of the instructions to Polling Officers requires amendment. We suggest that the following might be substituted for it :—

" 11. If another voting paper is subsequently tendered in a name already initialled in the Roll as above, the Polling Officer is to refuse to receive it and is to inform the person tendering it that any objection he may desire to make to the Commissioner, in respect of such refusal, must be made in writing before 5 p. m. on the following day. The Polling Officer shall also, if requested to do so by the person tendering such voting paper, but not otherwise, write thereon the word 'rejected,' and after placing his initials thereunder, return the voting paper to that person."

The last sentence commencing "The Polling Officers shall also," &c., may possibly not be thought desirable, and we do not think it very material whether it is included or not, but we have suggested it because it seems to us that a person whose voting paper is rejected may reasonably ask to have that voting paper identified in view to any objection or application he may desire to make to the Commissioner under section 28 (p) or to the Chief Judge of the Small Cause Court under section 33 (l) of the Municipal Act.

The only malpractice which came to our knowledge as having been resorted to at the last general elections was that of "personation," and of this apparently there were not a few glaring instances. This, of course, is a very grave evil, and is one which ought in our opinion to be susceptible of severe punishment.

As the Municipal Act at present stands it would be practically hopeless to prosecute even the actual personator for reasons which are fully illustrated and referred to in a letter which we wrote to the Assessor on the 11th June 1896 in reference to a case of personation which had been attempted in an election for D Ward a short time previously. We enclose for ready reference a copy of this letter.

As against a candidate who employs, connives at, or instigates recourse to, personation on his behalf there is at present literally no law which, so far as we are aware, can be put in force, though it is of course such a person who ought to be primarily responsible and amenable to punishment.

In order to effect that object, it would be necessary to introduce into the Act provisions somewhat analogous to those which find place in the English Municipal Corporation's Act, 1882, in which personation amongst other things is made punishable as a "corrupt practice" and if committed by or with the knowledge or consent of a candidate at a municipal election, such candidate is to be deemed to have been personally guilty of a corrupt practice, and his election, if he is elected, is rendered void, and he is subjected for seven years to certain disqualifications; amongst other things he is incapacitated from holding or exercising any corporate office or municipal franchise or being enrolled as a voter, and from acting as a justice, or holding any judicial office, &c.

It no doubt rests in a great measure (as Mr. Brunton points out) with candidates themselves to put a stop to such malpractices if they choose, but we doubt whether they can ever be effectually dealt with without some such amendment of the law as above indicated.—We have, &c.,

CRAWFORD, BURDER & Co.
BOMBAY, 11th June 1896.

R. P. BRUNTON, Esq.,

Assessor and Collector, Municipality.

SIR,—We have the honour to return herewith the voting paper and other papers which you left with us a few days ago in connection with the challenged vote tendered in the name of Nowroji Maneckji at the recent election in D Ward.

There seems to be no doubt whatever as to the facts: the person who tendered the voting paper in question and signed it "Novroji Muncherji" was in reality one Kekhushro Bejanji who, when the vote was challenged, admitted that he was the person enrolled in the Ward Roll as Novroji Muncherji and stated that he was brought to the Polling place by one Limjibhoy who was apparently busying himself in the election on behalf of one of the candidates and who, on the vote being challenged, disappeared.

The question which, under the circumstances we have had to consider, is whether either Kekhusro Bejanji by thus attempting to personate a voter, or Limjibhoy by instigating him to do so, has committed an offence, for which he has rendered himself liable to prosecution; and, if so, whether it is advisable to institute proceedings.

There is (unfortunately perhaps) nothing in the Municipal Act purporting to constitute it an offence for a person to represent himself as another so far as signing and tendering a voting paper in the name of that other is concerned, nor can we find that this constitutes any offence cognizable under the Indian Penal Code, for it does not come within the definition of cheating (sec. 415), and does not therefore amount to "cheating by personation" (sec. 416). On the other hand, it was evidently the intention of the Municipal Act [secs. 28 (k) and 473] that, if the person went a step further and gave an untrue answer to either of the questions contemplated by section 28 (j), he should be deemed to have committed the offence of furnishing false information to a public servant (Indian Penal Code, sec. 177). Kekhusro Bejanji, as a matter of fact, when these two questions were put to him, answered them truly, but we must add that, even if he had not done so, we think [notwithstanding secs. 28 (k) and 473 of the Municipal Act] that he could not have been successfully prosecuted, for the essence of the offence under section 177 of the Indian Penal Code is that the false information be given to a public servant; while, notwithstanding the provisions of section 521 of the Municipal Act, Polling Officers cannot, as regards offences cognizable under the Indian Penal Code, be regarded as public servants unless they fall within the definition (which few if any of them do) of "public servants" in that code (sec. 21). On this point see the correspondence and papers arising out of a prosecution in 1891 of one Enoch Solomon, including Counsel's opinion obtained under instructions conveyed under Commissioner's No. 20139, dated 1st December 1891, and subsequent correspondence in February and August 1892 on the subject of the amendment of the Act, which was proposed in consequence of Counsel's views.

We think under the circumstances no proceedings could be sustained against Kekhusro Bejanji or Limjibhoy.—We have, &c.,

CRAWFORD, BURDER & Co.

Proposed by the Hon'ble Mr. Bhalechandra K. Bhatawadekar, seconded by Sundernath D. Khote, Esq.—

"That the following be recorded:—Letter to the Secretary, No. 17316, dated 9th October 1897, from the Commissioner reporting on certain malpractices at Municipal Elections."

Carried.

EX-PARTE THE MUNICIPAL CORPORATION—RE LEGALITY OR OTHERWISE OF MUNICIPAL SERVANTS INTERESTING THEMSELVES IN INVENTIONS UTILIZED BY THE MUNICIPALITY.

INSTRUCTIONS FOR COUNSEL TO ADVISE.

On the 7th September 1896 the following resolution was passed by the Municipal Corporation :—

“ That the Municipal Commissioner be requested to enquire and inform the Corporation whether any and what Municipal officers own or are interested in any patents connected with municipal work or works under the guidance or supervision of the Municipality, with all details and particulars connected with such patents.”

The Commissioner, having forwarded a copy of this resolution for report to the head of each department of the Municipality on the 16th August 1897, reported to the Corporation the result of his enquiries. A printed copy of the Commissioner's report addressed to the Municipal Secretary, with a copy of a joint report by the Health Officer, Dr. Weir, and the Drainage Engineer, Mr. C. C. James, on the subject of certain designs registered by them is sent herewith.

On the 2nd September 1897 the Corporation further resolved—

“ That the consideration of the Commissioner's letter to the Secretary, No. 12306, dated 16th August 1897, be deferred, and the Commissioner be requested to take Counsel's opinion as regards the legality or otherwise of municipal servants interesting themselves in patents of invention by themselves or others utilized by the Municipality.”

Counsel is referred to sections 74 to 86 inclusive (Chapter IV) of the Municipal Act, and is requested to advise the Corporation upon the question raised in the Resolution of 2nd September 1897 just quoted.

And to advise generally.

Under section 86 no person who has any share or interest in any contract with the Corporation is qualified to be a municipal servant, and if, being a municipal servant, he acquires any share or interest in such contract, he vacates his office. It follows that no municipal servant can have any contract with the Corporation (except his own contract of service), and I don't think it matters whether the municipal servant derives any personal benefit, pecuniary or otherwise, from the contract, provided there is a contract in which he is interested, e.g., a contract by which the Corporation agreed with a municipal servant to use the latter's invention in consideration of paying a royalty to a charity would be a contract and within section 86. The municipal servant would be interested in such a contract. The fact of his

invention being used would be a good advertisement for him. The fact of payment of a royalty, albeit to a charity, is a protection of the servant's rights in his invention.

There can, therefore, be no *contract* whatever as to the user of a municipal servant's invention without the case falling within section 86.

There can be no objection to the Corporation using the invention, if there is no *contract* as to its user, that is, the fact of the municipal servant getting the advantage of the advertisement of his invention by such user would not, in the absence of a contract with the Corporation, matter at all.

I see nothing to prevent the inventor charging royalty to other persons who use his invention either in Bombay or elsewhere. Having regard to the provisions of section 74, clause b, and 77, clause c, the servants or officers who are bound to devote their whole time to the Corporation could not start a business to manufacture or sell their inventions; but I think they could license other persons to do so, merely receiving payment for such license by royalty or otherwise, and not themselves taking any active part in the manufacture or sale of their inventions.

J. D. INVERARITY.

February 19th, 1898.

THE BOMBAY MUNICIPALITY—*RE* COMPASSIONATE
ALLOWANCE TO THE WIDOW OF THE LATE
INSPECTOR T. GLOVER.

To P. C. H. SNOW, Esq.,

Municipal Commissioner.

Sir,—In returning the papers forwarded under your No. 875, dated the 6th instant, we have the honour to forward herewith a copy of the case which we have submitted to Counsel and of his opinion thereon on the question of the compassionate allowance to the widow of the late Inspector T. Glover.

In the absence of Mr. Inverarity and Mr. Macpherson, both of whom are at present in England, we sent the case to Mr. Scott.

