



SUPPLEMENT
TO THE
BOMBAY GOVERNMENT GAZETTE.

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FRIDAY, 12TH SEPTEMBER 1862.

PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

THE following Extract from the Proceedings of the Council of the Governor of Bombay, assembled for the purpose of making Laws and Regulations under the Provisions of the Act of Parliament, 24 and 25 Victoria, Chapter 67, is published for the information of all whom it may concern :—

The Council met at Poona on Wednesday, the 3rd September 1862.

PRESENT :—

His Excellency Sir H. B. E. FRERE, K.C.B., the Governor of Bombay, Presiding.

His Excellency Sir W. R. MANSFIELD, K.C.B.
The Honorable Mr. FRERE,
The Honorable Mr. INVERARITY,
The Honorable the ADVOCATE GENERAL,
The Honorable Mr. TRISTRAM,
The Honorable Mr. MADHOWROW VITTUL VINCHORKUR,
The Honorable Mr. RUSTOMJEE JAMSETJEE JEJEEBHoy,
The Honorable Mr. JUGONNATH SUNKERSETT,
The Honorable Mr. ROBERTSON,
The Honorable Mr. SCOTT, and
The DEPUTY SECRETARY.

The consideration of the " Report of the Select Committee on a Bill to abate the nuisance arising from the smoke of Furnaces in the Island of Bombay and Colaba" was resumed.

The following amendment, of which Mr. Frere had given notice, was put :—

" That the following section be substituted for Section III. of the Bill as amended by the Select Committee :—

III. " It shall, for the purposes of this Act, be competent for a Magistrate, or the Municipal Commissioners of Bombay, to appoint a person or persons, who shall be thereby authorised to enter any premises to which the provisions of this Act shall apply,

and inspect any Furnaces therein; and if the owner or occupier of the Premises, or if the Agent, Foreman, or other person employed by such owner or occupier shall refuse to allow their premises to be inspected by the person so authorised, it shall be lawful for any Police Officer or Constable authorised by the order in writing of a Magistrate, with or without any assistance, to enter into and upon any building or premises in the Town and Suburbs of Bombay, in which any furnace may be, or in which any noxious trade or business may be carried on, and to examine into the construction of such furnace, and into the manner of carrying on such trade or business, and any person obstructing any such Police Officer or Constable in the execution of any such order shall, upon a summary conviction for such offence before a Magistrate, forfeit and pay any sum not exceeding 500 Rupees."

Mr. FRERE said that as the following clause of the Bill rendered the authority of a Magistrate or the Municipal Commissioners necessary before any proceedings were taken under the Act, he thought it desirable that Magistrates or the Municipal Commissioners should have power to appoint the person to enter premises and inspect furnaces.

Sir W. R. MANSFIELD said he thought that the expression "a Magistrate" was not sufficiently definite.

The ADVOCATE GENERAL thought there was a miscarriage in the 3rd Section. He considered that perhaps the best plan would be to adopt the amendment.

Mr. ROBERTSON said that he thought the power of authorising persons to enter premises should be limited to either the Municipal Commissioners or to the Chief Magistrate, but that he would suggest it should be conferred on the former.

The question was put whether the words "a Magistrate or" be omitted from the second line of the Section proposed to be substituted for Section III.

Carried.

The question was then put whether the amendment of Mr. Frere with the words "a Magistrate or" omitted stand part of the Bill.

Carried.

Sections 4, 5, 6, and 7, as amended by the Select Committee, were passed.

Mr. TRISTRAM said that as it was desirable that the Bill should pass, and the amendment made was clerical, he would ask the President to suspend the standing orders.

The PRESIDENT said he thought the amendment made was more than merely clerical, and that he would prefer not to suspend the standing orders.

The Second reading of the Bill was accordingly postponed to next Meeting.

The consideration of the "Report of the Select Committee on a Bill for further amending Act XXVI. of 1850" was resumed.

Section I. as amended by the Select Committee was agreed to.

The following amendment, of which Mr. Inverarity had given notice, was put.

"That the following Section be inserted as Section II. of the Bill, as amended by the Select Committee, and that Section II. in the amended Bill stand in the Bill as Section III.

