



SUPPLEMENT
TO THE
BOMBAY GOVERNMENT GAZETTE.

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FRIDAY, 30TH JANUARY 1863.

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 21st 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. A. D. ROBERTSON,
 The Honorable Mr. M. H. SCOTT.

The Council proceeded to consider the Report of the Select Committee on a Bill to facilitate the adjustment of unsettled claims to exemption from payment of Land Revenue in the Districts subject to Act XI. of 1852.

Mr. ROBERTSON said that he trusted, that as this Bill has now been so long before the public, and as its consideration had already been twice adjourned by the Council, no further time might be lost in disposing of the subject. Of the many thousand landholders affected by the Bill, not one had come forward, in its earliest stages, to oppose its principles, and it was only at the last moment when the Bill, so far as this Government was concerned, was on

the point of becoming law that a single petition which was now in the hands of the Honorable Members of Council had been brought forward. That Petition had been cleverly put together; but so as to throw dust if possible, into the eyes of the Council, and to hide, he conceived, the real object which the Petitioners had in view; which was not so much to raise objections to the proposed scheme of Summary Settlement as to obtain, if possible, an annulment of all the past proceedings of the Inam Commission.

The Petitioners, he said, after professing to give a short historical account of the manner in which the British Government acquired possession of the provinces of which this Presidency consisted, asserted that on the downfall of the Peishwa, a guarantee was given by the Honorable Mountstuart Elphinstone to all classes that they would be continued in possession of whatever Wuttuns, Inams, &c., they had possessed before the conquest, without hindrance or molestation.

The Petitioners next proceeded to describe the rules and regulations which had been passed from time to time for the trial and adjudication of claims to alienated lands: the first of these Rules they showed to have been framed and circulated by the Honorable Mountstuart Elphinstone in March 1819; thus themselves proving that the colouring which they desired to give to the Proclamation of 1818, was illusive. It was clear not only from these Rules, but from the Regulations No. I. of 1823, and No. XVII. of 1827, both of which were passed under the Government of the Honorable M. Elphinstone that he had never intended to continue alienations of the Government Revenue without due inquiry as to title, and that what he (Mr. Robertson) had previously had the honour of stating, namely, that the Government had always reserved to itself a right of inquiry, was strictly accurate. Such a right had in fact never been for a moment abandoned.

The Petitioners lastly attempted to prove the injustice and iniquity of Act. XI. of 1852, and concluded by making seven distinct requests or prayers. As the justice however of Act XI. of 1852 was not the question before the Council, he would not needlessly take up its time by discussing that question, nor if he might so speak, would he by following this false scent assist in misleading the Honorable Members from the real object in hand, which was by passing the Bill, now before the Council, to virtually supersede the much-abused-Act of 1852, and thus in effect to comply with the first prayer of the Petition. By losing sight of this object and rejecting the Bill they would be undoing all that had been done in anticipation of its provisions, and would be inflicting in point of fact the severest possible blow upon the Petitioners and others similarly circumstanced, by throwing them back for the determination of their titles upon what they denounced as the harsh and injurious rules of Act XI. of 1852.

The second prayer of the Petition was, that the same rate of compromise should be offered to the holders of alienated land in the Deccan, Khandeish, and the Southern Muratha Country, as had been offered to such landholders in Gujarat and the Concan. The reasons however which had induced the Government to concede to the latter class a more favourable rate of compromise than the former, he had already explained to be that in the Deccan and the Southern Muratha Country the interests of the State in regard of alienated lands had from the first acquisition of that part of the Presidency been more closely watched, and the rights of Government more strictly enforced than in Gujarat. Owing also to the preservation of the valuable State Records of the Peishwa's Government, the British Government was in a position to press those rights without risk of injustice more closely than in the older provinces; in regard to which such carefully preserved records of the former Governments had not fallen into our hands. The proposed settlement was a compromise, and there was good reason for saying that such a compromise as the Bill provided, was a much more valuable consideration to claimants of rent-free land in the Deccan, Southern Muratha Country, and Khandeish, than to those of Gujarat and the Concan. The general acceptance in fact of the proposed compromise by the alienees in the former districts showed clearly that they considered it one by which their interests would not be prejudiced.

