M.R.O. 1—77,000—9-6-41.

(1) Number of pages 12

(2) Date of repair 1/12/39

(3) Initials of the Referencer

MADRAS RECORD OFFICE.

Government of Madras.

Educational DEPARTMENT.

G.O. No.	Press / Mis.
Dated 11-3-	18 72

63-44 1874

Not to be folded or roughly handled

No. 63. Read the following letter from the President of the Municipal Commission, Dindigul, to the Officiating Chief Secretary to Government, Fort St. George, dated Kodaikanal, 1st May 1872, No. 14:—

I have the honour to submit, for the sanction of Government, a bye-law made by the Municipal Commissioners for the town of Dindigul under Section 163, Act III. of 1871, at a meeting held on the 14th March last.

2. The Vice-President considers the proposed bye-law illegal on the ground that it is repugnant to Section 65, Act III. of 1871. His reasons for holding this opinion are fully stated in a letter dated 23rd April 1872, No. 3, which I submit herewith at his request.

3. Government, in their Order in the Public Department, dated 9th April 1867, No. 370, expressed the opinion that a bye-law of this description might be passed with propriety under the old Act, and I fail to see that it cannot legally be passed now.

Bye-law of the Dindigul Municipality.

That persons having paid taxes on carriages, horses, &c., under Schedule C of the Act in any other Municipality, be exempted from liability to payment of the same in Dindigul for the same half-year.

(Signed) H. W. BLISS,
Vice-President.

From H. W. BLISS, Esq., Vice-President, to the Acting President of the Dindigul Municipality, Madura, dated Dindigul, 23rd April 1872, No. 3.

I have the honour to forward a bye-law passed at a meeting of the Dindigul Municipal Commissioners held on the 14th March, which they request that you will move Government to sanction under Section 165 of Act III. of 1871.

2. I beg, however, to express an opinion, which I request may also be forwarded to Government, that this bye-law is illegal, and ought not to be sanctioned by Government, inasmuch as it is repugnant to a law in force, that is to say, to Section 65 of Act III. of 1871.

From J. F. Smith, Esq., to the Vice-President, Dindigul Municipality, dated 27th March 1871.
To J. F. Smith, Esq., from Vice-President, Dindigul Municipality, No. 45, dated 27th March 1871.
From J. F. Smith, Esq., to the Vice-President, Dindigul Municipality, dated 29th March 1871.
To J. F. Smith, Esq., from the President, Dindigul Municipality, No. 5, dated 1st April 1871.
To J. F. Smith, Esq., from the Vice-President, Dindigul Municipality, No. 52, dated 29th April 1871.
From J. F. Smith, Esq., to Vice-President, Dindigul Municipality, No. 9, dated 11th May 1871.
To J. F. Smith, Esq., from the Vice-President, Dindigul Municipality, No. 5, dated 26th May 1871.
From J. F. Smith, Esq., to the Vice-President, Dindigul Municipality, No. 13, dated 6th June 1871.

3. You may remember that this question of the liability of persons to pay taxes on carriages, animals, &c., in two Municipalities in the same half-year was raised last year in the correspondence marginally noted.

4. The question has now come up again in consequence of the return of the Small Cause Court to Dindigul.

5. The following are my reasons for the opinion above expressed.

6. Provision is made in Section 58 of the Act that professional taxes shall not be charged twice in the same half-year in different Municipalities, merely because of a change of residence of persons paying the same. Such persons have, however, to pay such taxes in each Municipality they may reside in (though for the shortest possible period) if they have exercised therein within the same half-year the art, profession, &c., in respect of which they have been taxed in any other town. Similarly it seems to me taxes on carriages, &c., should be paid in each Municipality in which they are kept and used. It is true that the liability to pay professional taxes twice over is newly created by Act III. of 1871, as will be seen by comparing Section 58 thereof with the corresponding

section (46) of Act X. of 1865; but this strengthens my case, and proves that the bye-law now under consideration is at all events at variance with the spirit with which the principle of double charges was viewed by the Legislature which passed the Act now in force.

