LEGISLATIVE COUNCIL OF INDIA

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P . L .

MR. HARINGTON moved the addition of the following Proviso to Section 378 :—

"Provided that no review of judgment shall be granted without previous notice to the opposite party to enable him to appear and be heard in support of the decree of which a review is solicited."

The Motion was carried, and the Section as amended was agreed to.

MR. HARINGTON moved the omission of the words "Provided that" in the beginning of Section 379.

Agreed to.

MR. PEACOCK moved that the words "This Act shall come into operation in the Presidency of Bengal from the 1st day of July 1859, and in the Presidencies of Madras and Bombay from the 1st day of January 1860, or from such earlier day as the local Government in those Presidencies respectively shall fix and shall publicly notify in the Gazette of the Presidency three months at least before the date so fixed" be substituted for all the words before the word "But" in the 4th line of Section 387.

Agreed to.

MR. PEACOCK moved that the words "pending at the time when this Act shall come into operation" be substituted for the words "then pending" in the 5th line of the Section.

The Motion was carried, and the Section as amended was agreed to.

The Council having resumed its sitting, the Bill was reported.

MUNICIPAL ASSESSMENT (BOMBAY).

MR. LEGEYT moved that the Bill "to amend Act XXV of 1858 (for appointing Municipal Commissioners and for raising a Fund for Municipal purposes in the Town of Bombay)" be referred to a Select Committee consisting of Mr. Peacock, Sir Charles Jackson, and the Mover.

Agreed to.

SALES OF LAND IN EXECUTION OF DECREES.

MR. RICKETTS postponed, till Saturday, the 19th Instant, his adjourned motion respecting sales of land in execution of decrees of Court.

CIVIL PROCEDURE.

MR. PEACOCK gave notice that he would on the same day move the third reading of the Bill "for simplifying the Procedure of the Courts of Civil Judicature not established by Royal Charter."

PENAL CODE.

MR. CURRIE moved that a communication received by him from the Bengal Government, relative to the introduction of Corporal Punishment for infraction of the Abkaree Regulations in Military Cantonments, be laid upon the table and referred to the Select Committee on "The Indian Penal Code."

Agreed to.

The Council adjourned at 5 o'clock on the motion of Mr. Grant till Monday the 14th Instant.

Monday, March 14, 1859.

PRESENT:

The Right Honorable the Governor-General, in the Chair.

Hon. the Chief Justice.	P. W. LeGeyt, Esq,
Hon. J. P. Grant.	E. Currie, Esq.
Hon. Lieut.-Genl. Sir J. Outram.	H. B. Harington, Esq., and
Hon. H. Ricketts.	H. Forbes, Esq.
Hon. B. Peacock.	

CUSTOMS DUTIES.

THE GOVERNOR-GENERAL moved that the Council resolve itself into a Committee on the Bill "to alter the Duties of Customs on goods imported or exported by sea."

The question being proposed—

MR. GRANT said, before the Council went into Committee, he wished to say a few words on one particular point in connection with the Bill.

The Bill did not touch Salt, and very properly so; because the Salt duty was in effect an Excise duty, and the Customs Laws applicable to it were merely auxiliary to the Excise Law.

In the speech which His Excellency had made last Saturday, His Excellency had remarked that he should be opposed to any proposal for raising the