With regard to the third prayer, it would be sufficient to state, that the Regulations to which the Petitioners referred, had never been applied to the adjudication of titles to alienated lands in the Deccan, Khandeish and Southern Muratha Country. The request, he would submit therefore, was one, which had no real reference to the Bill before the Council. It was in fact entirely beside the question; for the object proposed to be attained by the Bill was to give a milder alternative against the operation, not of the Laws and Regulations of another Province, but of those which were at present in force, and by which the claims of the Petitioners would be decided in a great majority of cases prejudicially to their interests.

The fourth prayer was specifically directed against provisions of Sections X. and XI. of the Bill. In a measure of this sort it was natural that opinions should have differed as to whether the acceptance of the settlement should be left optional or not. There were many reasons why in such a scheme of compromise no option should be allowed; but it had been finally determined as fairer to the alienees that liberty to claim a regular investigation of title should be permitted on the understanding that the burthen of proving his title should rest on the claimant who rejected the very liberal terms of compromise by which the Government would, upon the whole, be a considerable loser, and the landholders considerable gainers. In this rule he (Mr. Robertson) could see neither injustice nor hardship, especially as it had been provided in the Bill that any claimant demanding an inquiry into his title should be allowed the benefit of any evidence in his favour to be found in the records of the present or of any former Government in the custody of Officers of the Government. A provision which had been made even more favourable to claimants by the addition to it at the last meeting but one of the Council, of a clause binding the Officers of Government to search for and produce such evidence on application made to them. This addition, he might observe, disposed also of the fifth prayer of the Petition.

The sixth prayer did not apply to the holdings which formed the subject of the Bill; but was a request that its provisions might be extended to those holders of alienated lands whose claims had been tried and rejected by the Inam Commission. This, it appeared to him, was a question entirely for the consideration of the Executive Government, and had already been disposed of by the Executive Government unfavourably to Petitioners. It was obvious indeed that the demand for compromise came too late when conflicting claims had been already decided upon, and to concede that demand in the present instance, would be to run counter to the first principles of all sound legislation, and especially to this Bill, by reviving settled disputes and renewing litigation which Government was willing to make large sacrifices in order to prevent.

The seventh prayer related to a question, which it belonged to the Executive Government alone to dispose of. As he had observed with regard to the third prayer, so he might say of this, that it was one lying apart from the scope of the present Bill, the object of which was the settlement of unadjudicated claims and not the renewal of years of litigation and all its attendant evils.

MR. MADHOWROW VITUL VINCHOORKUR said that, on reading the Petition letter by letter and with due regard to justice, it would be found that all the statements contained therein were correct. He was therefore fully of opinion that the Petition should be complied with; and that provisions in accordance therewith should be embodied in the Bill. By doing this, the hundreds of persons who had been ruined by the arbitrary proceedings of the Inam Commission would be placed within the reach of justice. Nor was this all. The considerateness and generosity of our Government would become known to the people.

Perhaps it might appear that the Petitioners had extended their statements in the petition to a great length and that their prayer was difficult (of compliance). But they had resorted to this measure through sheer necessity, because a severe enactment was going to be passed for being enforced upon them. And their request also was consonant to justice.

If the several requests preferred by the Petitioners appeared difficult (of compliance) to the Honorable Members of the Council, and if they (wished to) pass the Bill as it was, he was of opinion that the following statements made by him might be taken into consideration, and the Petitioners be allowed some relief (benefit).

On the authority of the Bengal draft (*i. e.* the Bill read before the Legislative Council at Calcutta) notices had been issued to the people, and the decision for receiving the Chowthae and Nuzzurana from them had been confirmed. On taking into consideration the real state of the people of this Country, it would be found that some parties possessed valid proofs and documentary evidence in support of legal enjoyment, which were sufficient to enable them to demand a trial. But simply through stupidity, ignorance, and other causes, they had remained quiet without demanding a trial. Secondly, there was a slight difference between the India Bill and the present Deccan Inam Bill. At that time every Government Officer had explained to the people the India Bill, and as this Bill had been altered, a further provision should be added to Section XII. of the present Bill to the effect that immediately after it had become law, notifications should be published at every village and Government office, and that if those who wished to demand an inquiry, should present petitions to the Zillah Collectors within six months from the date of the promulgation of the notifications, quit-rent and Nuzzurana should not be levied from the petitioners and a trial and adjudication would take place.