7. There is, moreover, a well-known maxim of law, *Expressio unius est exclusio alterius*, from the application of which alone to this case I am of opinion that it cannot have been the intention of the Legislature to exempt persons from payment of taxes under Schedule C of the Act (on carriages, animals, &c.) under any circumstances whatever; otherwise no doubt they would have said so, as they have done with regard to professional taxes under Schedule B. As they have not said so, it is, I think, clear that they did not intend so. Any bye-law, therefore, of the character of that now proposed by the Commissioners seems to me illegal, as being repugnant to a section of the very Act under which it is sought to be made.

8. This conclusion may also be arrived at from a comparison of Sections 58 of Act X. of 1865 and 65 of Act III of 1871. For easy comparison I append Section 58 of Act X. of 1865 with the changes made in it by Act III. of 1871, the latter in brackets and the cancelled portion of the former underlined :—

58. The owner (or person having charge) of every carriage kept within the town shall, within one month from the date on which the approval of the *Governor in Council* (Government) in *the last preceding section* (Section 63) mentioned shall have been notified in the District Gazette and *shall* thenceforward, *on or before the first day of May and the first day of November in each year* (within thirty days from the first day of the official year, and the first day of the next succeeding half-year), send to the office of the Commissioners a statement in writing signed by him containing a description of the vehicles and animals liable to the tax for which he desires to take out a license. The owner shall at the same time pay to the *Municipal* Commissioners the *half of the yearly* (half-yearly) taxes payable by him, according to the rates given in Schedule C to this Act annexed. Any person becoming possessed between the first day of *May and the thirty-first day of October, or between the first day of November and the thirtieth day of April* (the official year and the first day of the next succeeding half-year, or between such last-mentioned day and the first day of the next official year) of a carriage or animals so kept, shall within *fifteen* (*thirty*) days of becoming so possessed send to the office of the *Municipal* Commissioners a similar statement together with the full amount payable for the then current half-year according to the said schedule. (Provided always that no person shall be liable to be taxed under this section for any carriage or animal which shall have been in his possession for thirty-days only or any less period in any half-year).

9. By the law as it was under Act X. of 1865 it is indisputable that double charges of taxes on carriages, &c., in two Municipalities in the same half-year were legal. Government have so admitted in their Order marginally noted. It seems to have appeared to them, however, rather hard measure that the same tax should be paid for an animal, &c., kept within the town for fifteen days only as for one so kept for the whole half-year, and they, therefore, expressed an opinion that Municipal Commissioners might with propriety pass a bye-law for the prevention of such double charges, observing that the principle was recognized in the proviso to Section 46 of the Act. I venture very respectfully to think that such a bye-law was illegal under the old Act; if so, it is much more so under the new.

Proceedings of Government dated 9th April 1867, No. 370, Public Department.

10. It is fair to assume that when the new Act was under consideration the Government Order in question was not forgotten, and that, if the Legislature had thought the exemption ought to have been made, they would, with this before them, not have failed to make it. All they substantially did, however, was to substitute the words "thirty days" in Section 65 of the new Act for the words "fifteen days" in the corresponding section of the old Act and to add the proviso which forms the last sentence of the new section. The meaning of these changes would appear to be that while the executive Government, as constituted in 1867, thought it hard that a visitor for fifteen days only should have to pay tax on his carriages, &c., the Legislature as it existed in 1871 determined that a visitor for over thirty days might fairly and justly be required to do so. No one, I think, can say that this compromise is inequitable; but in any case, after this deliberate re-enact-

ment (in a slightly altered shape) of the law on this subject, and considering that, as a certain relaxation was granted, it is to be presumed that the Legislature intended that so much should be granted and no more, I am more than ever convinced that a bye-law intended to relieve Municipal Commissioners of the duty of carrying into effect the law under which they act is necessarily illegal.

11. If it is objected that, if this view is taken, the law is virtually made more stringent than before, the answer is that this is exactly what has been done by the alteration of the law regarding double payments of professional-tax (noticed above in paragraph 6), and is, therefore, apparently intended. It is also noticeable that where the words "thirty days" now appear in Section 65 of the Act, there were the words "sixty days" in the corresponding section of the original Bill introduced into the Legislative Council on the 4th February 1870.