Excise duty upon Salt. He had understood His Excellency, in making that observation, to allude only to Salt in Bengal, in the Punjab, and in the North-Western Provinces; and, subject to that limitation, he entirely concurred in His Excellency's opinion. He quite agreed that it would be impolitic to raise the duty upon Salt on this side of India; but the duty upon Salt differed widely in different parts of India, and he thought that the duties in Madras and Bombay might probably be raised materially without bearing severely upon the inhabitants of those Presidencies. In the Presidency of Bengal, and the Provinces below Allahabad, the duty at present levied is 2 Rupees 8 annas the maund. Above Allahabad, both in the North Western Provinces and in the Punjab, it is 2 Rs. the maund. At Madras, it is practically about 14 annas the maund. The system there is to sell Salt at 1 Rupee the maund; and of this amount, he believed that about 14 annas might fairly be taken to be the duty, on an average. At Bombay, the duty is 12 annas the maund. These were very great differences. Before the present financial pressure, it had always been the object and policy of the Government to get rid of the differential duty of 8 annas between Bengal and the Provinces above Allahabad. A few years ago, the duty upon Salt in Bengal and the Lower Provinces was 3 Rupees 12 annas the maund; but the Government had gradually worked it down to 2 Rupees 8 annas. It had always been its object to get rid altogether of the differential duty of 8 annas between the Upper Provinces and Bengal. At present, owing to the financial pressure, all idea of reducing the duty anywhere is out of the question. The existing duty of 2 Rupees 8 annas in Bengal must remain for a time; but he considered that 2 Rupees a maund was a sufficient rate of duty to levy on the article of Salt, and he hoped still that the time would come when that uniform rate might properly be fixed over the whole of this side of India. He did not see, however, that it followed, that because the duty on Salt could not be raised on this side of India, it could not be raised in Madras and Bombay. He was aware of no good reason why the inhabitants of those Presidencies should not pay eventually what was reckoned a proper duty on Salt in Bengal, as they pay the same duty that is levied upon all articles of import and export by sea in this Presidency, and as they pay, or ought to pay, the same excise on spirits that is paid here. He thought, therefore, that it would be a very proper subject of consideration by the Governments of Madras and Bombay, whether their local duties upon Salt might not with propriety be raised. If they could be raised without bearing too heavily on the consumers, he thought they should be raised forthwith to the extent perhaps of 1 Rupee 8 annas the maund, which would be at the rate of 100 per cent. at Bombay, and a little more than 5 per cent. at Madras. This would give a large increase of revenue; and it would leave the duty in the Bombay and Madras Presidencies still materially less than it is in every Province on this side of India.

He had made these remarks only in order that what had fallen from His Excellency the President of the Council at the last Meeting, and his (Mr. Grant's) own concurrence therein, might not be misunderstood.

THE GOVERNOR-GENERAL said, that in his observations on Saturday last, he alluded only to the duty on Salt on this side of India, and had in his mind the difference between the duty in Bengal and the duty in the North-West, beyond Allahabad. The sooner the Government could equalize these duties by abolishing the differential duty of 8 annas, the better. He had intended that the measure should have been taken before, and but for subsequent events, the occurrence of which we are now deploring, this would have been done. That would have been touching the duty on Salt; but it would have been by reducing it for the purpose of equalization. He quite agreed with the Honorable Member who had last spoken, in thinking that the increase of the duties on Salt in the Presidencies of Madras and Bombay was a very proper subject for consideration; but it could not be considered now in connection with this Bill, which was a measure relating entirely to an alteration of the duties levied on goods imported or exported by sea.

The Motion that the Council go into Committee upon the Bill was then put and carried.

Section I repealed portions of Schedules annexed to certain Acts "from and after the passing of this Act." It was passed after an amendment repealing the Schedules "from and after the 12th day of March 1859," and a further amendment exempting the articles of Salt and Opium from its operation.

Section II was passed after an amendment.

Section III provided as follows:—

"Nothing in this Act shall apply to the articles of Salt or Opium, or to Teak Timber exported from the Arracan, Pegu, Martaban, and Tenasserim Provinces."

It was passed after the omission of the words "the articles of Salt or Opium, or to."

Section IV related to contracts or agreements for the sale and delivery of goods *in transitu* to this country, which had been made without reference to any increase in the import duties.

Mr. CURRIE said, before he came into Council that morning, two members of the Mercantile Community had called at his house, and represented to him that this Section, instead of affording them relief, would affect their interests injuriously. They said that very large consignments of Manchester goods were in transit to Calcutta; that about two-thirds of the whole had already been sold by factors or agents here to Native merchants in the bazaar, under contracts for particular prices: and that it would be absolutely necessary for the factors to give delivery at those prices, notwithstanding any provision in this Bill, as otherwise much litigation would ensue, and an amount of ill-feeling, which would be destructive of their business with them; and the effect of the Section would consequently be to throw the whole loss on the factors and agents in this country, who had done their best for the interests of their principals at home. If the Act provided a remedy for the recovery of the difference of duty, the constituents of the factors here would look to them for that difference; whereas if this Section were omitted, the loss would fall on the owners of the goods. It seemed to him but just and proper that, when an unforeseen change like that proposed by this Bill was introduced, the difference should be paid by the purchaser, who would have the means of reimbursing himself by increasing the price of the goods. The gentlemen who had had an interview with him, however, said, that this was absolutely impossible. There had been no time to call a meeting of the Chamber of Commerce; but they stated that all the merchants to whom they had spoken were of opinion that the Section should be omitted. He could not say that he was prepared to make any Motion on the subject, because the information before him was only that which had been represented to him that morning. He thought it was to be regretted that more time had not been allowed for the due consideration of a measure bearing so largely on the interests of the Commercial Community.