Some alteration should be made in Sections X. and XI. of the Deccan Inam Bill. There was a provision to the effect that proofs from the records of Government should be rendered available from time to time to prove the title of the party claiming exemption from payment of land revenue. This provision should be strengthened, and the claimant should not be prevented from furnishing other proofs. For it was very unjust and cruel not to receive proofs offered by a party. If the trying authority, for any just ground, considered the evidence to be improper, there was no objection to his rejecting it, and to his recording the reason of such rejection. But to throw an obstacle in the way of receiving proofs was tantamount to obstructing the course of justice. The people would also be losers for nothing. Alterations should therefore be made in the Sections he had mentioned, and additions on the subject should be made to those Sections.

Section IV. of the Bill provided that on the payment, by holders of lands declared hereditary, continuable by Act XI. of 1852, of a Nuzzurana at the rate of one anna for each Rupee, those lands should become private property. This was a proper provision. But in the event of the non-payment thereof it was stated that, at the time of continuing the holdings to heirs, a Nuzzurana equal to one and two years' assessment should under Rules A and B of Section V. be received into the Sirkar. This provision only was not proper. No mention of Nuzzurana had been made in the Act XI. of 1852, under which decrees and orders had been passed. Nor did the decrees or orders contain any statement on the subject. It appeared altogether improper to disturb proceedings which had taken place in accordance with a previous enactment. If the holder refused to pay Nuzzurana the Inam should be continued to him under the terms of the decision formerly passed, or when he or his heir presented a petition with the object of having the holdings converted into private property, it should be subjected to the payment of Nuzzurana, and he should be allowed the benefit of the holding being continued to him as private property. But to receive into the Sirkar under Section V. Nuzzurana equal to one and two years' assessment, and thereby inflict a hardship upon him in consequence of his not having agreed to the payment of the above Nuzzurana, was not proper. Alteration should therefore be made in this Section also.

Clause 1, Section VII. of the Bill provided that the holders who demanded a trial and adjudication of their title should be required to deposit a sum and give a security. All holders were not men of property, or in affluent circumstances. Nor could they pay money when required to do so. Security from them would therefore be sufficient. To this effect an alteration should be made in the above Section.

Section II. of the Bill provided that an annual quit-rent, equal to one-fourth, and a Nuzzurana calculated at one anna for each Rupee of the assessment should be levied from the people. This was a very great burden upon them. Agreeably to the rate fixed by the Second Bill on the holders of rent-free lands in Gujarat and the Konkun, a quit-rent calculated at one-eighth or two annas for each Rupee, and a Nuzzurana equal to one anna of each Rupee of the annual assessment should be declared payable. An alteration to this effect should be made in this Section.

Clause 2, Section VIII. of the Bill provided that lands held on behalf of religious or charitable institutions should, if not already inquired into, be subject to the payment of a quit-rent equal to four annas of each Rupee of the assessment. As this payment had reference to Hindoo gods and charitable institutions, it should be entirely discontinued.

Section XVI. should contain a provision to the effect that, in the event of a party who paid a quit-rent equal to four annas, and a Nuzzurana equal to one anna of each Rupee, refusing to pay the full amount of the quit-rent and Nuzzurana according to the former rate of assessment of his land, it should be lawful for an Officer of Government to enter upon the land for the purpose of making a measurement only.

When the Honorable Mr. Robertson had recommended the present Inam Bill at one of the meetings of the last Session of the Council at Poona, he had stated that the subject of rendering more valid the claims in cases in which the continuance of holdings for one or two generations only had been guaranteed, was under the consideration of Government. Agreeably to this assurance the provisions which might have been formerly made for the continuance of Inams for one or two generations should be embodied in the present Bill, and it should be provided that a quit-rent and Nuzzurana should be received from the party, and that his Inam should become private property.

The Advocate General said that, on a reference to the former Acts and Regulations, he found that the *onus probandi* was not in all instances thrown on the claimants of alienated land. For example, in Sections III. and IV. of Act XI. of 1852, and Rules A and B of the same enactment, he found it laid down that the presumption was to be taken in favour of

a claimant in possession. In the present Bill, on the other hand, the *onus probandi* was in every case thrown on the possessor claiming the continuance of his holding. The parties, it seemed to him, who did not succeed in establishing their titles under this Bill, ought not on that account be deprived of the benefits they enjoyed under Act XI. of 1852. The rules of the latter enactment had, he apprehended, been framed after long and careful consideration of the subject. If claimants were tied down to the Inam rules for proof of their titles, they ought also to receive the benefit of those rules in the cases in which prescription was allowed to count in favour of the possessor of land.