12. I may note, in conclusion, that because visitors and temporary residents are not expressly mentioned in Section 65 of Act III. of 1871, there seemed to be some idea among the Municipal Commissioners that it was not intended to apply to them at all. They would appear, however, to be included in the words marginally quoted, because, though they may have owned their carriages, &c., long before they became resident in the Municipality, they never owned any *so kept* (*i. e.*, kept within the town) until they brought them there and thus "became possessed" of them "so kept."

"Any person becoming possessed, between the first day of the official year and the first day of the next succeeding half-year, or between such last-mentioned day and the first day of the next official year, of a carriage or animal so kept."

No. 64. ORDER THEREON, 14th May 1872, No. 656.

The Governor in Council considers that the Vice-President's construction of the law is correct and declines to sanction the proposed bye-law.

2. It was clearly not the intention of the Legislature in passing Act III. of 1871 to make any provision for the exemptions which the Dindigul Municipality desire to have sanctioned by a bye-law.

(True Extract.)

Officiating Chief Secretary.

To the President of the Municipal Commission, Dindigul.

Exd. A. S. Rodgers.

No. 14

(Camp) Kodaikanal
1st May 1872

From

W. McAuhae Esquire
President of the
Dindigul Municipality

To

W. Huddleston Esquire
Offg. Chief Secretary to the
Government, Madras

Sir,

I have the honor to submit for the sanction of Government a bye-law made by the Municipal Commissioners for the Town of Dindigul under Section 163 Act III of 1871 at a meeting held on the 14th March last.

2. The Vice President considers the proposed bye-law illegal on the ground that it is repugnant to Section 65 Act III of

III of 1871. His reasons for holding this opinion are fully stated in a letter dated 23rd April 1872 No 3 which I submit herewith at his request.

3. Government in their Order in the Public Dept dated 9th April 1867 No 370 expressed the opinion that a bye-law of this description might be passed with propriety under the old Act and I fail to see that it cannot legally be passed now.

I have the honor to be
Sirs,
Your most Obedt Servant

J. D. McPherson
President, Dundigul
Municipality.

Rec'd 9th April 1872 from the Municipality of Dundalk

Chief Secretary's Office
Dublin 9th April 1872

Sir,

I am directed by the Lord Lieutenant General and General Governor of Ireland to transmit herewith, for the consideration of the Lords Commissioners of Her Majesty's Treasury, a Petition addressed to His Excellency by the Municipal Commissioners of Dundalk, praying that the Sanction of Government may be given to a Bye-law made by them for the purpose of regulating the Markets and Fairs of the Town of Dundalk.

I am, Sir,
Your most obedient
humble Servant
[illegible]
Under Secretary

Rec'd 9th April 1872. No 9-10.
" 9th April 1872 " 39-40. Pub

1872 Irish Department

Letter from
The President of the
Dundalk Municipality

The Offg. Chief Secretary
to Government
Castle Saint George

GG 14th May/72
Date 1st
Rec'd 9th May 1872
No 14
Enclosures 2 No 918

Submitting for the
sanction of Government
a Bye-law, made by
the Municipal Com-
missioners of Dundalk,
together with the Vice
President's letter No 3 dated
23d April 1872, on the
subject.

C-13/5
12-15

Cover to letter No. dated 23rd April 1872

From
Vice President

To
The Ag President
Dindigul Muni.

Dated 23rd } April
Recd } 1872

Enclosure None

No 14 ... to ...
... bye law passed
by Dindigul Municipal
Commissioners

In Cml 918/72

No 3 — Dindigul 23rd April 1872

From
H. W. Bliss Esqre
Vice President
Dindigul Municipality

To
W. McQuhae Esqre
Ag President Dindigul Municipality
Madura

Sir,

I have the honor to forward a bye law passed at a meeting of the Dindigul Municipal Commissioners held on the 14th March which they request that you will move Government to sanction under Section 165 of Act III of 1871.