The CHAIRMAN said, he did not clearly understand the drift of the objection which was taken to the Section. The object of the Section was not to put any compulsion on factors or agents for goods in transit to India, who had already contracted to sell at particular prices, and so to force them to charge to the purchasers the additional rate of duty to which such goods would be liable under this Bill, but only to empower them to do so. Therefore, as to the apprehension of raising bad blood between the agents of the owners in England, and the Native purchasers in the bazaar, nothing could be easier for the former than to avoid it by forbearing to exercise the power which the Section gives. The Section had been inserted for the purpose of protecting those who had given orders in England consequent on their contracts with dealers here, and to afford them the means of recovering the difference between the existing duties and the increased duties.

The CHIEF JUSTICE said, he could infer from the statement of the Honorable Member for Bengal what the apprehension entertained really was. The contracts to which the gentlemen with whom the Honorable Member had had an interview referred, were contracts not, as he understood the mat-

ter, between importers of goods on their own account, made before hand, but contracts for the sale of goods exported by the owners in England to their agents or factors in India for sale generally. The factor sold the goods while they were still at sea at a fixed price. If the goods were the property of the contractors themselves, the argument of His Excellency would have been unanswerable. But these men, being only factors, feared that if they insisted on the right given to them by this Section of enforcing payment from the purchasers of the difference between the present and the increased rates of duty, they would diminish their credit with the Native dealers in the bazaar; whilst, on the other hand, if they forebore from insisting on that right, they would offend their principals in England; so that they would be between two fires. To him, the apprehension entertained did not seem to be of a very serious character. Ordinarily, judging from the contracts which he was in the habit of seeing in Court, the factor sold through his banian, and had little personally to do with the Native purchasers. On the other hand, these transactions were very much complicated by the relations between the European merchants and their banians, who were liable, in consideration of their dustoorie, which was in the nature of a *del credere* commission, to be held responsible for the completion of the contract.

On the whole, he thought that justice would be better worked out by this clause, which had precedent in its favor, than by any other which could be proposed. At the same time, he considered it would be better if the Chamber of Commerce had had time to consider and express their opinion upon the question.

MR. PEACOCK said, he was not at all prepared to abandon the Clause; and from what had fallen from the Honorable and learned Chief Justice, he thought it ought not to be abandoned. It was entirely optional with factors in India to enforce the power given by the Section. The Section had been taken from a similar one in 21st of Victoria, c. 15, s. 4,—which, indeed, went a little further. If the factor in India paid the difference between the existing duties and the increased duties upon goods *in transitu*, in order to bring those goods into this Port for delivery to the purchaser, he paid the money to the use of the purchaser, and was entitled to a lien upon the goods until the purchaser repaid him. To allow the rescission of contracts already entered into, would be to interfere very much more with the rights of individuals than the present Section did. It would enable every factor to rescind a contract for the sale of goods the price of which had risen since the date of the contract.

THE CHIEF JUSTICE said, he did not know that any provision could be suggested which would work less evil than that which stood in the Bill. What was now proposed, would work a rough kind of justice. If the effect of the change were to raise the price of goods at once, then no doubt it would be perfectly just between the parties contracting that the seller should add the difference between the present and the increased rates of duty to the price of the goods. But if it was true, as he had been told, that the stocks in the country were now unusually large, the immediate effect of this Section would not be to raise the price of goods in a ratio corresponding to the increase in the duties; and, therefore, if the purchaser had contracted to take the goods for a particular price, intending to sell them at the market rate of the day, and if he should have to pay an additional amount of duty upon them, his calculations of profit would be very much disturbed, and he would be very injuriously affected by the Act.