The PRESIDENT said that the Petition could only be practically dealt with as giving rise to some specific motion of amendment; and of such a motion notice ought to be given. He pointed out that justice had not been done to the motives of the Government in creating the Inam Commission and in passing Act XI. of 1852; that the Petition used terms (freeholder, &c.) which inaccurately described the position of Inamdars and gave an erroneous account of the custom of former Governments in dealing with them, and of the proceedings of our own Government in this respect. He described the want of real security for the Inamdar under former Governments and their lavishness in conferring Inams on unworthy recipients, especially under the last Peishwa, and pointed out that inquiries into rent-free tenures were directed by Mr. Elphinstone immediately after the conquest of the Deccan, and were imperatively called for by justice to the community, as well as in the interests of the Inamdar himself, who was subjected to perpetual extortion as long as his precise rights were not inquired into and defined. This last in fact was one main reason for the constitution of the Inam Commission, which was intended to be as much a protection for the honest holder as for the interests of the Government.

But while it was only due to the originators of the Inam Commission to deal with these facts, he was glad that Mr. Madhowrow Vittul's business-like statement had been presented to the Council. It would be better, he thought, to consider the Sections objected to by the Honorable Member one by one; and also those to which the Advocate General had objected.

Mr. ROBERTSON had no objection to offer to this course.

The PRESIDENT said that Mr. Madhowrow Vittul's remarks on Section II. amounted to a proposal of amendment by changing the quit-rent to be paid to Government under that Section from one-fourth to one-eighth of the total assessment.

Mr. ROBERTSON said that about forty thousand holders had accepted the settlement; twenty-five thousand had received sunnuds from Government; and these landholders had already paid six instalments quit-rent under that settlement. To disturb an arrangement so happily and successively effected would be to unsettle men's minds, to foster a litigious spirit, and to encourage new and more extravagant demands.

Mr. MADHOWROW VITTUL VINCHORKUR said that as to the apprehension Mr. Robertson had expressed of the unsettlement of men's minds, there was no fear that the change he had proposed would occasion any uneasiness. No landholder would object to the reduction of his quit-rent by one half.

Mr. JUGONNATH SUNKURSETT said that though the settlement had been accepted by many landholders, and though it was stated here that they had paid up six instalments, he was not certain, from what he had heard out-of-doors, that these payments had not rather been forced than voluntary.

The question was then put, that the words "a quit-rent equal to one-fourth of the assessment" be expunged, and the words "a quit-rent equal to one-eighth of the assessment" inserted.

The Council divided:—

Ayes—3.

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

Noes—7.

Honorable Mr. FRERE,
Honorable Mr. LEWIS,
Honorable Mr. ANDERSON,
Honorable Mr. INVERARITY,
Honorable Mr. ROBERTSON,
Honorable Mr. TRISTRAM,
Honorable Mr. SCOTT.

The motion therefore was lost.

Mr. FRERE moved the insertion of the words "of five annas in the rupee" after the word "Government" in the 21st line of the Section, but after some discussion he withdrew the amendment.

The PRESIDENT said that the remarks of Mr. Madhowrow Vittul Vinchoorkur on Sections IV. and V. amounted to a proposal to amend the former by omitting the words "are to" in the 6th line, and the substitution for them of the words "may at the option of the holder."

On this amendment the Council divided :—

Ayes—6.

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

Noes—4.

Honorable Mr. FRERE,
Honorable Mr. LEWIS,
Honorable Mr. TRISTRAM,
Honorable Mr. SCOTT.

The amendment was therefore carried.

The PRESIDENT then asked what specific amendment Mr. Madhowrow Vittul would move in Section V.

MR. MADHOWROW VITTUL said that in Rule B of that Section the exaction of two years' assessment was harsh and oppressive. He would move its reduction to one year's assessment, which was a sufficiently heavy duty to levy on any transfer. It might happen that by two or three deaths and transfers four or five years' assessment might be taken in a single year. Whereas not more than one year's assessment ought in any case be taken.