"II. All Collectors, Sub-Collectors, Assistant and Deputy Collectors, Mamlutdars, Certain Officers to be *ex-officio* Commissioners of Municipalities, and Mahalkurries, shall be *ex-officio* Commissioners of every Municipality within the limits of their local jurisdiction, and the following Officers shall be *ex-officio*

Commissioners when resident in any City, Town, or Suburb in which a Municipal Commission is or shall be established, viz :—

- “ The Executive Engineer of the District.
- “ The Civil Surgeon.
- “ The Superintendent of Police.
- “ The Assistant Superintendent of Police.
- “ The Deputy Collector at the Sudder Station.
- “ The City or Town Foujdar.”

Mr. INVERARITY explained the objects of the Bill and amendment.

Sir W. R. MANSFIELD would like to inquire whether the proposed Clause would not give too great a number of Government officers, and therefore cause the Municipality to assume the appearance of Government machinery for taxation. It must be remembered that the influence would be one of patronage and superior education as well as of number. He thought it doubtful whether the Clause would not deprive the Town's people of the power of expressing their opinion.

Mr. JUGONNATH SUNKERSETT thought the proposed increase of Government influence too great.

Mr. ROBERTSON suggested that the difficulty might be met by limiting the number of *ex-officio* members in each Municipal Commission to one-third of the whole number of Commissioners.

The PRESIDENT said his own inclination was in favour of having *ex-officio* members, but not in such a proportion to the non-official members as to over-ride them. He quite agreed that some limitation should be placed on the number.

The question was then put whether the following Proviso be added at the end of the Section proposed in the amendment of Mr. Inverarity :—

“ Provided that the *ex-officio* Commissioners shall not at any time exceed the proportion of one-third in number of the non-official Commissioners of any Municipality.”

Mr. INVERARITY'S amendment with the abovementioned *Proviso* was then put and carried.

Section III. was then passed.

On the question whether the Preamble should stand (the Preamble of the Bill), Mr. Frere said it would require alteration in consequence of a new Section being added to the Bill.

The following words were then added to the Preamble after the words “ Act XXVI. of 1850 ” :—

“ And to make provision for certain Officers to be *ex-officio* Members of Municipal Commissions.”

The consideration of the “ Report of Select Committee on a Bill to promote the construction of Lines of Communication as Feeders to Railways, High Roads, Navigable Rivers and Canals,” so far as relates to Section XVI. of the Bill, was resumed.

The following amendment, of which Mr. Frere had given notice, was put :—

“ That the word “ order ” be substituted for “ direct ” in the 12th line of Section XVI. of the Bill, and that the following be added at the end of the 16th line, “ within a certain time to be specified in that order in case of wilful failure on the part of the Company to comply with that order, they shall be liable to a fine not exceeding Rupees Five hundred for every day that they fail so to do,”

and carried.

On the amendments of which Mr. Inverarity had given notice being put :

Mr. INVERARITY said that since the Bill was printed, he had been in communication with one of the most experienced and eminent authorities on all subjects connected with Railways on this side of India, and the valuable suggestions of this authority had been embodied in the amendments which he begged to propose.

Sir W. R. MANSFIELD had some doubts whether on a point of order, now that the report of the Select Committee on the Bill had been agreed to, the Council could admit the amendments till the second reading of the Bill was moved.

On the question whether the amendments of the Honorable Mr. Inverarity be now considered, the Council divided.

Ayes—4.

Honorable Mr. INVERARITY.
Honorable Mr. TRISTRAM.
Honorable Mr. JUGONNATH SUNKERSETT.
Honorable Mr. SCOTT.

Noes—6.

His Excellency Sir W. R. MANSFIELD, K.C.B.
Honorable Mr. FRERE.
Honorable Mr. LEWIS.
Honorable Mr. RUSTOMJEE JAMSETJEE JEJEE-
BHOY.
Honorable Mr. MADHOWROW VITTUL VIN-
CHOORKUR.
Honorable Mr. ROBERTSON.

The question whether the Bill be again referred to the Select Committee, who had reported on the Bill, to consider the amendments proposed by Mr. Inverarity, was then put and carried.