It will be observed that while agreeing that under the proviso to Regulation No. 22 as it stands, and assuming it be valid, the Corporation have the power to grant a compassionate allow-

ance to the widows or heirs of deceased Municipal servants in excess of the limits prescribed by the previous portion of the same regulation, he, nevertheless, doubts the validity of the proviso in question on the ground that it omits to determine the amount of the compassionate allowance which may be given, leaving it to the absolute discretion of the Corporation. Mr. Scott, however, thinks it would be sufficient if a *maximum* amount were fixed by the proviso.—We have &c.,

CRAWFORD, BURDER & Co.

Ex parte.

CASE FOR THE OPINION OF COUNSEL.

The following are sent herewith for Counsel's perusal : viz :—

- (1) File of correspondence with reference to the compassionate allowance payable to the widow of the late Inspector T. Glover ; and
- (2) Print (at page 268 of the accompanying book) of the Regulations framed by the Standing Committee under section 81 (1) (f) of the City of Bombay Municipal Act, 1888.

The facts are shortly as follows :—

The late Inspector Thomas Glover, who had served in the Health Department of the Bombay Municipality for 22 years, died on the 1st January 1897, leaving a widow sole executrix of his will. He died of plague contracted in the discharge of his duties as an Inspector in the Health Department. His services had been of an exceptionally meritorious character, and had been specially valuable at a time when, shortly before his death, the plague had assumed very serious dimensions, and there was considerable apprehension that the employes of the Health Department would desert their services, his personal influence and zealous exertions with them in great measure conducing to their being kept to their work.

Under Regulation 22 (at page 270 of the Book) Mr. Glover's widow became entitled, as of right, after his death, to a compassionate allowance of Rs. 3,000. That amount was paid to her, but subsequently a further application was made for a special allowance, having regard to the late Mr. Glover's services and the fact that his death was due to disease undoubtedly contracted in the course of his duties.

It will be seen from the correspondence that Inspector Glover, during his service, made contributions to the Pension Fund aggregating Rs. 1,993-6-7, so that in point of fact, without taking into account interest on these contributions during the many years over which they had extended, the net result was really that the widow received only about Rs. 1,000 in excess of what had actually been paid by her husband himself.

The question was referred to us as to whether under these circumstances it was legally competent to the Corporation, in their discretion, under the proviso to Regulation 22, to grant a special compassionate allowance to Mrs. Glover, notwithstanding that under the first clause of that regulation she was, as of right, entitled to, and had actually received, a compassionate allowance on the basis thereby prescribed.

For the reasons stated in our letter of the 15th March 1898, we came to the conclusion that it was competent to the Corporation to make a grant of such special allowance, and it is upon this point that Counsel's opinion is now asked.

Counsel is requested to advise on the question stated in the Standing Committee's Resolution of the 28rd March 1898, namely—

QUERIES.

Whether the Corporation have the power under the Pension Regulations to grant a compassionate allowance to the widow or heirs of a deceased Municipal servant in excess of the limits fixed by the said regulations; and further

Whether the proposed amount of Rs. 2,000, in addition to the Rs. 8,000 which has already been paid to Mrs. Glover, would be in excess of the limits fixed by Regulation 22, having regard to the facts of the case and the terms of the proviso to that regulation.

And to advise generally.

OPINION.

Under the Pension Regulations as they stand I am of opinion; that the Corporation, if the conditions specified in the proviso to Regulation 22 are fulfilled, have power to grant a compassionate allowance in excess of the limits fixed by the regulations. The effect of the proviso, assuming it to be valid, is to render it immaterial for the Corporation, when granting a special compassionate allowance, to consider whether or not the widow or relations of the deceased servant who may have been killed in discharge of his duties have already received a compassionate allowance as of right under the first clause of Regulation 22. I think Rs. 2,000, if paid to Mrs. Glover in addition to the Rs. 8,000 already paid, would be in excess of the limits prescribed by the first clause of Regulation 22. According to the basis of calculation prescribed by clause (c) of Regulation 15 the gratuity payable to Mrs. Glover, as of right, was Rs. 8,000, and there is nothing in the Regulations to show that the widow of a contributing servant who dies before taking his pension is entitled to any refund of contributions. Such contributions, I think, become part of the Municipal Fund, as premia of insurance become part of the assets of an insurance Company.

In giving the above answers I have assumed the proviso to Regulation 22 to be valid, but I doubt if it is so.

Under section 81 (f) of the Municipal Act, the Standing Committee have to frame regulations to determine the conditions under which widows shall receive compassionate allowances and the amounts of such compassionate allowances, and the proviso in question does not determine the amount of the compassionate allowance, but leaves it in the absolute discretion of the Corporation; and for that reason the proviso is, in my opinion, invalid. The invalidity can be rectified by the repeal of the proviso and the framing of a fresh regulation to the same effect, with the addition of words determining the maximum amount of the special compassionate allowance.

(Sd.) BASIL SCOTT.
9th April 1898.

ADDITIONAL TAXATION ON ACCOUNT OF CITY IMPROVEMENT TRUST.

Considered the following:—Memorandum from the Commissioner, No. 21580, dated the 29th November 1898—Forwarding, with reference to the Standing Committee's Resolution No. 7245, dated the 23rd November 1898, copy of the following letter to his address from Messrs. Crawford, Brown, Bayley & Duulop, dated the 26th November 1898:—

“ In acknowledging the receipt of your No. 21277, dated the 24th instant, we have the honour to state that, as the payment to be made to the City Improvement Trust on 1st April 1900, pursuant to section 72 (1) of the City of Bombay Improvement Act, 1898, has to be made from the Municipal Fund, and as the Act just referred to gives no power to the Municipality to levy any special or additional taxation in order to supplement the Municipal Fund, it follows that the Municipal Act alone can be looked to for the means of providing the amount required, that is to say, no taxation can be resorted to for the purpose other than such as is authorized by the Municipal Act. The necessity for making provision for the payment however remains, and seems to entail making allowance for a cash balance at the end of year 1899-1900 (that is to say, on 31st March 1900), of the sum required to be paid to the Trust on the following day,

over and above the minimum cash balance of one lakh required by Section 126 (2) (c) of the Municipal Act. So far as the obligation to provide for the payment is concerned, it is immaterial apparently from what particular tax or portion of Municipal Fund this provision is made, provided it is made and is made without exceeding the limits of the taxing powers conferred by the Municipal Act. The answer to the question raised by the Standing Committee's resolution would therefore appear to be that a portion of the 12 per cent. at which the General Tax is proposed to be levied, or, if not, that some other adequate portion of the Municipal Fund will have to be reserved for the payment to be made on 1st April 1900. And, with reference to the addition to the resolution which the proposer suggested (but which was ruled out of order), we may add that it is quite clear that an additional sum of 2 per cent. is not, under Section 72 (1) of the City Improvement Act, also leviable on the rate-payers for general tax."

GRATUITY TO MUNICIPAL OFFICERS IN ADDITION TO PENSION.

30, ESPLANADE ROAD,
BOMBAY, 23rd October 1896.

FROM CRAWFORD, BURDER, BAYLEY, AND DUNLOP,
To P. C. H. SNOW, ESQ., MUNICIPAL COMMISSIONER.

Sir,—In reply to your No. 14248, dated the 22nd instant, and to the Resolution No. 7292 forwarded therewith, we think we cannot better answer the question therein referred to us for opinion than by dealing with the Corporation's Resolution No. 6985, out of which the present point arises :

There appears to us to be considerable doubt as to the competency of the Corporation to make the proposed grant of Rs. 18,000 to Mr. Barrow "on account of specially meritorious service." As to the grant of Rs. 2,000 as honorarium for his special researches and literary labours in preparing and publishing a calendar of the old Municipal records we see no difficulty.

The powers of the Corporation in regard to the purposes for which Municipal moneys may be provided and applied are laid down by sections 61, 62, 63, and 118 of the Municipal Act. Sections 61 and 62 prescribe the purposes for which money *must* be provided, and it is obvious, of course, that the proposed grant does not fall within any of these. Section 63 vests in the Corporation a discretion in regard to providing for certain other matters ; it is only necessary, so far as this section is concerned,

to consider clause (k), for clauses (a) to (j) inclusive and clause (l) clearly have no bearing whatever on the present question; it would be impossible in our opinion to hold that the proposed grant of Rs. 18,000 to Mr. Barrow "on account of specially meritorious service" is a measure likely "to promote public safety, health, convenience, or instruction" within the meaning of clause (k), particularly when regard is had to section 118 (d), to which we shall presently refer. As regards the Rs. 2,000 however, the case is different; a calendar of the old Municipal records such as Mr. Barrow has in view may be, and no doubt will be, a very convenient and instructive work and one which will involve an immense amount of labour and research, and we can see no reason to doubt that a payment from Municipal money to secure the publication of such a calendar would be a proper expenditure under section 63 (k).

Section 118 contains substantive provision that the Municipal fund, "shall be applied in payment of all sums, charges, and costs necessary for the purposes specified in sections 61, 62, and 63 or for otherwise carrying this Act into effect, or of which the payment shall be duly directed or sanctioned under any of the provisions of this Act, inclusive of" [clause (d)] "the salaries and other allowances of all Municipal officers and servants and all pensions, gratuities, and compassionate allowances payable under the provisions of this Act or of any schedule or regulation framed under this Act and at the time in force."

Regulations have been framed under section 81 (f) prescribing the pensions, gratuities, and compassionate allowances payable to Municipal officers on retirement, but these clearly do not authorize any such special grant as the Rs. 18,000 now proposed, and, in the absence of such authority either in the bye-laws or in the Act itself, we are unable to advise that it is legally competent to the Corporation to make the grant in the terms stated.