2. I beg however to express an opinion, which I request may also be forwarded to Government, that this bye law is illegal, and ought not to be sanctioned by Government, inasmuch as it is repugnant to a law in force, that is to say, to section 65 of Act III of 1871.

3. You may remember that this question of the liability of persons to pay

1 From J. S. Smith Esqre to the Vice President Dindigul Munty dated 27th March 1871
2 To do from do No 45 dated do

From J. Smith Esqre to the Secretary
Prodl. Judicial Papers dated 29th March 1871
Do from the President Do 25th
dated 4th April 1871
Do do from the Vice Presidt Do 25th
dated 29th April 1871
From Do to Do No 9 dated 6th May
Do do from Do No 12 dated 20th Do
From Do to Do No 13 dated 5th June Do

Last year in the Correspondence mentioned

Noted.

4. The Selection has been Come to by Govt in Consequence of the return of the Small Cause Court to Judicial.

5. The following are may be seen in the Division above Exhibited—

6. Provision is made in Section 58 of the Act that Professional taxes shall not be charged twice in the Same half year in different Municipalities, Merely because of a Change of residence of persons, during the Same. Such persons have however to pay Such taxes in Each Municipality they may reside in (Except for the Shortest possible period) if they have exercised their in either the Same half year the Act, Profession &c in respect of which they have been taxed in any other town. Similarly it Seems to pay taxes on Carriages &c (Shroff) be paid in Each Municipality in which they

Copy sent to Secretary Commissioner of Police
Do Do Collector
Secretary to Commissioner of Salt & Excise
Do Do Customs
Do Do Opium
Do Do Stamps
Do Do Post Office
Do Do Telegraphs
Do Do Marine
Do Do Mint
Do Do Forests
Do Do Public Works
Do Do Port Trust
Do Do Municipality
Do Do Military Finance
Do Do Military Auditor General
Do Do Accountant General
Do Do Public Prosecutor
Do Do Legislative Department
Do Do Home Department
Do Do Revenue & Agriculture Department
Do Do Foreign Department
Do Do Public Works Department
Do Do Military Department
Do Do Marine Department
Do Do Finance Department
Do Do Secretary to the Governor General
Do Do Private Secretary to the Governor General
Do Do Private Secretary to the Governor
Do Do Private Secretary to the Lieutenant Governor
Do Do Private Secretary to the Chief Commissioner
Do Do Private Secretary to the Commissioner in Sind
Do Do Private Secretary to the Resident at Hyderabad
Do Do Private Secretary to the Agent to the Governor General in Rajputana
Do Do Private Secretary to the Agent to the Governor General in Central India
Do Do Private Secretary to the Resident at Mysore
Do Do Private Secretary to the Resident at Baroda
Do Do Private Secretary to the Resident at Kolhapur
Do Do Private Secretary to the Resident at Gwalior
Do Do Private Secretary to the Resident at Indore
Do Do Private Secretary to the Resident at Kathiawar
Do Do Private Secretary to the Resident at Kashmir
Do Do Private Secretary to the Resident at Travancore
Do Do Private Secretary to the Resident at Cochin
Do Do Private Secretary to the Resident at Nepal
Do Do Private Secretary to the Resident at Manipur
Do Do Private Secretary to the Resident at Sikkim
Do Do Private Secretary to the Resident at Kolapur
Do Do Private Secretary to the Resident at Kolhapur
Do Do Private Secretary to the Resident at Kolhapur