On the next order of the day, viz. the report of the Select Committee on a " Bill to extend the jurisdiction of the Bombay Court of Small Causes and to provide for the appointment of additional Judges of that Court" being read ;

The ADVOCATE GENERAL said the Bill had been almost recast in Committee. His avocations elsewhere having prevented his considering the report, he moved that the period for receiving the report be extended to the next meeting of the Council.

The PRESIDENT put the question whether the period for the reception of the Report be extended to the 10th Instant.

Carried.

Mr. FRERE said he was not prepared at present to introduce the " Bill to enable Magistrates to depute to Subordinate Magistrates power to try certain offences punishable under the Penal Code, and to enable district Police Officers to try certain minor offences specified in Chapter 14 of the Indian Penal Code."

He would do so at the next meeting when he also intended to introduce two Police Bills.

The first reading of the Bill was then postponed to the next meeting.

Mr. INVERARITY, in introducing the " Bill for the Registry of Vessels and levy of Pilotage fees on the River Indus," spoke to the following effect :—

" The Navigation of the Indus has long been declared free to all nations, but it still remains to secure that navigation from all undue risk. The obstacles which the river Indus offers to navigation are twofold. These are the difficulties presented by the main stream and the difficulties met with at the entrance and in the branches of the Delta."

" Among the first is the difficulty of controlling the stream. During the inundation, the waters of the Indus in some places spread over a surface of 15 miles in breadth, and during

their subsidence, it is never a matter of certainty which bank the current of the stream will most affect. Any thing imaginable in the shape of irregularity scarcely comes up to the truth in regard to the eccentricities and caprice of the Indus. Three times within the memory of existing man has Kusmore in Upper Sind been washed away. Twice have Gobla and Bustanee shared the same fate. When the Rookun road was first lined out some ten years ago, it was miles from the river, two embankments put up to protect the country from the encroachment of the river have since been carried away; and at the present day a stone might be thrown from the deck of a passing Steamer into the staging Bungalow built on the side of that road. Lower down the river between Tatta and the sea there are standing in the centre of the stream some rocks which not many years ago were some distance inland. Besides this difficulty of control, there are difficulties of clearance. Frequent shoals, uncertain situation of channels, and foulness of the river bed, all present obstacles to safe navigation. The mere grounding of a boat is sufficient to raise a shoal, to divert the current from its course and create a new channel. During the inundation many trees are carried down and deposited, and during the low season many trees topple with the banks on which they stand into the stream, and there in a short time become firmly imbedded. These sunken trees are obstacles from which danger is most to be apprehended, because no attention of the navigator can effectually guard against them. It will be within the recollection of some at this Board that, but a few years ago, a young and accomplished Officer of Engineers lost his life by his boat coming in contact with a sunken tree some miles above Hyderabad. It will not be forgotten that the ill-fated "Meteor" lies at the bottom of the river irrecoverably lost, and more recently the Steamers "Lawrence" and "Chenab" were both snagged, but by great exertions were both happily saved. Thus it came to pass that a consideration of risks and of the large and increasing development of trade on the river induced the Government to initiate a system of conservancy, and the Steamer "Assyria" has, during the past low season, been successfully employed in clearing and improving the navigable channel by removing sunken obstructions. To provide something towards the expenses of this conservancy, a Registry fee on boats plying on the Indus has been imposed, to the satisfaction of all concerned.

"But besides these difficulties which affect the main stream, there are the difficulties met with at the entrance and in the branches of the Delta. Here are seen, the combined effects of the inundation and the South West Monsoon in low shelving mud banks intersected with continually shifting channels. A system of Pilotage has here been organised, and while the navigable channels are marked out with posts, Beacons are exhibited on prominent points to give the general direction and bearings. Towards the maintenance of an Establishment for Pilotage and Beaconage purposes, small pilotage fees, originally fixed as regards native craft by the traders interested, are levied, to the satisfaction of all concerned.

"Opinions have been invited from Sind, and to-day I have seen a letter from the Commissioner, who reports that the Kurrachee Chamber of Commerce give the Bill as now presented its cordial support, and that the Registry and Pilot Fees give general satisfaction. With these few remarks I beg to move the First Reading of the "Bill for the Registry of Vessels and levy of Pilotage Fees on the River Indus."