We return the copy of the resolution of the Corporation No. 7292, dated the 21st instant, as also the Pension Rules.—We have, &c.,

CRAWFORD, BURDER, AND Co.

RE THE BOMBAY MUNICIPALITY.

CASE FOR THE OPINION OF COUNSEL.

From the enclosed copy letter No. 6989 of the 12th instant, it will be seen that, at the adjourned monthly meeting of the Corporation held on the 12th instant, a resolution was passed (No. 6985) granting to Mr. Barrow Rs. 20,000,—Rs. 18,000 on account of specially meritorious service and Rs. 2,000 as honourarium for his special researches and literary labours in preparing and publishing a calendar of old Municipal records.

The legality of the grant having been questioned, the Commissioner is desirous of having Counsel's opinion as to the competency of the Corporation to make it.

The powers of the Corporation in regard to the purposes for which Municipal moneys may be provided and applied are found in sections 61, 62, 63, and 118 of the Municipal Act. Sections 61 and 62 prescribe for the purposes for which money must be provided, and we think it is obvious that the proposed grant of Rs. 18,000 for *specially meritorious service* cannot fall within any of these.

Section 63 gives the Corporation a discretion in regard to providing for certain other matters, and it will be seen that clauses *a* to *j* inclusive and clause *l* have clearly no bearing on the present question. As to clause *k*, unless it can be said that the grant of Rs. 18,000 on account of specially meritorious service is a measure likely to promote public safety, health, convenience, or instruction, the clause cannot apply, and this we think is clear when section 118 (*d*) is considered.

We are at present only referring to the Rs. 18,000, as we think the Rs. 2,000 should be considered separately.

By section 118 the purposes to which the Municipal fund is to be applied are set out "in payment of all sums, charges, and costs necessary for the purposes specified in sections 61, 62, and 63 or for otherwise carrying this Act into effect or of which the payment shall be duly directed or sanctioned under any of the provisions of this Act inclusive of (*d*)."

"The salaries and other allowances of all Municipal officers and servants and all pensions, gratuities, and compassionate allowances payable under the provisions, of this Act or of any schedule or regulation framed under this Act and at the time in force."

Under section 81 (*f*) regulations have been framed prescribing the pensions, gratuities, and compassionate allowances payable to Municipal officers on retirement, but we fear these do not authorize any such special grant as the Rs. 18,000 now proposed to be given. We enclose them for Counsel's consideration.

Beyond the sections above quoted and the by-laws, we know of nothing further to which we can with advantage refer Counsel to assist him, and we take it that, unless some authority can be found in the By-laws or in the Act itself, the grant cannot be made.

So far as the Rs. 2,000 honorarium, the case is different and we think presents no difficulty as a calendar of the old Municipal records will, no doubt, prove a very convenient and instructive work and one which will involve an immense amount of labour and research, and we think Counsel will probably be of opinion that the payment from Municipal money to secure the publication of such a calendar would be a proper expenditure under section 63 (*k*).

We ought, we think, to have explained to Counsel that Mr. Barrow's service with the Municipality has extended over 26 years, and that he has earned and has been granted the maximum pension of Rupees 416-10-8 per month in respect of this service and that, according to the regulations made under section 81 (clause f), no further pension could be granted to him beyond this amount.

Provision is made by Regulation 15 (d) for a special good service pension after 30 years' service (Mr. Barrow's being however only 26) in addition to the pension payable under clause c, subject however to a maximum limit of Rupees 88-5-4 per month, and it was pointed out during the discussion in the Corporation when the question of this grant to Mr. Barrow was before them—and we believe correctly—that the sum of Rs. 18,000, if turned into pension, would give Mr. Barrow an additional Rs. 140 per month, bringing his pension from Rupees 416 to Rs. 556 a month, or Rupees 6,700 a year, the maximum allowed to any officer after 30 years' service being only Rs. 6,000.

From these regulations it will also be seen that in no case is any provision made for a gratuity in addition to a pension. The two seem to be dealt with entirely separately, and apparently a gratuity is given to an officer who, having completed the 5 years' service, but not 15, has not become entitled, under clause 15 (a), to any pension, in which case the gratuity is given to him calculated as therein provided.

QUERIES.

Counsel is therefore requested to advise as to whether the Corporation are competent to legally make the grant or any part of it specified in Resolution No. 6985 of the 12th October instant.

And to advise generally.

OPINION.

The powers of the Corporation as to the application of Municipal moneys are such, and such only, as the Act either expressly or by necessary implication confers.

As to the Rs. 18,000 now in question, the right to grant and pay that sum, or any sum, to Mr. Barrow must turn on section 118 (d) of the Act read in connection with the subsisting regulations as to pensions and gratuities, and I find nothing either in the section or in the regulations to justify any gratuity being given to Mr. Barrow in addition to his pension under the rules. The regulations seem to contemplate and provide for gratuities only in lieu of pensions, and not in addition thereto, and only in certain specified cases. There is provision made for special good service pension, but with a condition precedent of thirty years' service.

My answer must, therefore, be that the Corporation are not competent to make the grant of Rs. 18,000 or any part thereof, and that Mr. Barrow is entitled only to his pension under the rules.

As to the Rs. 2,000 for the Calendar, I think the grant of that sum is permissible as a provision for a measure likely to promote public convenience under section 68 (k).

JOHN MACPHERSON.

27th October 1896.

BUDGET GRANTS.

BOMBAY, 29th November 1894.

TO H. A. ACWORTH, Esq., Municipal Commissioner.

SIR,—We have the honour to return the papers forwarded for opinion with your No. 19649, dated the 22nd instant. The questions upon which, as we understand, we are asked to advise are :—(1.) Whether under Section 132 of the Municipal Act, the Standing Committee can sanction the expenditure of an unexpended budget grant during any year except the year next following that for which such grant was budgetted for and adopted. (2.) Whether an unexpended balance of a budget grant for work to be executed from Loan funds is on the same footing in this respect as a grant sanctioned from current revenue. (3.) If it be so, whether such budget grant for loan work is to be treated as dating from the date of the sanction of the Corporation or from the commencement of the Budget year, or from the date of the raising of the loan.

Upon the 1st question we are of opinion that Section 132 does not admit of the Standing Committee sanctioning the expenditure of the unexpended portion of a budget grant during any year, except the year *next* following the year for which such grant was budgetted for and adopted. Consequently it is not, we think, competent to the Standing Committee to sanction the expenditure during the present year of the lapsed grants for 1892-93 and previous years, referred to in para. 8 of the Chief Accountant's letter No. 3477, dated the 21st instant. As to the 2nd question we consider that an unexpended balance of a budget grant for work for which a loan has been or is to be obtained, is on precisely the same footing, as regards the Standing Committee's power under Section 132, as a grant sanctioned

from current revenue. We think the present practice of budgetting for expenditure on Loan works as well as on works to be executed out of current revenue, is correct, and is indeed necessary, under sections 125 and 126 of the Municipal Act, the separate budget for Loan works referred to by the Chief Accountant in para. 11 of his letter is in reality a part of the "budget estimate" for the year and section 132 applies, we think, to that part just as much as to any other. And this leads us, we think, to the correct answer to the 3rd question. Expenditure on works to be executed from Loan funds has to be budgetted for in the budget estimate for the year and adopted under section 130 just as other expenditure has, and when so adopted it becomes a budget grant for the year to which the budget estimate relates, if not expended during that year, whether because the loan has not been raised or for any other reason, it lapses, subject, however, to the power of the Standing Committee, under section 132, to sanction the expenditure of the money during the next following year, but not afterwards.—We have, &c.,

CRA WFORD, BURDER & Co.

QUARRIES.

30, ESPLANADE ROAD,

BOMBAY, 17th August 1896.

To P. C H. SNOW, Esq., Municipal Commissioner.

SIR,—We have the honour to state, with reference to your No. 9807, dated 18th instant, that the functions of the Commissioner and Standing Committee under section 382 of the Municipal Act are clearly not restricted to lying by until the working of a quarry or the removal of stone, earth, &c., from a place has actually become dangerous or a nuisance. Whenever such working or removal is *likely* to create a nuisance, notice can be given requiring the owner to take order "for the purpose of preventing danger or of abating the nuisance arising or *likely* to arise." It is obvious that practically conditions can thus be imposed under which future working may be carried on; should those conditions be found insufficient or ineffectual, there is nothing to prevent the Commissioner from thereafter requiring (with the approval of the Standing Committee) other measures, or even the discontinuance of working altogether if that should be deemed necessary. Section 382 does not contemplate express permission being applied for or granted, but, by a requisition to take order under that section, the Commissioner and Standing Committee do in effect acquiesce in working being carried on, subject to the adoption of such

measures as have for the time being been called for. No permission, however, ought, we think, to be granted, which purports in any way to limit the power thereafter to reconsider those measures and require others. Assuming the permission granted to the Tramway Company (which we have not before us) did *not* purport to do this, it apparently would amount to nothing more than an intimation of the conditions on which working would for the time being be allowed and, as such, would be legally unobjectionable.—We have, &c.,

CRAWFORD, BURDER & Co.

APPOINTMENT OF MUNICIPAL AUDITORS.