Copy sent to Secretary Commissioner of Police
Do Do Collector
Secretary to Commissioner of Salt & Excise
Do Do Customs
Do Do Opium
Do Do Stamps
Do Do Post Office
Do Do Telegraphs
Do Do Marine
Do Do Mint
Do Do Forests
Do Do Public Works
Do Do Port Trust
Do Do Municipality
Do Do Military Finance
Do Do Military Auditor General
Do Do Accountant General
Do Do Public Prosecutor
Do Do Legislative Department
Do Do Home Department
Do Do Revenue & Agriculture Department
Do Do Foreign Department
Do Do Public Works Department
Do Do Military Department
Do Do Marine Department
Do Do Finance Department
Do Do Secretary to the Governor General
Do Do Private Secretary to the Governor General
Do Do Private Secretary to the Governor
Do Do Private Secretary to the Lieutenant Governor
Do Do Private Secretary to the Chief Commissioner
Do Do Private Secretary to the Commissioner in Sind
Do Do Private Secretary to the Resident at Hyderabad
Do Do Private Secretary to the Agent to the Governor General in Rajputana
Do Do Private Secretary to the Agent to the Governor General in Central India
Do Do Private Secretary to the Resident at Mysore
Do Do Private Secretary to the Resident at Baroda
Do Do Private Secretary to the Resident at Kolhapur
Do Do Private Secretary to the Resident at Gwalior
Do Do Private Secretary to the Resident at Indore
Do Do Private Secretary to the Resident at Kathiawar
Do Do Private Secretary to the Resident at Kashmir
Do Do Private Secretary to the Resident at Travancore
Do Do Private Secretary to the Resident at Cochin
Do Do Private Secretary to the Resident at Nepal
Do Do Private Secretary to the Resident at Manipur
Do Do Private Secretary to the Resident at Sikkim
Do Do Private Secretary to the Resident at Kolapur
Do Do Private Secretary to the Resident at Kolhapur
Do Do Private Secretary to the Resident at Kolhapur

they are Exempted. Thus two Classes of persons (Soldiers & Sepoys) are Specially Exempted by Section III of 1871, & will be seen by Comparing Section 58 thereof with the Corresponding Section (46) of Act X of 1865, that two Strong Reasons may exist that the Legislature intended to make a Change in the Principle of the Charges hereto levied by the Legislature which caused the Act then in force.

7. There is nothing to be found in the maxim of Law "Expressio unius est exclusio alterius", from the application of which alone to this Case, I have of opinion that the Legislature have been the intention of the Legislature to Exempt persons from payment of taxes under Schedule B. of the Act (on Carriages, Animals &c) under any Circumstances which ever. Otherwise, no doubt they would have Said So, as they have done with regard to Professional Taxes under Schedule B. As they have not Said So, it is, I think Clear that they did not intend So. Any Inference therefore of the Character of that one proposed by the Commissioner to Seem to be illegal as being

Repugnant

Respondent to a Section of the 1877 Act could
then in respect of the Year

5th The Section may also be proved Act
from a Comparison of Section 58 of Act
X of 1865 and 63 of Act II of 1877, the Law
Comparison Applied Section 58 of Act I of 1865
with the Changes made in it by Act II of
1877, the latter in brackets and the Cancelled
portion of the former underlined:—

58. The owner (or person having charge)
of every Carriage, ~~or animal~~ kept within
the Town, shall within one Month from
the date on which the Approval of the
Governor in Council (Government) in
the last preceding Section (Section 63)
mentioned shall have been notified in
the District Gazette and shall thence
forward on or before the first day of
May and the first day of November in
each year (within 30 days from the
first day of the official year, and the
1st day of the next succeeding half year)
send to the office of the Municipality
a Statement in writing signed by him
containing a description of the Vehicles
and Animals liable to the Tax, for
which he desires to take out a License.
The owner shall, at the same time
pay

pay to the Municipality Commissioners
the half of the Yearly (half yearly) Taxes pay-
able for them, according to the rates fixed
in Schedule C to the Act annexed. Any
person becoming possessed of the
Vehicle or Animal after the
first day of May and the 1st day of
November in each year (after the official
and the 1st day of the next Succeed-
ing half year) in respect of which
Returns should have been made, shall
(within) days of becoming so possessed,
send to the office of the Municipal
Commissioners a similar Statement
together with the first Instalment pay-
able for the three Quarters half year
according to the said Schedule. Pro-
vided always that no person shall
be liable to the Tax for any Vehicle
for which a Carriage or Animal which
shall have been in his possession for
thirty days only in any Quarter of
such half year.