The Bill was then read a first time.

Mr. INVERARITY moved that the Bill should be referred to a Select Committee consisting of—

Honorable Mr. ROBERTSON,
Honorable Mr. TRISTRAM,
Honorable Mr. SCOTT,
Honorable Mr. JUGONNATH SUNKERSETT,
Honorable Mr. RUSTOMJEE JAMSETJEE JEEJEEBOY, and
The MOVER,

with instructions to report at next sitting of the Council.

Carried.

Mr. SCOTT in moving for leave to bring in a "Bill for the better suppression of Frauds in the Cotton Trade in the Presidency of Bombay," said:—

I make the motion, of which I have given notice, with some little diffidence, because Government withdrew the measure on the same subject, which they had intended to bring forward at the last Session of the Council, and because I am aware that the opinion is held in high quarters that any legislation such as that which I propose is unnecessary. In this I cannot agree; on the contrary, I am convinced that some interference by Government is absolutely necessary, and my conviction in this respect is, I believe, shared by the whole mercantile community of Bombay. I do not speak of the European mercantile community only, but of the better class of the native merchants, who, equally with their European brethren, are sufferers by the universal system of fraud which appears to pervade our cotton trade.

Rule 13 provides that a member moving for leave to bring in a Bill shall be at liberty to state *concisely* his reasons for so doing. I shall endeavour to abide by the strict reading of this rule, but I crave the forbearance of the Council if my remarks should appear a little too lengthy. I know, as I have said, that objections are entertained to any legislation on this subject, and I should be glad if a short statement of the case, as it appears to me, should so far disarm these, that the permission I now ask for may be accorded, and an opportunity afforded hereafter for the full discussion of the whole subject in Council.

The subject of Indian Cotton has attracted much attention of late, and much more information with regard to the trade is probably now in the possession of *outsiders* than has ever been the case before. I question, however, whether it is generally known, or at any rate generally believed, that at no time within the last ten years has the adulteration of Indian cotton been carried to so great an extent as during the past twelve months. I am careful to speak of ten years only, because for that period I can speak from personal knowledge. At no period has the improvement of the quality of Indian cotton been of such vital importance as of late; at no period has the trade itself been of such vital importance both to this country and to Europe; and at no period within my recollection has the adulteration of the staple been so great and so universal.

Adulteration is effected in many ways. Compta cotton used to enjoy the unenviable notoriety of being full of seed, while Broach and Dhollera bales used to be weighted with stones and dirt. In the past year all have retained their own failings, and have besides appropriated those of their neighbours; Compta has been as seedy as ever, and as dirty as Broach and Dhollera often used to be; Broach and Dhollera have been dirtier than for many years past, and, the former especially, as seedy as Compta almost ever was. So far I have spoken of one kind of adulteration; another, and perhaps the more serious, is adulteration by the mixture of one kind of cotton with another, the inferior with the superior, and the sending them to market in such packages as have hitherto been distinctive of the superior quality. The Oomrawuttee name and the Oomrawuttee docra have been usurped by the somewhat similar, but short stapled and dirty cotton of the neighbouring province of Kandeish. Verawul and Mangrole have deserted their old docras, and come to market in bales fashioned to represent those of Dhollera and Bhownuggur, and sometimes bearing these names in native characters upon them. The New Orleans seed cotton of the Southern Mahratta Country, commonly known as "Dharwar Sawginned," and from which so much was expected in the way of raising the character of Indian cotton, has latterly been of the most wretched description: much of it is the common indigenous cotton, but much of it has never seen the Dharwar Districts at all, but has come from Kandeish.

While on this subject, I may mention a singular circumstance, which is within my own knowledge. The firm to which I belong had, some years ago, large cotton ginning establishments in Kandeish. These we have not been working lately; but the machinery is still standing, and I last season permitted an old agent of ours to use it in ginning cotton for the neighbouring soucars. A considerable quantity of Kandeish cotton, very poor cotton too, as reported to me at the time, was thus ginned, and yet, strange to say, not a docra of Kandeish ginned cotton ever appeared in Bombay: it left Dhurrumgaum for Bombay, but never appeared there for sale under its own name. I have found it, I believe, in Dharwar docras over and over again, but no Kandeish ginned cotton was to be bought as such in the market. I mentioned the matter to our agent, and on his taking the soucars to task, they laughingly admitted that they knew their cotton was used to adulterate, or to represent the superior Dharwar growth.