The PRESIDENT said that might be remedied by a provision that the Nuzzurana should be levied but once in a single year, which with the concurrence of the Honorable Member he would put.

MR. MADHOWROW VITTUL assented, and Mr. JUGONNATH SUNKERSETT moved the addition that the Nuzzurana should be taken by instalments.

MR. ROBERTSON said that if this motion were pressed, he should move the omission of the Section altogether.

MR. ANDERSON said that though the commutation of claims of Government on the occasion of successions and transfers into one of a small yearly payment was doubtless beneficial to the landholders, yet the payment of the occasional rather than of the permanent Nuzzurana was what many Inamdars would think more consonant to their dignity. It was on this ground that he had voted for the amendment of the fourth Section, but though he had concurred in the amendment of that Section, he thought that while the option should be left to the landholder of paying either an annual or occasional Nuzzurana, no encouragement should be held out to him to choose the latter rather than the former. In the unusual case of two or three Nuzzuranas falling due within a single year, the payer of the last one might come before Government by petition, which it was certain would receive due consideration. The right, however, of collecting fifty Nuzzuranas if necessary in a year ought not to be abandoned, because having elected one course as on the whole the most favorable to them, landholders ought to take it without its attendant disadvantages. By adopting the amendment the Act would be encumbered with several provisos.

The PRESIDENT said that the amendment was providing for a case of very rare occurrence, and if Inamdars considered it in any way advantageous to them, and if it would take away any appearance of harshness from the Section, he thought its adoption advisable.

The question was then put that Clause 1 be amended by the addition of the following proviso :—

"Provided that in the event of more than one succession or transfer occurring within
"twelve months, such occasional Nuzzurana or succession or transfer shall not be
"leviable more than once."

The Council divided :—

Ayes—7.

Honorable Mr. FRERE,
Honorable Mr. LEWIS,
Honorable Mr. TRISTRAM,
Honorable Mr. MADHOWROW VITTUL,
Honorable Mr. JUGONNATH SUNKERSETT,
Honorable Mr. PREMABHAI HEMABHAI,
Honorable Mr. SCOTT.

Noes—3.

Honorable Mr. INVERARITY,
Honorable Mr. ANDERSON,
Honorable Mr. ROBERTSON.

The question was then put that a further proviso be added to the Clause :—

“Provided also that it shall be at the option of the holder of the land to pay such occasional Nuzzurana in one sum or by annual instalments not exceeding one-fourth of the whole Nuzzurana per annum.”

The Council divided :—

Ayes—7.

Honorable Mr. FRERE,
Honorable Mr. LEWIS,
Honorable Mr. TRISTRAM,
Honorable Mr. MADHOWROW VITTUL,
Honorable Mr. JUGONNATH SUNKERSETT,
Honorable Mr. PREMABHAI HEMABHAI,
Honorable Mr. SCOTT.

Noes—3.

Honorable Mr. INVERARITY,
Honorable Mr. ANDERSON,
Honorable Mr. ROBERTSON.

These amendments were therefore carried.

Mr. ROBERTSON said that finding the sense of the Council so strongly in favour of the amendments proposed in the Section, he would not press for its omission.

The Section as amended was then put and carried.

The PRESIDENT said that the next Section to which Mr. Madhowrow's remarks applied was the seventh, and effect would be given to the Honorable member's intention by changing the wording of the Section, so as to allow security to be taken instead of a deposit of one-fourth of the assessment.

Mr. FRERE said this would be accomplished by the omission of the words between the word “required” in the 6th line, and the word “to” in the 16th line of the Section, and of the words “remaining three-fourths thereof” in the 17th line, and the substitution for the latter of the words “assessment of the land,” and by corresponding changes in other parts of the Section.

These amendments were then put, the Council divided :—

Ayes—5.

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

Noes—5.

Honorable Mr. FRERE,
Honorable Mr. INVERARITY,
Honorable Mr. TRISTRAM,
Honorable Mr. LEWIS,
Honorable Mr. ROBERTSON.

The number being even, the PRESIDENT voted in favour of the amendments, which were therefore carried.

The PRESIDENT said that the next Section remarked on by Mr. Madhowrow was Section VIII., and the proposals of the Honorable member amounted to a motion to omit Clause 2 of the Section.