The President said that, as some members had expressed considerable doubt regarding the procedure to be followed on this occasion, he thought it might save time if he stated at the outset that, in his opinion, it was not necessary that notice of motion of intention to propose the appointment of any particular candidate should have been given; consequently he should, if requisite, rule that any candidate might be voted for irrespective of the circumstance whether notice of intention to propose such candidate had or had not been given. He (the President) had intimated this opinion to the Secretary when the notice convening the meeting was issued, and Councillors would observe that that opinion was borne out by the opinion which he (the President) had obtained from the Hon'ble the Acting Advocate General, and which was as follows:—

"I think the 'business specified in the notice' of the meeting of urgency includes the business of appointing an Auditor, and therefore I do not think that a proposal by a Councillor, at the meeting (without any previous written notice to the Secretary of such proposal), that A B shall be appointed Auditor, would be out of order by reason of section 36 (k) which applies only to 'business' or a 'substantive proposition not specified in the notice of meeting.' My view being that all proposals of individuals to be appointed to the vacant post must be deemed to be within the term business 'specified in the notice of such meeting,' it follows that individuals may in my opinion be proposed, not only without previous notice under section 36 (k), but also without their having applied for the appointment.

"19th November 1895.

JOHN MACPHERSON."

It followed from this, the President said, that notices of motion were not necessary in the case of meetings of urgency although there was no harm in their being given. The President further pointed out that the several notices received had apparently been framed without reference to the fact that, under section 136 of the Municipal Act, the appointment was a yearly one and the pay of the Auditors had to be fixed by the Corporation from time to time.

BOMBAY, 24TH NOVEMBER 1888.

SIR,—We have the honour to inform you that Mr. Barrow the Municipal Secretary consulted us yesterday upon the question of the appointment of Auditors and by his desire we now address you on the subject. Mr. Barrow pointed out to us that the present Auditors were appointed under the late Act in the month of December 1887 and that their appointment was under the provisions of that Act for a year only, while under the present Act (sec. 136) the Auditors are to be appointed "for each official year." Accordingly the questions we were asked to consider were whether it would be necessary under these circumstances to appoint Auditors next month and if so, for how long—whether for a year or only the remainder of the present official year or how the interval between the expiration of the year for which the present Auditors were appointed and the commencement of the next official year should be provided for as regards the Audit of the Municipal accounts. It appears to us that clause 6 of the Transitory provisions (Schedule R to the Act) provides for the difficulty. Under that clause it seems clear that the Auditors like other Municipal Officers, holding office at the time when the present Act, came into force are to be deemed to have been appointed under the present Act, that is to say, *for the Official year*, consequently we think they will, by virtue of that provision, continue to hold office until the commencement of the next official year. The appointment of the Auditors for the next official year should, we think, be made by the Corporation *before* that year begins, for if the appointment were deferred until the first meeting of the New Corporation in April there would obviously be some period, though it might be a short one only, during which there would be in fact no Auditor, at all, and the appointment would not be, as section 136 requires for an official year, but for something less.—We have &c.

(Sd.) CRAWFORD & BUCKLAND.

RE THE DEPOSIT OF MUNICIPAL FUND.

COUNSEL'S OPINION.

QUERIES.

1. What is the exact meaning and effect of the words "subject to the control of the Corporation" as used in section 122 of the Municipal Act 1888, as amended by Section 5 of Act I of 1894.

Re the effect and meaning of the words "subject to the control of the Corporation" used in section 122.

2. Generally.

ANSWERS.

1. In my opinion the control of the Corporation is confined to the selection of the Banks and they have nothing to do with the deposits to be made in such selected Banks.

The Corporation can decide that a particular Bank selected by the Standing Committee shall not be a Bank with whom the Municipal monies can be deposited.

In my view the section contemplates that the Standing Committee shall select a Bank or list of Banks for the purpose of depositing the Municipal monies with. When they have done so, the Corporation can negative this or that Bank, and I think they can do so at any time, e. g., although Bank A might be approved of in January, they could negative it in February, after which no deposits could be made with it, although previous deposits of course would stand good for the period for which they were made.

This seems to be the only practical way of working the section, as to select a Bank at the time the deposit is to be made and then lay the matter before the Corporation would probably be inconvenient.

In my opinion the Standing Committee have no power to deposit money with a Bank until the selection by them of that Bank has been approved by the Corporation, or at any rate until the Corporation have had an opportunity of expressing disapproval of the selection, as express approval apparently is not required by the section.

2. Certain Banks should be selected as Banks with whom the Municipal monies may be deposited. The list should be submitted to the Corporation and as long as they do not disapprove of any particular Bank, the Standing Committee can, when occasion arises, deposit money in any Bank in that list without further reference to the Corporation.

J. D. INVERARITY.

PROPOSED UNIVERSITY OF RESEARCH.

Letter to the President from the Chairman, Provisional Committee, for the proposed University of Research, dated the 6th July 1900 :—

“ On behalf of the provisional Committee, I have the honour to forward, for the information of the Corporation, an opinion obtained from the Honourable the Advocate-General on the question whether the Corporation can legally make a contribution towards the maintenance of the University of Research, if the buildings of the University have to be located outside the present Municipal limits. You will observe that the Advocate-General has no doubt that the Corporation can legally vote a grant if it wishes to do so.

Contribution
to Institutes
outside the
limits of
Bombay.

“ 2. It appears from the resolutions of February 15th, kindly communicated to me by your predecessor, that the Corporation appointed a Committee to advise as to the extent of the assistance to be given to the University. If the Corporation should, at this stage, be able to declare the amount of grant it is prepared to give to the University, such a pronouncement would greatly help the Provisional Committee in the important deliberations in which it is at present engaged.” .

COPY OF OPINION.

Q. 1.—Whether under the City of Bombay Municipal Act, Section 63, the Corporation can lawfully sanction a contribution to the projected University from year to year, or in any one year, or how, assuming that the University was located in the City of Bombay ?

A. 1.—I think the Corporation could lawfully contribute to the projected University if it was established in Bombay. The contribution could however only be for one year at a time, and each fresh yearly grant would have to be sanctioned by the Corporation.

Q. 2.—Whether they could lawfully do so in case the University was located in Bangalore or some nearer place like Poona, Khandalla, Nasik, Devlali and the like ?

A. 2.—Section 63 (b) does not in terms provide that the educational objects for which the Corporation may provide must be carried out actually in the City of Bombay, but the objects must be substantially for the benefit of the inhabitants of Bombay, though not necessarily exclusively for their benefit. I think a contribution for the expenses of the University at Bangalore could not be a contribution which could be lawfully made under Section 63 unless it was shown that the University was attended by a considerable number of the students from Bombay. *Prima facie* the establishment of the University at Bangalore would not be for the benefit of the inhabitants of Bombay, though it might afterwards prove to be so. The same remarks apply to the other places mentioned in this query.

Q. 3.—Whether they could lawfully do it, if the University were located near enough to Bombay to be practically though not actually within Bombay, say within 5 or 10 miles of it in one of the suburbs of the City, as they are now called, to which, however, the Municipal Act does not apply.

A. 3.—I think the Corporation would have power to contribute to the University if located so close to Bombay as is suggested in this query, though not actually within Municipal limits.

Q. 4.—Whether the difficulty could be obviated by locating some parts of the University buildings and appliances or its administrative office in the City and the rest outside it in Salsette.

A. 4.—See above.

Q. 5.—Can the Corporation resolve to make a building grant to the University for a period exceeding one year, the year of the Budget in which it is included.

A. 5.—I think the Corporation can make no building grant for more than one year.

28rd April 1900.

BASIL LANG.

Re THE INDIAN UNIVERSITY OF RESEARCH.

CASE FOR THE OPINION OF COUNSEL.

Mr. Jamsetji Nussarwanjee Tata of Bombay having proposed to make a munificent endowment for a University of Research to be established in India, the scheme has received the cordial support of the Government of India, at whose invitation a conference was convened at Simla in October last, and the report of that conference, together with the Resolution of the Government of India, dated the 17th November 1899, accepting the recommendation of the conference, and expressing readiness to proceed to legislation as soon as the scheme has been matured in all its details, will be found amongst the printed papers sent herewith.

By a letter from the Hon'ble Mr. Justice Candy, Chairman, Provisional Committee for post graduate education, the Municipal Corporation have been invited to express their view, particularly as to the amount of financial help the Corporation will be prepared to give in the establishment and maintenance of the University.

The Resolution of the Corporation, dated the 15th February 1900, upon that letter will be found herewith.

By that Resolution the Corporation, amongst other things, express their view that the head-quarters of the University of Research should be located in or near the City of Bombay (it will have been seen from Mr. Justice Candy's letter and from the report of the Simla Conference that the choice of locality seemed to rest between Bangalore and Bombay). By this Resolution the Corporation held that the proposed University has a claim for assistance from this Municipality and appointed a Committee for the purpose of suggesting to what extent this assistance should be rendered and the proper manner in which it can be given.

A printed copy of the Report of this Committee, dated 27th February 1900, will be found amongst the papers sent herewith.

On the 8th March 1900, the Corporation resolved that the consideration of the Committee's Report be postponed, "and " that in the meanwhile the Commissioner be requested to obtain

"and place before the Corporation Counsel's opinion as to whether it is legally competent to the Corporation to make a monetary grant to an institution located outside the City limits."

We believe that the only provisions of the Municipal Act which throw any light upon this question are section 1 and section 63 (b).

The former provides that "except as is herein otherwise provided, it (the Act) extends only to the City of Bombay."