I trust I have now shown that the evil exists, and that it is so great as to demand a remedy. As to this remedy, I have been told, *1st*, that it is supplied by the present law; and *2ndly*, that the merchants of Bombay can supply it themselves. As regards the first point, it might almost be enough to say that there must be something singularly insufficient in laws which not only do not check the evils which they were intended to prevent, but permit their great increase. These laws, as far as I have been able to discover, consist of Regulation III.

of 1829, and Act XV. of 1851. The first of these was, I believe, a dead letter for upwards of 20 years. It was then, in 1850, on the urgent representations of the Chamber of Commerce, and with good effect, put in force at Broach by the late Mr. J. M. Davies. It has not, as far as I know, been since acted on, except in a case where I believe, owing to its non-application to certain districts, the executive officer was held by Government to have exceeded his powers in attempting to put its provisions in force. The Regulation contains two great defects:—1st, there is a doubt as to whether it is applicable to any part of the Presidency except Guzerat, to which, according to the preamble, it is specially intended to apply; 2nd, it only permits of the confiscation and destruction of adulterated cotton when the loss “*can be made to fall upon the person or persons who have been convicted of having committed the fraud.*” This, I believe, renders the Regulation practically useless, and in this opinion I believe the executive officers of Government will agree.

Then as to Act XV. of 1851; this only refers to the Islands of Bombay and Colaba. Its provisions are good in so far as they go, but there have been great difficulties in the way of putting them in force. In the first place it has been felt by all that they fail to reach the guilty parties. They may punish a Bombay cotton dealer, but in so doing they may inflict a grievous wrong upon him, for they do not go beyond him, or enable him to reach the up-country dealer by whom he has probably himself been victimized. This consideration has, I believe, prevented in great measure any attempts to put the law in force. I only know of one attempt to do so on the part of an influential European firm, and it was met by a combination among the dealers not to sell any cotton whatever to the parties in question. Such a course was not under the circumstances extraordinary or altogether inexcusable, but it was productive of very serious inconvenience and loss to the firm of whom I have spoken, and who only endeavoured to avail themselves of the laws provided for their protection.

So far regarding the existing laws, which have certainly failed to provide the required remedy. They have been almost useless, but their very existence affords an argument for the further legislation which I advocate. If any law be necessary, let us have one which has some pretension to being effectual. If none be necessary, then expunge from the statute book those which now uselessly encumber it. Now, as regards the assertion that the merchants of Bombay can themselves supply the remedy, they are told that they can do so in two ways:—

1st.—By refusing to buy adulterated cotton.

2nd.—By going themselves into the producing districts, and there buying the cuppas or the cotton direct from the ryots.

As regards the first point, I fear I could not, without going greatly into detail, explain fully the almost powerlessness of the exporting merchant. Take, however, an ordinary case. An English house commissions a Bombay Firm to purchase on their account 1,000 bales, say of Broach cotton. The Bombay Firm contracts for this quantity, often necessarily months in advance of delivery. When the cotton comes to Bombay, and is tendered to the purchasers, it is found to be adulterated. What then are they to do?—decline to receive it, and endeavour to buy in the open market on account of the seller? This advice is easy to give, but difficult to follow. In the first place, if good cotton be procurable, there remains a long lingering lawsuit against the original seller, in which success hinges on the proof, often most difficult, of adulteration, and in which, if successful, the plaintiff must often feel that he is dealing somewhat harshly with the defendant. In the second place, if, as in the past season, there has really hardly been any good cotton to be had, there remains the lawsuit as before, and other very serious complications. The English house claims its cotton, which the Bombay firm, trusting to the Bombay dealer, has undertaken to supply, and if the cotton be not forthcoming, serious claims for damages may arise. In practice, then, it has been found to be almost absolutely impossible to carry on the trade, except by making all bargains, with English houses on the one hand, and with Bombay dealers on the other, for cotton of a certain growth, and of a fair average quality of a certain season's crop. When adulteration is the rule, and the exceptions are rare, where then is the remedy at all?