Mr. ROBERTSON said that the object of the Bill being to stay litigation and to remove doubt with regard to titles, the compromise it held out was as applicable to property held as the endowment of temples as to any other. The last Peishwa Bajcerao's gifts to temples had been as irregular as any others, and were of course equally open to inquiry.

Mr. JUGONNATH SUNKERSETT said that the expenses of many temples equalled the whole income, and if any part was taken away the services could no longer be performed.

Mr. ANDERSON said that the argument from expenses was not more applicable to temple endowments than to private property.

Mr. MADHOWROW VITTUL VINCHOORKUR said that he wished less than one-fourth the assessment to be taken in such cases on account of the religious character of the endowment.

Mr. PREMABHAI HEMABHAI considered that this should be conceded on the same principle upon which the Income Tax was remitted in such cases.

Mr. MADHOWROW VITTUL then moved the substitution of the word "one-eighth" for "one-fourth" in lines 7 and 8 of Clause 2, Section VIII.

The Council divided :—

Ayes—3.

Honorable Mr. MADHOWROW VITTUL,
Honorable Mr. JUGONNATH SUNKERSETT,
Honorable Mr. PREMBHAI HEMABHAI.

Noes—7.

Honorable Mr. FRERE,
Honorable Mr. INVERARITY,
Honorable Mr. LEWIS,
Honorable Mr. ANDERSON,
Honorable Mr. SCOTT,
Honorable Mr. TRISTRAM,
Honorable Mr. ROBERTSON.

The ADVOCATE GENERAL said he would move the omission from Clause 3 of the words "which prevented the transfer of lands forming the endowments of religious institutions" which tied up in mortmain a considerable portion of the land of the country. It would be impossible under the Bill for the managers of temple property to transfer it even when most for the advantage of the Institutions.

Mr. JUGONNATH SUNKERSETT said that if power were left to the managers to transfer the property, they would frequently make away with it altogether. They ought not to possess the power which they were very likely to abuse.

The PRESIDENT said that the Clause as it stood appeared to do more than exempt such lands from payment of Nuzzurana or transfer. It tied up the land for ever even though the charitable or religious object or even the religion itself like Bhuddism in India should have come to an end.

The ADVOCATE GENERAL said that the Clause was open to the further objection that the term "charitable institutions" as interpreted by native conceptions included vastly greater number of objects than in the English acceptation of the term. He did not see why this great quantity of land liable to constant increase should, any more than other lands, be tied up against transfers.

The ADVOCATE GENERAL then moved the omission of the words following "shall not be" in the 4th line to the end of the Clause; and the insertion of the words "subject to payment of any Nuzzurana on account of such lands."

The Council divided :—

Ayes—1.

The ADVOCATE GENERAL.

Noes—9.

Honorable Mr. FRERE,
Honorable Mr. INVERARITY,
Honorable Mr. TRISTRAM,
Honorable Mr. ANDERSON,
Honorable Mr. MADHOWROW VITTUL,
Honorable Mr. JUGONNATH SUNKERSETT,
Honorable Mr. PREMBHAI HEMABHAI,
Honorable Mr. SCOTT,
Honorable Mr. ROBERTSON.

The amendment was thus lost.

The ADVOCATE GENERAL inquired with regard to Section X. why the *onus probandi* should be thrown upon the holders of land claiming exemption from Government rent. Their titles would have to be proved under Act XI of 1852, and they ought therefore to have the benefit of the rules provided by that Act whenever they were advantageous to them.

Mr. ROBERTSON said that the Act referred to had been passed not to continue or ascertain rights previously enjoyed by the Inamdars, but to give them the benefit of certain rules under particular conditions, if their cases should be adjudicated on by the Inam Commission. Before that Act had passed the holders of alienated land had been bound to prove their title against Government, as in England they would be bound to prove it against the Crown. Their original rights had not been altered by Act XI. of 1852; and if now they did not choose to accept the compromise offered by the Bill, they might fairly be thrown back on their original rights, and required to prove the title which they asserted.

The ADVOCATE GENERAL said that he did not see the force of this reasoning. He could not understand why, because people did not choose to accept the compromise offered by Government, they should be deprived of the rights they had enjoyed altogether anterior to the Bill.

Mr. FRERE said that the Government was sacrificing a large portion of its rights, and that something must in reason be conceded on the other side.

