



SUPPLEMENT
TO THE
BOMBAY GOVERNMENT GAZETTE.

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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 Bombay, on Wednesday, the 14th January 1863.

PRESENT:—

His Excellency Sir H. B. E. FRERE, K.C.B., Governor and President in Council, Presiding.

The Honorable Mr. W. E. FRERE,
The Honorable Mr. J. D. INVERARITY,
The Honorable The ADVOCATE GENERAL,
The Honorable Mr. H. L. ANDERSON,
The Honorable Mr. W. B. TRISTRAM,
The Honorable Mr. MADHOWROW VITTUL VINCHOORKUR,
The Honorable Mr. JUGONNATH SUNKERSETT,
The Honorable Mr. PREMABHAI HEMABHAI,
The Honorable Mr. M. H. SCOTT,
The Honorable Mr. A. D. ROBERTSON, and
The UNDER-SECRETARY.

His Excellency the PRESIDENT, after taking his seat, said, that the first Bill set down in the Orders of the Day for discussion, was that for facilitating the adjustment of unsettled claims to exemption from the payment of Land Revenue in the Deccan.

After some discussion regarding the petition on the subject of this Bill ordered to be printed at the last Meeting of the Council, Mr. JUGONNATH SUNKERSETT said he would move the postponement of the Bill until the next Meeting of the Council. The petition was of great length, and he had not time to thoroughly peruse it.

Postponement agreed to.

The Council then proceeded to consider the Report of the Select Committee upon the Bill for the Regulation of the District Police in the Presidency of Bombay.

Mr. FRERE said that since the report was drawn up, he had seen Colonel Bruce, the Inspector General of Police in India, who had formed views on the subject considerably different from those of the Committee. Colonel Bruce, he said, objected to the principles of this Bill, thinking that Act V. of 1861 was preferable, as it left nearly everything to the discretion of the Commissioners of Police, who had to publish such rules as might be found convenient to practice; while this Bill, Colonel Bruce thought, laid down rules in far too great detail. Mr. Frere said that he differed *toto caelo* from Colonel Bruce's opinion on this point. He considered that in matters of this kind the law ought to provide, as far as possible, for all things necessary: individual discretion was a hazardous trust, nor could there be a worse tyranny than that of Manuals. He would, however, state Colonel Bruce's objections clause by clause, although he could not in most instances, admit their cogency.

On the question that Section III. stand part of the Bill, Mr. FRERE said that Colonel Bruce objected to the word "charge" in the eighth line of the Section, as it made the Magistrate an Executive Officer instead of merely investing him with a general control of the Police Force. This combination of duties, Colonel Bruce thought, was opposed to the now generally received principle that it is desirable to separate judicial, as completely as possible, from executive functions. Mr. Frere thought there was much weight in this objection, and moved the omission of the words "and charge" in the eighth line of the Section.

Carried.

On the question that Section V. stand part of the Bill, Mr. FRERE said that on the principle of keeping Judicial and Police functions distinct, Colonel Bruce thought that part of the Section which permitted the Magistrate of the District to commit Magisterial inquiries to the Superintendent of Police, ought to be struck out. He concurred in this view, and moved the omission of the words "unless specially deputed in any case by the Magistrate of the District" in lines 8 and 9 of the Section.

This was put and Carried.

Mr. FRERE then said that Mr. Hart, the Police Commissioner Southern Division, had written to say he was not aware of the grounds on which Section VI. of the Original Draft had been struck out by the Select Committee, but he was strongly of opinion that its substance ought to be retained. There was a tendency on the part of subordinate officers exercising Magisterial powers to set up themselves as independent and to introduce constant changes at their own discretion or caprice. The superintending control of the Magistrate of the District was necessary to check the variations of practice which would thus arise. Mr. Frere said he concurred in this opinion, and would move the introduction of the omitted Section.

The PRESIDENT said that the omitted Section was so indefinite that he thought it questionable whether any harm could be done by its omission.