The latter provides that the Corporation may in their discretion provide from time to time, either wholly or partly for (amongst other matters) "Educational objects other than those set forth in Clause (g) of Section 61" viz., primary education, for which under Section 61 it is obligatory on the Corporation to make provision. There is nothing expressly extending any part of Section 63 beyond the City.

Counsel is under these circumstances requested to advise the Corporation upon the question stated in their Resolution of the 8th March 1900, viz., "Whether it is legally competent to the Corporation to make a monetary grant to an institution located outside the city limits" and to advise generally.

OPINION.

In my opinion it is not. The provisions of Section 1 of the Municipal Act limiting the extent of the Act to the City of Bombay except as is otherwise expressly provided must be borne in mind in construing section 61 and 63. They, the Corporation, would not under section 61 (b), if it stood alone, have power to construct Water Works outside the City limits, but Section 261 (a) expressly gives that power; so also with regard to the disposal of sewage Section 61 (a and c) is supplemented by Section 245. With respect however to Section 63 (b and k) there are no supplementary sections authorising expenditure on educational institutions outside the City limits and I am therefore of opinion that the Corporation can only vote money from the Municipal Fund for Educational objects which are within the City limits.

BASIL SCOTT.

29th July 1900.

HIGH COURT JUDGMENT *re*-SUIT FOR BROKER- AGE AGAINST THE MUNICIPALITY.

The Hon'ble Mr. Justice Starling's Judgment in the
suit for Brokerage against the Municipality, *viz* :—

COOVERJEE HIRJI *vs.* THE MUNICIPAL CORPORATION
OF BOMBAY.

The following is the full text of the judgment delivered by his Lordship in the above suit and also in the suit brought by the plaintiffs against Bai Motlibai.

His Lordship, in delivering judgment, said :—Hirji Hunsraj, one of the plaintiffs in this case, has since 1889, been the municipal broker. As such his duties have been to assist the Municipal Commissioner in the purchase of land required by the Municipality. His ordinary work was to find out, if necessary, the owners of land which the Municipality required and negotiate with them for the sale of their land. Sometimes the owners were known beforehand, and in that case he was sent to them direct, but in every case his first duty was to try and buy the land in the name of some third party, subject, of course, to the approval of the Commissioner. This was evidently in the expectation that the land would be acquired in this way at a lower figure. If the owner found out that it was the Municipality who were desiring to purchase, he, of course, had to admit the fact and do the best he could. In the event of his being unable to effect a purchase at a figure which the Commissioner deemed reasonable, he seems to have been employed to get information and witnesses for the purpose of assisting the Collector to come to a decision favourable to the Municipality, when the land was taken up under the Land Acquisition Act. In the early part of 1891 it was determined by the Municipality of Bombay to take up the land for the purpose of making road, near the Byculla Club, in the Agripada district, otherwise known as the Old Race Course, and it was determined, if possible, to take up, not merely enough to make the roads, but all the land through which the roads were to run, or at any rate the frontage, in order that the Municipality might recoup themselves, to some extent at least, for the cost of the roads by selling the land abutting thereon at an increased rate. Out of this land two large plots belonged to Motlibai, the defendant in suit No. 403 of 1893, and to Muncherjee Cama. The matter was put into the hands of Hirji in the beginning of 1891, and his case is

that he negotiated with various parties during that year and the next; that in some cases he brought the negotiations to a satisfactory conclusion and the land was purchased; that in Cama's case he had in 1892 made a definite arrangement with him for the sale of his land at Rs. 3 a square yard, but that could not be definitively carried out then because the Municipal Commissioner would not purchase Cama's land until he had come to a settlement with Motlibai; that in Motlibai's case he carried on the negotiations with her or her son, or Sorabjee Shapoorjee Bengali, almost up to a final settlement, when Mr. Acworth stepped in and concluded the bargain personally with Motlibai, and that subsequently he also purchased Cama's land from him direct. In respect of these two plots of land, Hirji in this suit claims brokerage from the defendants, and the defendants deny his right to the same. At the commencement of the case it seemed to be contended, on behalf of the defendants, that Hirji could claim no brokerage in any case unless the Commissioner choose to allow it to him, and then only at such rate as the Commissioner allowed. This was the case set up by Bharucha, one of the municipal officers, in his letter to the Executive Engineer, dated 15th March, 1893 (A 28). This did not seem to accord with all the probabilities of the case, and after Mr. Acworth was examined out of order so that he might leave Bombay, it was quite clear that such a contention could not be maintained, and the only question in the case was whether Hirji had done the work and carried on the negotiations which he represented he had. Hirji had, since he commenced work as an estate broker, kept a diary which he produced in court, and from that he gave his evidence as to the interviews he had had, and the negotiations he had carried on with the parties. If that diary is genuine, if it was made up day by day, and truly represents the acts of Hirji, then, in my opinion, Hirji has proved his case and will be entitled to succeed in this suit. It therefore becomes necessary at once to examine this diary, in order to see how far it is corroborated or contradicted by what may be treated as independent evidence. Now the witness who is the most independent is Hormusjee Muncherjee Cama, the son of the Cama, whose land was bought by the Municipality. He it was who had interviews with Hirji about his father's land, and he is alleged also to have interfered, at Hirji's suggestion, in the negotiations with Motlibai. I see no reason to suppose that he has come into court with any other intention than to speak the truth, the whole truth, and nothing but the truth, and I cannot find in his cross examination any suggestion or any reason why he should do otherwise. Further, being, as I believe, a truthful witness, he does not depend for his recollection of facts entirely upon his memory, for he has kept a diary in which he used to enter matter which at the time he considered important. I will, therefore, commence by comparing his evidence and diary with Hirji's. Hirji says he had seen Muncherjee Cama and also his son Hormusjee Cama

about this land in 1891; as to the interview with the latter, Hirji is confirmed by his evidence. The first interview with the latter appears by Hirji's diary to have been on 24th February, 1891, but the interviews in this year were mere discussions and no entry is found in Cama's diary. The fact that Hirji was working is, however, shown by the letter of 9th May, 1891 (A 50), produced by Cama in his examination-in-chief. The first time any definite terms were arrived at was on the 16th January, 1892, on which date there is an entry in Hirji's diary (Exhibit 22a). On the same day Cama has an entry in his diary (A 47). Cama's is longer than Hirji's, but the two are evidently the notes made by two men of what they each thought important in one interview. Then we have a note in Hirji's diary under date 29th April 1892 (Exhibit 22c) of an interview with Cama, and, although he has no entry on that date of such an interview, yet he deposes to the fact that about that time he has several interviews with Hirjee, and, looking at the contents of exhibit 22c, it seems to me highly probable that Cama would not make any note of that occurrence. On the 6th May there is an entry in Hirji's diary (Exhibit 22e) of a conversation Hirji had with Cama in which the latter told him of an interview he had with Motlibai. Cama has no note of what he said to Hirji, but in his diary there is a note of an interview he had with Motlibai on the 4th May (A 48). These two entries confirm another entry in Hirji's diary (Exhibit 22d), in which it appears that Bharucha had told Hirji that Cama's land could not be purchased before Motlibai had come to a settlement. This, according to Cama's evidence, had been communicated to him, and the result was that he said he would go and see Motlibai with the result recorded in A 48. The next entry in Hirji's diary about Cama is on the 25th May, 1892 (Exhibit 22i), which is confirmed by the entry in Cama's diary of the same date (A 49).

The only way in which the accuracy of Cama is directly impugned with regard to these entries is in respect of the last one, of which Nowroji Wadia gives a somewhat different account. But I cannot place much reliance on his evidence. He kept no diary, and his evidence as to what took place from time to time rests only on the strength of his memory. Besides this, I consider his evidence about the letter from Hirji alleged to have been torn up by Motlibai, as very unsatisfactory, and his evidence as to Maju not being acquainted with Motlibai is contradicted by Maju when called in the suit against her. Consequently I come to the conclusion that his memory is not accurate, or else that he is keeping back what he knows to serve the purposes of his mother in her suit. I, therefore, place the greatest reliance upon the evidence and the entries in the diary of Cama, and in my opinion they show that there is every probability of the entries in Hirji's diary having been made from time to time and at the times they purport to have been

made. The other evidence which is relied upon as showing the truth of Hirji's diary does not consist of direct corroboration of the entries therein by disinterested witnesses, and it may be well to examine shortly the way in which this diary is attacked. It is not alleged that Hirji fabricated the entries from time to time, but that the entries were made after the commencement of this suit—in fact between the 7th December, 1893, when the defendant made their affidavit of documents, and the 18th December, 1893, when the plaintiffs disclosed it in their affidavit of documents, and that the intimate knowledge of facts and dates exhibited in the entries must have been acquired by an inspection of the documents disclosed by the defendant's affidavit of documents. Now the eleven days between the filing of the two affidavits is a very short time for the plaintiff to have inspected and made notes of all his adversaries' documents, to have combined them with the documents in his possession and to have therefrom fabricated some forty or fifty separate entries. Besides it is not attempted to be proved on the part of the defendants that inspection of their documents was taken between those two dates. Then it was also suggested that Hirji might have got the information by searching through the files at the Municipal Office. This would have necessitated searching through three files and taking notes therefrom, which must have been a very lengthy process, and one which could not escape attention, and yet no one is called from the Municipal Office to prove that Hirji did anything of the kind, and although it might be possible for him clandestinely to get a copy of a letter here or there, I do not think it is at all likely that so much information could be obtained from the voluminous files of the Municipality without some one knowing about it who was willing to give evidence on the point. Besides this, it must be remembered that for some months before 19th August, 1893, when the plaint was filed, Hirji and the Municipality were disputing about these matters; consequently there would be greater difficulty in his getting access to Municipal records. Further the diary contains many notes about other matters—some Municipal and some not—quite independent of the entries relating to the subject-matter of this suit; consequently Hirji must have found blank spaces at the proper places ready left to be filled in with a note relevant to this suit, or else you would expect to find crowding in some places, or entries for some days put under other dates with a note of the day to which they referred, because the date on which they ought to have been entered was occupied by another entry. The aspect of the three little books containing the entries does not suggest anything of the kind. They look as if they had been written up day by day, but that does not necessarily show that the entries are to be relied on in the way in which I must rely on them in order to give a decree for the plaintiff, and although I may be of opinion that the defendants' suggestion as to the way in which the diary

was got up fails, yet I must further examine it carefully with all the surrounding facts and documents, which I will proceed to do.