MR. CURRIE said, the case was as stated by the Honorable and learned Chief Justice. By far the larger portion of goods which would arrive within the next two months had been sold by factors on account of their principals in England. Then, supposing the case to be as had been represented to him, that the increased duty could not be recovered from the native purchasers, on whom was the loss to fall? Ought it to fall on the factors, who had done their best for the interests of their principals?—or ought it to fall on the owners in England? It appeared to him that it ought to fall on the owners in England.

MR. GRANT said, he did not think that the Honorable Member for Bengal had put the question on its proper footing. The question was not whether the loss consequent upon the increase in the duties ought to fall upon the owners of the goods in England, or upon the factors of the owners here; but whether it ought not to fall upon the consumer. It was not the object of the Government to tax the manufacturer in England; it was not the object of the Government to tax the merchant in India; the object of the Government was to tax the Indian consumer; and, therefore, the Bill threw the incidence of the new taxation proposed upon the consumer, or as near the consumer as the Government could get. If the Council should throw this Section out, it would defeat this object, and would tax the English manufacturer. The object was, as far as possible, to save all parties from loss on past transactions, and to make the new tax fall, from the first, as far as that could be done, wholly on the consumer.

MR. PEACOCK said, the objection to the Section seemed to be that if factors in India insisted upon the payment of the increased duty by the purchasers in the bazaar, they would diminish their credit with them; and that, if they did not, they would offend their principals in England. Now he did not think that that was a sufficient objection.

MR. CURRIE said, he had no Motion to make on the subject.

The Section was then put, and agreed to.

Section V provided that the Act should take effect on and after the 12th day of March 1859.

MR. PEACOCK moved the addition of the following words to the Section:—

"And every Collector of Customs and other Officer is hereby indemnified for any thing done on or after that day in collecting or enforcing the duties imposed by this Act, or in otherwise carrying into effect the provisions hereof, and no action or other proceeding shall be maintained against any such Collector or other Officer in respect of any thing so done."

Agreed to.

Schedule A declared what articles should be duty free.

Mr. Grant

Item 1 of the Schedule was passed as it stood.

Item 2 ("precious stones and pearls") being proposed—

MR. CURRIE said, he did not see why these articles should be exempt from duty, when the Bill professed to tax luxuries. He was aware that, under some late enactment, they were admitted duty free in England; but he did not know for what reason. He raised his objection merely as a matter of principle; for the importation of precious stones and pearls was small, the value, he believed, being estimated at not more than about a lakh of Rupees a year. He would suggest that the Item 2 be omitted.

THE CHAIRMAN said, it was quite true that precious stones, being essentially an article of luxury, ought, in accordance with the declared principle of this Tariff, to be taxed. But it was to be remembered that there were other principles to be observed in taxation besides that of assessing a duty on luxuries—and he could hardly imagine a greater error than the imposition of a tax in the collection of which the Government was certain to be defeated. A man might carry a king's ransom in his waistcoat-pocket, and it would be impossible to enforce a system of search so vexatious as that which would be necessary to insure detection in such a case. The principle upon which the article of precious stones was declared free by this Bill, was one which, he believed, obtained in every country, and surely it was a sound one.

The Item was then passed.

Items 3 to 8 were passed as they stood.

Item 9 ("Machinery for the improvement of the communications, and for development of the resources of the country") being proposed—

MR. CURRIE said, he knew, from his own experience in former years in the Custom House, and from the information of the present Custom House Authorities, that exemptions of this kind led to innumerable disputes and much dissatisfaction. Some years ago, an order was passed by Government directing that machinery should be passed free of duty, and he knew

that it used to be a perpetual source of dispute as to what was really included in machinery. Any implement almost was a machine, and it was not easy to say what was machinery. He remembered a question being raised about the importation of some Printing Presses. Printing Presses were undoubtedly machines; but whether they were machinery seemed to be a doubtful question. Under the restriction prescribed in this Schedule, they would not be exempt; but there were other articles as to which the question would certainly arise whether they were machinery; and if they were, whether they were machinery for the development of the resources of the country.

Then, it seemed to him that there was not much consistency in the exemption. According to the proposed Tariff, the iron ribs and plates for the construction of river steamers would be liable to duty; but the engines put into them would be free. Rails for the railways would be liable to duty; but the locomotive which was to run upon them would be free. It would be a great relief to the Custom House Authorities if the Item in question were struck out. He accordingly moved that Item 9 be omitted.