Mr. FRERE said that after the expression of that opinion by His Excellency, Mr. Hart would no doubt be satisfied that little or no good was to be obtained by the introduction of the Section. He would therefore withdraw his proposal to insert the omitted Section.

On the question that Section VII. stand part of the Bill, Mr. FRERE said that Colonel Bruce had objected to this Section as conflicting with Section 301 of the Code of Criminal Procedure. The object of this Section, however, was to supplement the Code of Criminal Procedure by allowing the Magistrate, where such a course seemed proper, to free his District from the presence of suspicious characters in a manner analogous to the passing of vagrants to their parishes in England. Under the Regulations, a suspected person unable to provide security in a District which is at a distance from his native place, might be passed on to the latter, where he probably could find security unless his character were bad. The provisions of the Code of Criminal Procedure on the other hand, offered no alternative but security or imprisonment. They would obviously bear hard on the suspected person, and, at the same time, involve considerable expense to Government for his subsistence in prison.

The ADVOCATE GENERAL inquired what was the point on which the two enactments were supposed to conflict.

Mr. FRERE said that under the Code of Criminal Procedure a man must furnish security or go to prison; under the Bill he might be sent to his own country.

Mr. ANDERSON said, it would be a harsh measure in many instances to send a man to his native place which he might have left many years before. He ought rather to be sent to the place of his business and ordinary residence.

Mr. FRERE said that would raise the vexed question of domicile.

The ADVOCATE GENERAL said that the Bill provided a course essentially different from that prescribed by the Code of Criminal Procedure; and he did not see clearly how the two laws could work consistently together.

The PRESIDENT said that the Bill would effect what was formerly effected by the Regulation—getting a suspected criminal out of the District or Country instead of imprisoning him—the provisions of the Code of Criminal Procedure however gave abundant power, he thought, for dealing with such cases; and unless there were some general complaints of that power having been harshly used, it would, he thought, be right to give the Code, as it stood, a further trial. The insertion of a Clause at variance or at apparent variance with the Code might not improbably lead to the rejection of the Bill by the confirming authority. It was desirable too, he thought, to preserve in this matter, a uniformity of procedure throughout India as well as throughout the Presidency. He should therefore feel inclined to move the omission of the Section, unless complaints had actually been made, of the harsh working of the Code, which would be an argument for its retention.

Mr. FRERE said that he was not disposed, generally, to oppose strong measures of administration; but in this instance, he felt little doubt that the Section under discussion had been introduced by the Police Commissioners in their Draft Bill upon full consideration of its expediency. If the consideration of the Section were postponed, he would write to the Police Commissioners, inquiring whether any complaints such as those referred to by the President, had been made, and communicate their replies to the Council, but he would upon the whole, prefer omitting the Section, and moved its omission accordingly.

Mr. ROBERTSON opposed the omission.

Mr. ANDERSON considered that the Code of Criminal Procedure was unduly harsh in not providing such an alternative as that which might be adopted under the Bill.

The PRESIDENT then put the question that the Section be omitted.

The Council divided:—

Ayes—4.

Honorable Mr. FRERE,
Honorable Mr. INVERARITY,
Honorable the ADVOCATE GENERAL,
Honorable Mr. JUGONNATH SUNKERSETT.

Noes—6.

Honorable Mr. TRISTRAM,
Honorable Mr. MADHROW VITTUL VIN-
CHOORKUR,
Honorable Mr. ROBERTSON,
Honorable Mr. SCOTT,
Honorable Mr. PREMABHAI HEMABHAI,
Honorable Mr. H. L. ANDERSON.

The motion therefore was lost.

It was put and carried that the discussion of the Section be postponed until the next meeting of the Council.

On the question that Section IX. stand part of the Bill, Mr. FRERE said that this Section had caused a great deal of discussion in Committee. Sir William Mansfield had pointed out several objections to it, in its original form, which had been met by the changes apparent in the amended Draft. Any further objections which might be raised, would, he thought, be met by a slight alteration in Clause I. He would move the omission of the words “including the Village Police Establishment” in the 9th and 10th lines of the Clause, and the insertion of the words “members of the Village Police Establishment or” between the words “against” and “the” in the 8th line of the same Clause.