As regards the second point, the establishment by European firms of agencies in the up-country producing districts for the purpose of dealing direct with the ryots, here I freely admit lies the remedy for many of the evils of which I complain, and for many more than I have referred to. No one can consider the establishment of such agencies more desirable than I do myself: no one can anticipate from them greater benefit than I do. Without them I do not think that we shall ever get to the root of the evil, or effect any material improvement in the quality of Indian cotton. Believing all this, and admitting all this, I must still emphatically declare that no prudent European merchant dare, in the existing state of the law, establish such agencies on a large scale without some system of easy registrations of contracts, and without some summary law for the enforcement of contracts, criminal or otherwise

I don't much care; he would be going to certain loss. This opens a large question, on which I must not enter, but the subject is one upon which I claim to speak from experience.

The firm to which I belong is the only one on this side of India which has attempted such operations on a large scale, and in my own earlier career in India I had a great deal to do with their management up-country. A history of our doings is on the records of Government, and I need not enter upon it here. Suffice it to say, that after fighting against all difficulties for ten years; after expending large sums in machinery, and in the importation of foreign cotton seed, &c., we were obliged to withdraw our agencies, and abandon altogether a large sum in outstanding advances. What caused our failure? The want of a system of registration of contracts, and the want of some means of summarily enforcing these. Give us these, and we will commence again, and so will many others. Without them we can do nothing.

In order to enforce my argument on this point, I may be permitted to state one case, taken also from our own experience. On the 6th May 1852, we contracted with a person in the Dharwar districts for the delivery of a certain quantity of cotton, and, according to custom, paid half purchase money in advance. He failed to deliver, and we sued upon the contract. We obtained a decree in the Sudder Ameen's Court on 23rd November 1853, and on appeal in the Judge's Court on 27th November 1854. The defendant then appealed to the Sudder, and his appeal was dismissed with costs on 30th January 1857. His property was then attached, and almost simultaneously he died. Claimants then rose up against the attachment. We again obtained decrees in our favour, and an appeal was again made in August 1861—ten years fighting for a paltry sum, which would have been abandoned long ago, save that we objected to being *done*. This is an extreme case, but it has occurred, and might occur again; I have endeavoured to show, then, that the evil exists; that the law does not provide a remedy; and that we cannot find a remedy for ourselves. I therefore ask leave to endeavour to provide one by further legislation.

The Act which I propose to bring before the Council will be very similar to one which was, on the 16th January 1858, introduced in the Legislative Council of India by the late Mr. LeGeyt, and which was subsequently withdrawn. It cannot be brought forward this Session, but I think the delay will be of advantage rather than otherwise, for the subject is a very difficult one, and I hope that, as attention has now been drawn to it, we may receive from competent authorities many useful hints.

I now beg to move for leave to bring in "A Bill for the better Suppression of Frauds in the Cotton Trade in the Presidency of Bombay."

Mr. FRERE said he should be most happy to support any Bill which was introduced for the purpose of putting an end to these frauds, but he was not sanguine of success, though he would give the Honorable Mover all the assistance in his power.

Sir W. R. MANSFIELD said that in England a Select Committee or a Commission would issue for the purpose of obtaining evidence in such a difficult matter. Thus, while most anxious to forward the Honorable Member's views, if it should be in his power to frame such a measure as might meet the approval of the Council, he would throw out, for the consideration of the Honorable Mover, whether it might not be desirable to appoint a Select Committee to take evidence on the whole subject during the recess.

Mr. SCOTT said he would be in a position to state what course he would pursue next meeting.

Leave was then given to Mr. SCOTT to introduce the Bill.

The PRESIDENT said that at the last meeting he stated that he hoped to be in a position this meeting to inform the Council how long the present Sessions would be further protracted and he proposed at the next meeting either to adjourn the Sessions, or to state on what date it would be adjourned.

The PRESIDENT then adjourned the Council to Wednesday next, the 10th September, at 3 P.M.

By order of His Excellency the Governor in Council,

L. H. BAYLEY,

Deputy Secretary to Government.

Poona, 3rd September 1862.