The ADVOCATE GENERAL said that if Government dealt with the Inamdars as one body this would be reasonable, but in fact Government did not profess to deal with them as a class, but held out an offer of compromise to each individual Inamdar. He could not see why any such Inamdar merely for refusing the offer should be deprived of a statute right which he had possessed for several years.

Mr. ROBERTSON said that this view of the subject had received full consideration. The question had been much controverted as to whether an option should be allowed at all to Inamdars. There were many arguments in favour of making the proposed settlement compulsory, but in the end it was determined that an option might be allowed, but only on the condition that those who did not accept the settlement offered by Government should fall back to their original position.

The ADVOCATE GENERAL said that under this explanation he would not press his proposed amendment.

The PRESIDENT said that Mr. Madhowrow Vittul's remarks on Clause 12 Section XI. amounted to a motion for the omission of that provision which required the custody of an officer of the British Government as the condition of receiving public documents as evidence. The reason assigned for this proposal was that though a different rule prevails now, former Governments allowed many public documents to remain in the hands of their officers who had transmitted them to their descendants.

Mr. ROBERTSON said that the object of the provision was to prevent forgery and fraud. Notices had been issued under Act XI. of 1852 that all documents of this description were to be brought in and delivered up to the officers of Government. A vast number had been given up, and if such a document were now brought from unauthorized custody, the presumption was very strong against its genuineness.

Mr. ANDERSON said that on principle no available evidence ought to be excluded merely on the chance of its proving in some instances spurious. The evidence in any given instance might not be of much weight; but that was a question for the Court, which should not be prevented from looking at it by any rule of law.

Mr. FRERE said the effect would be comparatively unimportant, as by the ordinary rules of evidence no public document would be admitted unless it came from the proper custody.

The PRESIDENT said Mr. Madhowrow Vittul's own family afforded an example of how public documents might be found in private custody. They had exercised almost viceregal authority in Khandeish, and as no strict rule had been laid down as to the custody of such documents, many had remained in their possession instead of being deposited in the archives of the State. No general rule indeed had been issued before the one issued under Act XI. of 1852, and he thought that rule could not be justly enforced against private individuals. It might frequently occur that the document in the possession of such persons was required as evidence by a third party, who would thus be deprived of its benefit by no fault of his own.

Mr. ROBERTSON said that the Clause would not exclude Sunnud and other documents the custody of which properly belong to private persons, but it would and ought to exclude the proof of such documents by a "Barnishee" for instance, not in custody of an officer entitled to its possession.

The question was then put that the words from the beginning of the Clause to "understood that" in line 14 inclusive be omitted.

The Council divided :—

Ayes—7.

Honorable Mr. INVERARITY,
Honorable Mr. ANDERSON,
Honorable Mr. TRISTRAM,
Honorable Mr. MADHOWROW VITTUL,
Honorable Mr. JUGONNATH SUNKERSETT,
Honorable Mr. PREMABHAI HEMABHAI,
Honorable Mr. SCOTT.

Noes—3.

Honorable Mr. FRERE,
Honorable Mr. LEWIS,
Honorable Mr. ROBERTSON.

It was then put and carried that the words "as is authorised by the British Government to have charge or custody of the same" be inserted after the word Officer in the 18th line of the Clause.

The PRESIDENT said that Section XII. to which Mr. Madhowrow's observations were next directed, had been reserved for further consideration.

The ADVOCATE GENERAL inquired whether the intention was to make settlements effected before the bill, perpetual.

Mr. ROBERTSON said that the history of the Section was this, that Sir George Clerk's government had taken upon itself to settle the long-pending and vexatious question of alienations. The terms offered had been accepted by 39,300 Inamdars, and that settlement this Section was designed to preserve. As to Mr. Madhowrow's remarks that notices had in these cases been issued with reference to a Bill before the Legislative Council of Calcutta, he replied that that Bill was precisely the same as the present one, except as to four Sections introduced to meet the circumstances of Gujarat and thus make the Bill applicable to the whole Presidency. He would add that it would not be fair to the late Governor to upset the arrangements effected by him without full proof that the landholders were not satisfied with that settlement. There was not any such proof; it was not even mentioned in the long Petition which had occupied so much of their attention, nor had any other Petition on the subject been presented.