Mr. INVERARITY inquired why the people of the Village be made responsible for the misconduct of the Police.

Mr. FRERE said the responsibility was recognized by the custom of the Country, and had always been enforced, and very properly so, considering how all the members of the Village Community were bound together. The alteration in the Clause was then put and carried; as was also a corresponding alteration in lines 14 and 15 of the Clause.

Mr. ANDERSON said that the summary investigation provided by the Clause appeared to him a very harsh proceeding. He did not indeed understand precisely how much or how little inquiry was implied by such an investigation.

Mr. FRERE said that a summary investigation meant merely an investigation without written proceedings.

The PRESIDENT said it was not clear to him why a Village Community should be fined on a summary investigation, any more than a single person.

Mr. ROBERTSON concurred, and moved the omission in lines 13 and 14 of the Clause of the words "to exact after summary investigation," and the insertion of the words "after a formal inquiry of which a record shall be kept to exact."

Mr. ANDERSON said he thought the term "formal inquiry" implied a record, and that it was therefore needless to insert an express provision, that a record be kept.

It was then put and carried that the words "after formal inquiry to exact" be inserted.

On the question that Section X. stand part of the Bill, Mr. Frere moved the omission of the word "and" in the 8th line of the Section, and the insertion of the words "and watering places" between the words "tanks" and "streets" in the 9th line.

Carried.

Mr. JUGONNATH SUNKERSETT said that there were many Dhurmasalas which though placed by the benevolence of their proprietors at the disposal of travellers; were yet private property; and ought not, as by this Section they would be, subjected to whatever rules the Magistrate might lay down with regard to such buildings. They ought not to be affected by the Act.

Mr. FRERE said he quite concurred, and moved the insertion of the word "public" before the word Dhurmasalas in the 8th line.

Carried.

On the question that Section XI. stand part of the Bill, Mr. FRERE said that on reconsideration he thought the objects of the Section would be better attained by its original form than by that adopted by the Select Committee. He would therefore move accordingly.

This was put and Carried.

Mr. FRERE said that in the Section as amended, he would move the substitution of "construction" for "erection" in the fourth line, and the omission of the words "the making" in the 5th line.

This was put and Carried.

On the question that Section XIII. stand part of the Bill, Mr. FRERE said that he would move an addition making it compulsory for retail dealers to keep the standard weights and measures.

The PRESIDENT said that until the question of Standard was settled, and while different standards prevailed at Bombay, Poona, and Surat, it would hardly be judicious, he thought, to introduce a change of this kind incidentally in the Police Bill.

Mr. INVERARITY said there was no authorised standard throughout the country; and therefore people could not be forced to keep standard weights and measures.

The ADVOCATE GENERAL inquired how if this were the case, charges of using false weights and measures could be dealt with.

Mr. INVERARITY said that the fraud would, in each case, consist in departing, for the purpose of cheating, from the ordinary standard of the place.

The PRESIDENT said he considered that such a sweeping change should not be introduced in this incidental way.

After further discussion, Mr. FRERE said he would not press his amendment.

On the question that Section XIV. Clause 1, stand part of the Bill, Mr. FRERE said that Colonel Bruce was of opinion that the Police Commissioners should be solely responsible for the appointments under this Clause; and that no authority to delegate the power of appointment to the District Superintendent ought to be granted. He (Mr. Frere) was inclined to the same view; and would move the omission of the words "but the Commissioner may delegate his authority on this behalf to the District Superintendent subordinate to him, who may also," and the insertion of the words "but the District Superintendent may."

This was put and Carried.