Before doing this, however, I would just notice one entry which, it is said, must be false—that is the one on the 14th June 1891 (A 58). Bharucha refers to a diary he keeps of certain matters and says that that day was a Sunday, and for a wonder he had work which took him to the Municipal Office and kept him there all day. Then from his memory he says that he did not see Hirji on that day, although the latter has noted an unimportant interview with Bharucha on that day. As far as the evidence goes, that particular Sunday was the only Sunday on which Bharucha went to the office, though it is not the only Sunday on which Hirji has noted an interview with Bharucha. The others are 25th September, 1892 (Exhibit 22 v), and 30th October, 1892 (Exhibit 23 b). Of course it may be a *bona fide* mistake on the part of Hirji and that he has noted a real interview on a wrong day. In this case it will not, on the whole, affect the weight of the diary. Bharucha says he never had an interview with Hirji on a Sunday. If that is so, and Hirji has concocted the diary, it is difficult to imagine that he would deliberately write a note of three interviews under Sundays. I do not think that this incident in itself in any way militates against the general genuineness of the diary; at any rate I do not think that the inaccuracy and falsity of this entry is so established that I can use it as a fact directly going to prove that the diary itself is fabricated. There is another entry which is attacked in much the same way (Exhibit 220), in which Hirji has noted that he had an arrangement with Bharucha to give him a share in his brokerage in the two matters now in dispute in this suit. Bharucha denies that such an arrangement existed, but such an agreement is not so improbable that I can take Bharucha's denial as a proof that it did not exist, nor on the other hand, can I, in the face of his denial, hold that the entry represents a fact, and for the purposes of this case I must leave that entry out of consideration altogether. Another point in which the diary of Hirji can be checked as against the evidence of Bharucha is in respect of the time when the Commissioner gave instructions for an offer in writing to be obtained from Motlibai. Bharucha in his evidence says that was in the beginning of September, and in A 28, written by him to the Commissioner on the 11th March, 1893, he inferentially makes the same statement, for in explaining why Hirji's services were dispensed with he writes that Hirji had been trying ineffectually for two or three months to get such an offer, and then the Commissioner took the matter into his own hands. The Commissioner took the matter into his own hands just before the middle of December, so three months before that would be the middle of September. Hirji, on the contrary, says he got no such order till the end of October, and I think the exhibits bear out his statement. On the 30th August

1892, Hirji wrote U to Bharucha, saying that Motlibai was willing to lease her land with option of purchase in Municipal bonds. Nothing seems to have been done on that immediately, as the Commissioner was then trying directly to get Motlibai to agree to sell. On the 19th September, however, Motlibai refuses to accept the Commissioner's then offer (W), but says she is open to consider any reasonable terms, and on the same day Bharucha seems to have taken up U and seen Hirji,* who has an entry in his diary (Exhibit 22t) showing that he and Bharucha went through the calculations of the cost of the land under the conditions set out in U. On the next day Bharucha wrote X to the Commissioner, communicating to him the calculations which he and Hirji had gone through on the previous day. The date of X, 20th September, would indicate that the order, Commissioner to Hirji, to get an offer in writing could not have been communicated to him in the beginning of September, but the case does not stop here. On the 28th of September there is an entry in Hirji's diary to the effect that Bharucha had not been able to get an answer from the Commissioner. On X there is an endorsement by the Commissioner—"Mr. Bharucha to see me on Friday"—dated 26-10, and one by Bharucha—"I am ready to see you, 28-10-92." It was suggested by Bharucha that the "10" was a mistake for "8," but that can not be, because the 28th October was a Friday, and the 28th August was not. Then under the 30th October (which by-the-bye is a Sunday) there is an entry (Exhibit 23b in Hirji's diary which records the giving of the order to get an offer in writing from Motlibai. Then on the 31st October, there is an entry in the diary Exhibit 23c) of a letter written by Hirji, to Motlibai, and Z is a press-copy, of that letter, which asks her to send him a written agreement in terms which are substantially the same as are set forth in W. Motlibai in her evidence admits receiving three letters and in her affidavit of documents she says one was dated 31st October or 2nd November, the former date agreeing with that of which Z is the press-copy, though she says she tore it up. Of this I shall have to say more hereafter in a different connection. I think I may fairly come to the conclusion that Z was really written and did reach Motlibai. On that there is an entry in Hirji's diary (Exhibit 23) of an interview with Naorojee in which Z is referred to, and in accordance with Naorojee's suggestion, another letter is written to Motlibai on the 2nd November (A,) in which the interview with Naorojee on the previous day is referred to. This letter is not produced, but from the curious coincidence of the two alternative dates given in Motlibai's affidavit of documents with the two press-copies of letters sworn by Hirji to have been sent to her, I can have no doubt that they were both sent and both received. There is an entry of the despatch of the last letter in Hirji's diary (Exhibit 23 c). Then come a series of entries in Hirji's diary (Exhibit 23f to 23i) of interviews with Motlibai, Bengali, and Bharucha about this matter, which I need

not refer to one by one, and on 24th November, 1892, there is an entry (Exhibit 23 m) in which Hirjee notes that he on that day asked Bharucha to inform the Commissioner that he had been going constantly about Motlibai's matter and had been put off from day to day, but that he would now take care to get a clear answer. There is every probability that this interview did take place, and also the interview related in exhibits 23f to 23i because on the 26th November, 1892, Bharucha writes A3 to the Commissioner, in which he informs him that "for the last thirty days the *dalal* has been to her, frequently, but he is put off from time to time.....there is no help but to wait till the *dalal* manages to obtain the written assurance." Now taking into account the date of X, the dates of the endorsement upon it, and the mention of thirty days in A3, I come to the conclusion that the instructions for a written offer from Motlibai were not given till the end of October, which strengthens Hirji's case and shows that Bharucha is not a witness whose accuracy can be depended on. Then all Hirji's letters and the entries in his diary (see exhibit 23m) so closely fit in with X and A3 that I cannot imagine that they have been concocted for the purposes of this suit, and I regard this incident about the written offer from Motlibai as another corroboration of the genuineness of Hirji's diary. A weak attempt was made to impeach U on the ground that there was no evidence but Hirji's to prove its delivery, that it was not registered in the Municipal Register, and that they could not find the original. But Mr. Acworth says he has very little doubt that he received it, and that he often threw letters into waste paper baskets which he thought unimportant or when he thought they were useless, and it is mentioned in Hirji's letter to Murzban (A 27) and a copy sent therewith, which, Hirji swears, was, with other copies, sent therewith, admitted by Bharucha to have been sent and to be correct, and Bharucha does not contradict him. Therefore I have no doubt that U was sent and received. Exhibit X and A3 are also useful to my mind for another purpose, especially when read in conjunction with exhibit 28. They show that Mr. Acworth's present recollection of details and of what was working in his mind from time to time is not accurate. In speaking of the offer made in U and his conversation with Bharucha about it "I said it would be useless to place such an offer before the Corporation," and subsequently "I never thought the proposal to lease and subsequently purchase would be entertained by the Corporation." If that was then his opinion, I do not understand why he should have considered the matter at all, or given instructions to Hirji to get the offer in writing, and, on receipt of A3, I should have expected him at once to have told Bharucha that that kind of agreement was not what he wanted and if the Corporation would not, in his opinion, have agreed to such a transaction, I cannot understand his agreeing to buy Shivalal Motilal's land on very similar terms (see exhibit 28). I do not intend to discuss seriatim the whole