THE CHAIRMAN said, that he understood his Honorable friend to object broadly to the exemption of any machinery whatever from import duty, and also to contend that the exemption would be a fruitful cause of disputes.

With respect to the latter objection, he (the Chairman) thought that the Government could do nothing better for the purpose of avoiding disputes than by declaring machinery free of all duty.

It might be urged, he did not know, whether with much force, that the definition in the Schedule was not a happy one. If this were really so, and any terms more explicit, which would avoid disputes, could be suggested, he should be very happy to consider them. For his own part, however, he did not think that there would be many disputes. No doubt there had been occasionally some questions raised on this subject, which had come up before Government for decision: but these questions had been very rare, and some of them were so absurd, that they answered themselves by the mere statement of them. Certainly, there could be nothing in itself unfair in imposing taxes on Societies which had such bright prospects before them, as the Railway Companies; and an enquiry, which had been instituted two or three years ago, had showed that about three-fourths of the machinery imported were imported by those Companies. But there were many inventions in machinery in use in England quite distinct from railway machinery, which we might hope to see introduced into this country, the resources of which they would materially assist in developing; and the best mode of encouraging their introduction was to admit them duty free; and that not only for the sake of the benefit to be derived from the use of each machine, but also in order to put such inventions as much as possible before the people, that they may become familiar with them and learn to imitate them. In proof that progress was making in this respect, he would mention that only a few days ago, a proposal had come up to Government, very much to his surprise, from the active and energetic Superintendent of Marine, to build, on his own responsibility, the steam engines required for a powerful river steamer, with no other aid than he can obtain in Calcutta, and he expected that it would be able to compete successfully with the improved river steamers which were now to be sent out from England. Some years ago, such a proposal would probably have been laughed at; but he saw no reason to doubt that it would succeed.

MR. CURRIE said, if machinery was constructed here, the materials would be liable to duty under this Tariff, and that, it appeared to him, was rather an argument against imported machinery being declared free. Why should machinery coming out from England be duty free, when the materials of which machinery might be constructed in this country would be liable to duty? He spoke from his own experience, and from that of the Collectors of the present day, when he said that the exemption proposed would lead to constant disputes and difficulties.

Mr. PEACOCK said, to avoid the disputes, the following Clause had been inserted in the Schedule :—

"And the Collector of Customs, subject to the orders of the local Executive Government, shall decide what articles of machinery come within the above definition, and such decision shall be final in law."

The Executive Government would hardly go wrong with the definition which was given before them.

Mr. CURRIE, with the leave of the Council, withdrew his Motion, and the Item was then passed.

Items 10 to 14 were passed as they stood.

Item 15 ("Haberdashery, Millinery, and Hosiery") being proposed—

Mr. CURRIE said, "Haberdashery" and "Millinery" were very vague and undefined terms, and it would scarcely be possible to determine what articles should be passed under this Item, which imposed a duty of 20 per cent., and what under the Item of unenumerated articles, which imposed a duty of only 10 per cent. The definition of the words given by McCulloch in his Commercial Dictionary, was as follows :—

"Haberdashery and millinery.—Closely allied, but vague and ill-defined terms, which are used to designate a great variety of articles, but especially those which either form component parts of ladies' dresses, or which are required to make or mend them. Dr. Johnson calls a haberdasher a 'dealer in small wares, a peddler.' But it is not easy to imagine a definition wider of the mark than this. It is true that a haberdasher deals in needles, pins, thimbles, sewing thread, and such like petty articles; but he also deals in articles of first-rate importance, including all sorts of linen, woollen, silk and cotton goods, &c."

He thought that "haberdashery" and "millinery" were such very undefined terms, that it would be scarcely possible to determine, without some further definition than was now given in the Schedule, what the articles were that should be liable to the enhanced duty of 20 per cent. He did not know of any Tariff in the world in which these words were used ; and he thought that, in practice, they would be found extremely difficult of application.

At present, there was no difficulty ; because it was immaterial whether articles came under the description of "haberdashery" or "millinery," or whether they came under the head of "piece goods" or any other article not enumerated in the Tariff, since they paid a duty of 5 per cent. in either case ; but when a new differential duty of 10 per cent. was imposed upon a particular class of imports, it was important to determine what were the articles that could be said to belong to that class.