9. By the law as now made, clause X of

of 1861 — a reading not liable that Annable charges
for keeping a Carriage for the Municipality
that the same half year were legal
Expenditure have to admitted on Tender, Or=
der Marginally
noted. It is
Seems to have
appeared to them however, better, that Provision
that the same Tax should be paid for one
year & kept until the Court for 15 days only
& not one so kept for the whole half year and
they therefore directed the Question that
Municipal Commissioners might with Jeop=
priety have a Reclam for the Proportion of
such double Charges, decerning that the
principle was to be confined to the Proviso
to Section 46 of the Act. Inasmuch very respect=
fully to think it incorrect, & repeal Counsel under
favourable Circumstances under the Act.
It is plain to acquiesce that when the
Act 1861 was under Consideration the
Appointment & order in Council had not
transpired, and that if the Legislature had
been of the Execution ought to have been
made they would, with this before them,
not have failed to make it. All they Sub=
stantially did, however, was to substitute
the words "30 days" in Section 65 of the Act
1861 for the words "15 days" in the Corresponding

Section

Section of the old Act and to add the proviso
which forms the Concluding Section of the new
Section. The meaning of these Changes would
appear to be that while the Executive Govern=
ment are Constituted in 1863 Municipal Ex
Hard that a Decision for 15 days only should
have to pay Tax on the Carriages &c the
Legislature do not Exercised in 1863 Notwithstanding
that a decision for one month or 30 days should
fairly and justly be required to Notwithstanding
me, I think, Can see that this Conformance
a unexpectable, Change in the Law, after the
Settlement & Assessment (in a slightly
altered Shape) of the Tax on the Subject &
And Considering that, as a Certain Re=
duction was granted, it is to be presumed
that the Legislature intended that so much
should be granted, but no more, I am there=
fore over Convinced that a Legislative En=
tended to relieve Municipal Corporations
Liners of the duty of Carrying into effect
the Law under which they act is unnecessary
illegal.

II. It is objected that, if the Assessor
taking the Law accurately Made Some

Section

stringent than before, the answer is that this is exactly what has been done by the alteration of the law regarding double payments of Professional Tax ([illegible] in para 8), and is therefore apparently intended. It is also noticeable that where the words "thirty days" now appear in Section 65 of the Act, there were the words "sixty days" in the corresponding section of the original Bill introduced into the Legislative Council on the 4th February, 1870.

12 I may note in conclusion that because visitors and temporary residents are not expressly mentioned in Section 65 of Act III of 1871, there seemed to be some idea among the Municipal Commissioners that it was not intended to apply to them at all. They would appear however to be included in the words marginally quoted, because, though they may have owned their Carriages &c long before they became resident in the Municipality, they never owned any so kept (i.e. kept within the town) until they brought them there and thus "became possessed" of them "so kept".

> "Any person becoming possessed, "between the first day of the official "year and the first day of the next "succeeding half year, or between "such last mentioned day and the "first day of the next official "year of a carriage or animal "so kept"

3

I have the honor to be,
Sir,
Your most obedt. Servt.

[signature]
Vice President

Financial Department.

No. 918.

From The President of the Dunedin Municipality

Dated 1st May 1872.

FOR ORDERS.

I think the Trustees
can take up the Loan if
such is required at
present bearing
interest for the
short period
mentioned.

H. D.

Financial Department.

PROCEEDINGS *of the* **MADRAS GOVERNMENT.**

Read the following letter from the President of the Municipal Commissioners, Dindigul, dated 1st May 1872. No. 46.

Order thereon 14th May 72 No. 656.

The Governor in Council considers that the Vice President's construction of the law is correct & declines to sanction the proposed bye-laws.

2. It was clearly not the intention of the Legislature in passing Act III of 1871 to make any provision for the exemptions which the Dindigul Municipality desire to have sanctioned by a bye-laws.

To,
The Vice President of the Municipal Commissioners Dindigul.

Govt. of {1872} Madras.

Financial

To

The Secy. to Govt. Chief Secy. Judicial.

Dated May 14
Recd. } 1872, No. 650

Nos. ~~1 to 5~~ 63. 64

Relating to sanction to the Loan proposed for the Sindiyad Municipality & granting the exemption of persons having paid the Carriage ~~Tax~~ Tax in any other Municipality from liability to payment of the same in Sindiyad for the same half year.