of the other entries in the diary and the correspondence between the various parties concerned prior to the 31st October, 1892, but I have been through them and taken them into consideration, and they seem to me to fit into and corroborate each other in such a way as to show that the diary of Hirji, so far as it is in evidence before the 31st October, is genuine, that certain letters said to be written before that date, the originals of which are not produced by the defendants, were really written and sent to and received by the Commissioner, and I consider that, unless I come to the conclusion that certain other matters which I shall have to discuss overthrow the impression which I have formed up to this date, I should give very great weight to Hirji's evidence as confirmed by his diary and letters, and if I had to choose between Hirji so confirmed and Bharucha unconfirmed, I should unhesitatingly give the choice to the former. Before passing on to these other matters, I may just mention one other point in which Hirji's diary receives confirmation. Exhibits 22p, 22q, and 22r relate to three matters occurring on 28th, 29th, and 30th August, 1892. The first relates to an interview with Motlibai at which an aged Parsee was present. Now Motlibai, Nanavati, and Modi admit one interview; the first two cannot give any date for it, but the third puts it before the middle of November. The two former, however, mention a lease at two annas a yard as being what was offered then by Hirji, and that agrees with exhibit 22p, and so far corroborates it. The interview described in exhibit 22p. sends Hirji to the Commissioner to seek an interview with him which exhibit 22q. shows he could not get and what is written in exhibit 22 q. is shown to be true by exhibit T, with Mr. Acworth's writing on it. The interview with Bharucha sends Hirji again to work on Motlibai as described in exhibit 22r, and what is recorded there results in Hirji writing U to Bharucha. The next matter to be discussed is whether A2 and A4 are genuine—i.e., whether Hirji wrote them on the date they bear and delivered them at the Municipal Office. I will first refer to what Mr. Acworth said about them. When shown A2, he read it and said "I never received the letter. I have not the slightest doubt about it. I was never told by plaintiff or any one else that Motlibai would sell at Rs. 3. If I had been told that, I should have closed with the offer." In cross-examination he further said, "If I had seen this letter, I should have closed with the offer contained therein. It is because I would have done this that I say I have not received it." It is evident that Mr. Acworth's impression on reading the letter in Court was that it contained a definite offer capable of acceptance. Now, when the letter is looked to there is no definite offer. The gist of the letter is that Motlibai had been inclined to lease, but some fanciful idea had got into her head as to what would happen if she had to sell for Municipal bonds and the Municipality could not pay the interest, and that therefore she seemed now to be inclined to sell out and out, but Bharucha had said he doubted whether there was money enough available

to purchase out and out and asked for instructions. In answer to this, Mr. Acworth could not have said "Accept her offer to sell." He could only have told Hirji to try and induce her to sell. Consequently I do not think that Mr. Acworth's reason for saying he is sure he never said A2 is a good one, and if not a good one, it seems to me that I cannot rely upon his memory as to whether he received it or not because his impression as to his not having received it depends entirely upon his present reading of the letter and his present idea of what he would have done if he had received it. I do not, however, think he would have done what he says he would even if it had been a more definite offer. At that time he was distrustful of Motlibai, because he thought she had resiled from her offer to give all the land he wanted for roads. I do not think she did reile from what she thought she was offering in the first instance, but when Mr. Acworth increased his requests after her first willingness to give, she then saw the magnitude of her offer and said she had no idea that she was wanted to part with so much land gratis. But, nevertheless, Mr. Acworth mistrusted her. Mr. Acworth had also got into his mind that Hirji had brought bogus offers. It is quite true that certain vendors had refused to carry out contracts which Hirji had reported they were willing to enter into, but I do not think the evidence, as it stands at present, shows that they had not instructed Hirji to make the offers he did make. It is not necessary in the present case to go minutely into this. Whatever are the rights of the case on this point, Mr. Acworth did not at this time quite trust Hirji, and the result of his mistrust of Motlibai and Hirji was that he about the 28th October told Bharucha he must have an offer in writing from Motlibai; consequently, if he had seriously considered A2 on the 9th November, all he would have done would have been to reiterate his instructions for a written offer, but I think it very probable that in his then state of mind he would have paid no attention whatever to A2 and put it into the waste paper basket. Consequently I cannot accept Mr. Acworth's evidence as proving that he did not receive A2. I have already expressed my opinion that Z and A were really written by Hirji to Motlibai, and that 23d is the record of a real interview with Nowrojee. The first part of A2 exactly accords with the state of things as shown by ZA and 23d, and the latter part is in accordance with an entry in Hirji's diary (Exhibit 23i). In exhibit 23i there is an entry of an interview with Bharucha on the 9th November as described in A2. It was objected, however, that there is no mention in exhibit 23i of the letter to the Commissioner. If A2 and 23i were manufactured for the purpose of the suit, at the same time there is no reason why at the end of the entry in the diary the words "wrote to the Commissioner sahib" should not have been inserted, for, though the entry fills the page for the day, there is plenty of room for such words as these. Such words do appear on some, but not all, occasions, when letters were written, and if the entry was

fabricated, I should expect them to appear. But if the entry was genuine, then I do not see the necessity of fabricating the letter, as the entry was quite sufficient for Hirji's purpose. There are other matters to be noticed about A2, but as they equally apply to A4, I will refer to them afterwards. Now as to A4, Mr. Acworth said "I never received this letter. If I had received it, I should not have gone to Motlibai myself." I very much doubt this, for Mr. Acworth had previously said in his evidence, "When I found the plaintiff had not brought a written offer from Motlibai on the 26th November" (referring to A3). "I then made up my mind to negotiate direct with her, and wrote to Bengali a few days after I received the Memo. from Bharucha." The result of this was that an appointment was made to see Motlibai on the 15th December, which could not be kept, and another appointment was then made for the 17th. Now, if Mr. Acworth was dissatisfied with Hirji and tired of waiting and had an outstanding appointment with Motlibai, the result of having taken the matter into his own hands, I feel quite sure that A4 would not have induced him to refrain from going to see that lady himself, but would have strengthened his resolution to go and see her personally, because the letter does not say that Motlibai is willing to sell, but only that she is willing to "give" and is uncertain whether the giving is to be by lease or sale, and I think the natural result of this upon Mr. Acworth's mind would be that he would seek to put an end to that uncertainty by a personal interview. Consequently I cannot accept Mr. Acworth's evidence as being by any means conclusive that he did not receive this letter. The fact is that Mr. Acworth has no independent recollection of the receipt or otherwise of any particular letter, and I am not surprised at it; consequently, when he gives reasons for saying he did not receive a particular letter, which, to my mind, are inconclusive or point it to an opposite conclusion, I must be of opinion that he really has no recollection about the matter, for, rejecting the reason for recollection, I cannot accept the denial of receipt as being of any weight. There is a reason, too, why it is very probable that Mr. Acworth received the letter and put it in the waste-paper basket. The letter finishes up with a remark about Hirji's brokerage. Now it is quite evident from Mr. Acworth's evidence that, having taken the matter into his own hands, he did not consider Hirji was entitled to brokerage, as appears from his endorsement on A6, and so it seems to me to be very unlikely that he would pay any attention to a communication, the desired answer to which would throw the matter out of his own hands back again into those of the broker and thus cause brokerage to be earned. The events after the 24th November, which led up to A4 being written, appear from exhibits 23n, 33o and 23p, and the last, if a genuine entry, thoroughly corroborates A4, though there is no mention in it of that letter having been written. On the 16th December, according to the diary, Bengali had told Hirji to call

the next day, which, according to the diary, he did, not knowing of the steps Mr. Acworth was taking, which, according to his evidence, sprang from himself and not from the suggestion of any one else, and which, according to Bharucha's evidence, were unknown to him until the afternoon of the 17th December. On the 17th Bengali gave Hirji a letter to Motlibai, which was taken by one Cooverjee who went there with Hirji, and an entry of the interview between Hirji and Motlibai appears in exhibit 23q and was communicated to Bharucha. Motlibai and Nowrojee deny this interview, and Bharucha also denies that it was communicated to him, but Cooverjee swears that he took the note to Motlibai and came away, leaving Hirji with her and Gopaladas, Hirji's man, confirms Hirji as to going to Bengali's and thence, with Cooverjee and a note, to Motlibai's, where he stopped downstairs. Having considered all that is alleged against these two witnesses, and especially Cooverjee, I have come to the conclusion that they are telling the truth. It was also argued that as Bengali was in communication with Mr. Acworth and knew that he was to see Motlibai on the afternoon of the 17th, he would not have given a note to Hirji to enable him to have an interview with Motlibai on the morning of that day. I do not take that view of the case. Bengali knew Hirji was the Municipal broker and had had many communications with him about this matter, and Mr. Acworth had also from time to time been also communicating with Bengali about the lands, so that I cannot suppose that he would see anything extraordinary in Hirji being at work contemporaneously with Mr. Acworth, especially seeing that it does not appear that Bengali had any inkling that Hirji's services had been dispensed with in any way. It seems to me exceedingly natural that, knowing that Mr. Acworth was to see Motlibai in the afternoon, Bengali should think that, in her then state of mind, a little pressure or persuasion from Hirji in the forenoon might be useful. I see no reason further why Bengali should have told Hirji about what Mr. Acworth was doing. The correspondence between the two was private, and Bengali might well think that Mr. Acworth did not want what he was doing to be known. So, too, if Hirji saw Motlibai on that morning, it seems to me to be more probable that she should say nothing about Mr. Acworth than that she should mention his name. I think, therefore, that the diary and the evidence of Cooverjee supports this letter, and having come to the conclusion that the diary is trustworthy up to the beginning of November, I do not see any reason why Hirji should commence to fabricate entries afterwards. The last ground on which these two letters are attacked is that no mention is made of them in the plaintiff's first affidavit of documents. That is true, and the way they came to light appears to be as follows:—The defendants made their affidavit of documents in December, 1898. On the 23rd February, 1894, their solicitors wrote A44, in which they informed the solicitors to the plaintiff that the Commissioner had discovered among the