On the question that Section XIX. stand part of the Bill, Mr. MADHOWROW VITTUL said that "Sections XIX. and XX. state that it shall be lawful for the Commissioner of Police with the consent of Government to depute additional force to a place where any commercial concern or manufactory has been established, but that the pay thereof shall be recovered from the proprietors, and further that it shall be lawful for him to increase the number of Police in any part (of a District) which shall be found to be in a disturbed or dangerous state, the inhabitants thereof being charged with the cost of such additional

Police Force. But it has not been shewn here what should be the ordinary number of Police in every Zilla, and there is no Regulation specifying the extent of Police Force to be employed by Government. And the people moreover dare not ask what arrangements have been determined upon on the subject. Until this point is settled no conjecture can be formed as to the number of additional Force required on any occasion. If Government reduces the Police Force on one occasion, or does not employ as many men as are required, there is no telling to what expense the people may sometimes be subjected. Government levies from the people various kinds of taxes. It is not necessary to specify in this place the total number of them, all being aware of it. I am therefore of opinion that Government should protect the lives and property of the people in return for the above mentioned taxes. If the Legislative members subject in some way or other the people to (new) taxes and if various other imposts are allowed to continue, it will be inflicting hardships upon them. Taking the whole population into consideration, we all know to what straitened circumstances the people have been reduced. It therefore does not appear proper to me to go on imposing upon them in some shape or other additional pecuniary burdens. If the state of the whole of India is considered, no one will think that the people are prosperous and wealthy as those of the City of Bombay are. The object of Her Majesty's Government in establishing in each Presidency independent local Councils possessing information about the real circumstances of the people, is to ensure the framing of laws in accordance with the state of the country. That object will be entirely frustrated if the above provisions are enforced. I think that in future, laws imposing additional pecuniary burdens upon the people should never be passed."

Mr. ANDERSON said that Section XIX. imposed a charge only on the employers of labourers from whose presence danger arose to the peace of the neighbourhood, and in both Sections the sanction of Government was required for the employment of additional Police.

Mr. MADHOWROW VITTUL said the tax might be imposed in the first instance as an exceptional case, and afterwards kept up, though the Police were withdrawn. Section XIX. might be allowed to stand, as those who would have to pay for the Police would profit by the labourers, but he would oppose Section XX.

The PRESIDENT said that the provision of the latter Section was one which it had been found necessary to enforce in other provinces after the mutiny. It was analogous to the course followed when a District was proclaimed in Ireland.

It was then put and carried that Section XIX. stand part of the Bill.

On the question that Section XX. stand part of the Bill, Mr. MADHOWROW VITTUL moved the omission of the Section.

The Council then divided.

Ayes—4.

Honorable Mr. MADHOWROW VITTUL,
Honorable Mr. JUGONNATH SUNKERSETT,
Honorable Mr. PREMABHAI HEMABHAI,
Honorable Mr. ANDERSON.

Noes—6.

Honorable Mr. FRERE,
Honorable Mr. INVERARITY,
Honorable the ADVOCATE GENERAL,
Honorable Mr. TRISTRAM,
Honorable Mr. ROBERTSON,
Honorable Mr. SCOTT.

The motion therefore was lost.

Mr. FRERE then moved the omission of the words "of the District" in the ninth line of the Section.

This was put and Carried.

On the question that Section XXI. stand part of the Bill, Mr. FRERE said, that he considered that money received under this Section ought, like that received under Section XXXIX. be paid into the Police Fund.

The PRESIDENT said that the two classes of payments were distinct, and that money received under Section XXI. ought to be credited to Government, to reimburse it for the expense of providing an additional body of Police.

The Section was then put and Carried.

The further consideration of the Bill was postponed until the next meeting of Council.

Mr. FRERE introduced a "Bill for the Regulation of Public Conveyances in the Town and Suburbs of Bombay," the first reading of which he said he would move at the next meeting of the Council.

Mr. TRISTRAM said, that copies of the Bill, he had obtained leave to introduce, for regulating the Burial or Disposal of the Dead in the Town and Suburbs of Bombay, had not yet been a week in the hands of the Honorable Members. He had no wish to press the measure in a hurried manner, and would defer his motion for the first reading of the Bill until the next meeting of the Council.

The PRESIDENT then adjourned the Council to Wednesday next, the 21st January, at 11 A. M.

By order of His Excellency the Governor in Council.

R. WEST,

Officiating Under-Secretary to Government.

Bombay, 14th January 1863.