Another objection to the Item was that it would apply only to the European and Eurasian parts of the community. The duty was raised from 5 to 20 per cent. Unless it could be shown that there was an absolute necessity for such an increase, he should be disposed to move for the omission of this Item from this part of the Schedule leaving it to fall under the head of unenumerated articles.

The CHAIRMAN said, that, although the term "haberdashery" did not exist in the Customs Law, it exists in the Custom House List. That being the case, there surely must be an understanding in the Department as to what the word meant. The Officers of the Customs must have in their minds a tolerably clear notion as to what articles would come under the head of "haberdashery," and what under that of "piece goods," or any other head unenumerated in the Schedule. He did not apprehend the difficulty which the Honorable Member for Bengal anticipated ; but, at the same time, he felt bound to say that the matter was one upon which he spoke with very little certainty.

Mr. CURRIE said, he thought that the Item would give rise to very great difficulty. Supposing Madame Gervain should import a quantity of French or English silk in the piece. Would that be "millinery ?"

Mr. GRANT said it would not be.

Mr. CURRIE. Then, suppose she should import a quantity of French or English silk in the form of dress pieces. Would that be "millinery ?" He thought that the use in a Tariff of phrases which were indefinite, would occasion much difficulty ; but he would make no Motion.

MR. GRANT moved the addition of the following words to the Item :—

"And the Collector of Customs, subject to the General Orders of the local Executive Government, shall decide what articles come within the above definition, and such decision shall be final in law."

Agreed to.

Mr. GRANT moved that the word "general" be inserted before the word "orders" in Item No. 9.

Agreed to.

Items 16 to 21 were passed as they stood.

Item 22 ("Porter, Ale, Beer, Cider, and other similar fermented liquors") was passed after amendments.

Item 23 (subjecting all unenumerated articles to a duty of 10 per cent.) being proposed—

THE CHIEF JUSTICE said, he was happy to state that, though a delay of forty-eight hours had been allowed between the introduction of the Bill and its consideration in Committee, no objection had been made to him to the proposed Tariff, except one—a circumstance from which he hoped he was justified in inferring that this measure was as popular as any increase of taxation could be to any community. The objection was that it would not be right to double the duty on medical drugs and surgical instruments.

THE CHAIRMAN said, he was not aware until now that this objection was felt in any quarter. With respect to surgical instruments, he did not think that the objection was a very sound one One surgical instrument did a great deal of work. Every body did not want a surgical instrument, and he did not think that a duty of 10 per cent. would make any difference with respect to the supply of such articles to those who used them. With respect to drugs, the objection might probably be better founded. He knew that, either from irregularity in sending them up, or from their spoiling by keep, the want of them had been very much felt Up-country. But he doubted whether any case had been made out for reducing the duty upon them below 10 per cent. He did not know what the amount of duty now collected upon them was. If the Honorable and learned Chief Justice proposed to make any motion on the subject, he should like to have time to consider it.

THE CHIEF JUSTICE said, he had no Motion to make, and the Item was then put and carried.

Schedule B (which related to Exports) was passed after amendments.

The Title was agreed to.

The Council having resumed its sitting, the Bill was reported.

THE GOVERNOR-GENERAL moved that the Bill be now read a third time and passed.

The Motion was carried, and the Bill read a third time.

THE GOVERNOR-GENERAL announced that he had given his assent to the Bill.

The Council adjourned.

Saturday, March 19, 1859.

PRESENT :

The Hon'ble the Chief Justice, *Vice-President*, in the Chair.

Hon. J. P. Grant, Hon. Lieut.-Genl. Sir J. Outram, Hon. H. Ricketts, Hon. B. Peacock, P. W. LeGeyt, Esq., E. Currie, Esq., H. B. Harington, Esq., H. Forbes, Esq., and Hon. Sir C. R. M. Jackson.

CARNATIC ESTATE.

THE CLERK presented a Petition from certain creditors of the estate of the late Nawab of the Carnatic against the passing of Act II of 1859.

MR. FORBES moved that this Petition be laid upon the table.

Agreed to.

INDIAN NAVY.

THE CLERK reported to the Council that he had received from the Home Department a communication from the Bombay Government, relative to a suggestion by the Commander-in-Chief of the Indian Navy, respecting the propriety of obtaining an Act of Parliament conferring on the Indian Navy certain powers given to the Officers in