loose papers on his table a letter from the plaintiff dated the 4th July, 1892, which was put in as exhibit M. Thereupon, as appears by exhibit A45, Hirji searched amongst his loose papers and found a press-copy of M, put in as exhibit A46, a press-copy of a memo dated 4th July 1892 (A55), the original of which was produced by the defendants and put in as A51 (which, however, has no direct bearing on this case), and the press-copies of the two letters of 9th November and 6th December. Hirji's explanation is that his press-copy book was kept at his house and that all letters written at his house were copied therein. These letters were composed by one Jethabhai Anundji and copied by Hirji's son. From time to time, however, it happened that, after Hirji had come up to the Fort and been to the Municipal office, a letter was required to be written, in which case he went to the office of Wadia and Ghandy, where Jethabhai was a clerk, and got him to draft and write the letter which was press-copied on a loose sheet of copying paper at that office. Hirji in this is corroborated by Jethabhai. If Cooverji, Hirji's son, was with him in the Fort and Jethabhai was pressed for time then, Cooverji fair-copied the letter after Jethabhai had drafted it. Hirji further says that, except in one instance (Exhibit E), in which a letter had been written at home and copied in the book and then was altered in the Fort and re-written, these press-copies made in the Fort were not struck into the press-copy book, but were kept among other loose papers and that, when Hirji was preparing his affidavit of documents, he did not remember these loose copies, but only looked at his press-copy book and so omitted them and that for a like reason, when writing A28 to Murzban, he omitted to make mention of M and A3 and A4. Hirji now produces a number of loose press-copies, some in the handwriting of Jethabhai, some in that of Cooverji, and some in that of another writer, but I did not have them put in, as they have no direct bearing on the case. It does not appear from the contents of M whether it was likely to have been written before Hirji went to the Fort or afterwards, but the original is produced and consequently A 46 is the press-copy of a genuine document. A51 would from its contents have probably been written after he had been to the Municipal Office and found he could not get the money he wanted, and as the original is produced, the press-copy is also that of a genuine document. Looking at the entries in Hirji's diary and the contents of A2 and A4, I am of opinion that they would be more likely to have been written in the Fort after a visit to the Municipal Office than at his house; consequently there is nothing improbable in their not appearing in the press-copy book. Jethabhai swears that E, A2, and A4 were written by him on the dates which they bear and copied at Wadia and Ghandy's Office. If Hirji had fabricated A2 and A4 after the suit was commenced, there was no necessity for him to have copied both on loose sheets of paper, for the last two letters in his press-copy book are dated 16th December 1892.

(Exhibits 39 and 40). The originals of these are produced from the Municipal Offices as Nos. 42 and 43. After the pages on which these two are press-copied, there is a number of blank pages upto the end of the book, and A4 at any rate might have been press-copied at p. 411, and I have but little doubt that some place might have been found for A2, for Hirji's press-copy book is not very regularly kept, and if a letter had been a little out of date, a close scrutiny, aided by the fact that Nos. 39 and 40 are copies of genuine letters, would have shown that the fact of a letter having been copied out of date did not show that it was concocted. In fact, I think, that if A2 and A4 had been concocted, they would more likely have been copied in the press-copy book than on loose-sheets of paper. The first 270 pages of the press-copy book contain copies of letters in regular order of date as far as I can judge up to 22nd December, 1891; then comes a letter of 4th January, but whether 1891 or 1892 I cannot say; then one of 8th November, 1892; then one of 7th December, 1892; then a number of Gujarati letters. Then from pp. 283 to 299 the pages are blank, and from p. 300 letters are copied, beginning in April 1892 and going on regularly to p. 308 up to 3rd August, 1892, and the last is marked "not given," which, I suppose, means "not sent." Then comes a copy of a letter of December 1892 (I think), then a blank page. Then two Gujarati letters; then two letters of 12th October, 1892; one of 7th November, 1892; then No. 38, dated 23rd November, 1892; from Hirji to Nowrojee, which the latter says he no doubt received. Then Nos. 39 and 40, which were duly received and registered in the Municipal registers. Thus it will be seen that if A2 had been fabricated and copied somewhere on pp. 283 to 299, the irregularity in the date would have caused but little remark, if it had been discovered, and I think it probably would not have been discovered, seeing that the irregular positions on Nos. 38, 39, and 40 were not discovered. Hirji gave an explanation as to why the blank pages were left in the middle of the book, but he could give no explanation as to the irregularity in date of the letters to which I have referred. The explanation which occurs to me is that the book was not kept with absolute regularity, and that no inference is to be drawn against Hirji from that fact. Now it was not necessary for the plaintiffs' case that these two letters should have been sent, but as, it is alleged that they were written and sent, it would have a very important bearing on the case if it could be proved that they were not written or sent on the dates they bear. I have already come to the conclusion that Mr. Acworth's evidence does not satisfactorily prove that he did not receive them, and I also come to the conclusion that there is nothing in the other matters which I have discussed to prevent me giving due weight to the evidence of Jethabhai and Hirji that they were written and sent on the days they bear date. On the

whole, if it were necessary for me definitely to find on the point I should be inclined to hold that they were sent to, and received by, Mr. Acworth, and I have no doubt in arriving at the finding that the defendants have not succeeded in proving that they were fabricated. Such being my opinion, I see no reason why I should give less weight to Hirji's diary after the 31st October, 1892, than I have given to it up to that date. I will next examine the evidence of Nowrojee and Motlibai and the Parsee witnesses connected with them. Nowrojee is contradicted by Cama and Hirji as to what he said at the interview with them. Cama is a perfectly disinterested witness, and I give more weight to his evidence, corroborated by that of Hirji and the diaries of the two, than I do to that of Nowrojee. Then he said that his mother did not know Maju at all; in this Maju, called on behalf of Motlibai, contradicts him. He keeps no diary; consequently it is difficult to place any reliance as to his accuracy when he purports to relate details of conversation which took place two or three years ago. Then he at first swore that his mother had not received any letter from Hirji, but in cross-examination he has to admit that she had received one which she tore up without reading it. It is true she says the same in her defence examination, but in her affidavit of documents, which I think is more reliable, she said she had read it. Further he said his mother had never spoken to him about Hirji coming to see her. Two days afterwards he said his mother did tell him about Hirji coming to see her. This was an answer to a question as to what his mother had said to him, and a few questions after that he said he had made a mistake and that it was Pestonjee who had told him. Whether Nowrojee is intentionally stating what is false I do not pretend to determine, but it is quite evident that he is a witness upon whose testimony no reliance can be placed. Then as to Motlibai, she says she received a letter from Hirji which she tore up without reading it, because she had nothing to do with Hirji. Nowrojee's description is "she said, if she would not talk to Hirji, why should she read letters from him." Now it seems to me to be very improbable that Motlibai, getting a letter from a man whom she wants the Court to believe she knew nothing about, should not have the curiosity to see what was in the letter. I do not believe any woman or man would do this. On this point her evidence is contradicted by the statement in her affidavit of documents. Consequently I must come to the conclusion that on this point both she and Nowrojee are stating what is untrue. It is to be observed that, while Motlibai produces two letters from Hirji, she does not produce two others, one of which she says she tore up, and these two letters are, as between her and Hirji, very important ones, by keeping back which she might hope to weaken his case against her. As to the rest of her evidence, in my opinion, the most charitable way of looking at it is to accept the evidence of Drs. Boyd and Khory, and, coupling it with the fact that she was

examined in her own room, and the attack of illness which she had during the examination, to come to the conclusion that the senile decay of which the doctors speak really prevented her from being responsible for all she said, or of being capable of remembering all that took place in the years 1891 and 1892 with regard to her land at Agripada. Maju gave the principal portion of his evidence very well, but I noticed that on occasions when he had to deny having seen Motlibai there was a certain amount of hesitation and a softness in the tone of his answers quite different from the tone in which he gave the rest of his evidence. In my opinion that arose from his not speaking the truth at those times. He was to get half the commission payable by Motlibai to Hirji if he succeeded in getting her to come to terms with the Municipality; he had failed to do anything with Nowrojee, and he was on terms of comparative intimacy with Motlibai. Under these circumstances it is absolutely impossible to believe that he did not try to earn his share of commission by seeing Motlibai herself and doing his best to bring her to terms. He, however, incidentally corroborates Hirji in that he says that at the time Hirji got him to interfere in this matter, Hirji secured himself to be working in it, and spoke in such a manner as to lead him to believe that he had several interviews with Motlibai. As to Nanavati and Modi, it seems to me, that if I cannot accept the evidence of the principal witnesses as being trustworthy, I cannot place much reliance on these two witnesses as against that of Hirji, corroborated by his diary and independent evidence. The result is that as regards Motlibai's land I have come to the conclusion that Hirji has done the work which he represents was done by him, and Mr. Acworth admits that, if such be the case, he is entitled to his brokerage from the Municipality. His claim against Motlibai stands on a somewhat different footing. He may have been employed by the Municipality to get the land from Motlibai and yet not have been in any way employed by her to negotiate on her behalf, but as I accept Hirji's account of the matter, it is quite evident that he was used by her to put certain propositions before the Commissioner and to try and get him to accede to them. I must, therefore, look upon him as acting between Motlibai and the Municipality in the way in which a broker usually acts, in which case he will be entitled to his brokerage from Motlibai also. As to Cama's land, it is clear from this gentleman's evidence that he, through the exertions of Hirji, agreed in the early part of 1892 to sell his land to the Municipality for Rs. 3 a square yard and that fact was communicated by Hirji to Mr. Acworth on several occasions. Against this we have the evidence of Bharucha that Cama had agreed directly with Walton to sell at the same price as Motlibai sold, but the evidence of Cama, corroborated by the entries in his diary, shows that that was not the case, and the action of Bharucha when he sent for Cama in the end of 1892 or the beginning of