The PRESIDENT said that it would be a doubtful benefit to Inamdars to allow the cases settled with their consent to be re-opened. But apart from that, it was due to Sir George Clerk's government not to hold out any inducement to the Inamdars to withdraw from a compromise which they had deliberately entered into, and which they had accepted at the time as extremely liberal to them. It must be remembered, that Sir G. Clerk's government incurred a very serious responsibility in offering terms of compromise so much more liberal than the Inamdars had expected, and this Clause was in effect simply to confirm what had been so done.

Mr. ROBERTSON said he had compared the Bill with the one formerly introduced in the Legislative Council of Calcutta. The only differences he had found, were those he had previously mentioned. He had brought with him a translation of the notices issued by Sir George Clerk's government, which were to precisely the same effect as those which would be issued under the Bill.

Mr. MADHOWROW VITTUL said that the provision that thirty years' possession should be sufficient to give a valid title, was in the Calcutta Bill, but not in the present one.

Mr. ROBERTSON said that that provision was limited to Gujarat, and being limited to Gujarat should be separately dealt with.

Mr. MADHOWROW VITTUL said that under this explanation he would withdraw his amendment.

The PRESIDENT said that the next Section to which the remarks of Mr. Madhowrow Vittul applied was the sixteenth, and his proposal was that the right of Government officers with respect to Inamdars land, should be limited to measurement and not extend to assessment. The Honorable member, however, appeared to be under some misapprehension as to the meaning of the Section.

Mr. MADHOWROW VITTUL said that by the Collector going into their lands and re-assessing them great loss would arise to the landholders in cases in which the old assessment was greater than the new.

Mr. ROBERTSON said the Honorable member appeared to be apprehensive that by the assessment by the Collector for the purposes of this Act, a landholder would be forced to sublet his land at the Government assessment. That, however, was not its intention; its object was merely to effect a settlement between Government and the landholder without interference between the latter and his tenants.

The PRESIDENT said that Rule I. of Section II. appeared to make this Section almost superfluous. He thought it might be omitted.

The question that Section 16 be omitted was then put and carried.

The PRESIDENT said that the next proposition of Mr. Madhowrow Vittul was, that a provision be embodied in the Bill for allowing those landholders whose holdings had by former adjudications been continued for one or two lives only, to obtain the benefit of this Act upon paying the Nuzzurana for which it stipulated.

Mr. ROBERTSON said that the Bill was not meant to interfere with adjudicated cases ; its object was not to unsettle what had been already decided, but to afford the means for a speedy and liberal settlement of the cases which were still in doubt.

Mr. MADHOWROW VITTUL said it would be a sound and generous policy to admit all subjects of Government who had suffered by former proceedings to the same benefits as those who fell under the operation of the Bill.

Mr. ROBERTSON said that the titles of those persons had been settled, and if they wished to convert their life-holdings into permanent grants, it would be a matter of calculation of the comparative values of the two. Government was interested, and intended in its executive capacity to afford an opportunity for such conversions.

Mr. ANDERSON said that an Act, he thought, would be required to authorise such a Settlement as was contemplated.

Mr. INVERARITY said that the question now mooted, appeared to him to be somewhat beyond the competence of the Council to dispose of. The settlements previously affected had been carried out under the orders of the Home Government, and it was doubtful, he thought, whether they could upset or modify them without reference to the same authority.

The question was then put that the following Clause be added to Section XVI. :—

“ The provisions of this Act shall be applicable to any grants which have been adjudicated under Act XI. of 1852, and continued as grants rent-free for one or more generations but not in perpetuity,” but the motion was negatived without a division.

Mr. ROBERTSON said as the Bill had been subjected to several important alterations, he would defer moving its second reading until the next meeting of the Council.

The further consideration of the Bill was then adjourned.

The consideration of the reports of the Select Committees on the Police Bills and on the Bills for the settlement of unadjudicated claims, &c. in parts of the Presidency of Bombay not subject to Act XI. of 1852, was postponed.

Mr. TRISTRAM said he wished to move for the first reading of the Bill for regulating the burial or disposal of the Dead in Bombay.

The PRESIDENT would suggest that, as the principle of the Bill would have to be discussed upon the motion for its first reading, and as that discussion was likely to occupy a good deal of time, the motion might be postponed.

Mr. TRISTRAM assented, and the order relating to the Bill was postponed.

The Council then proceeded to consider the report of the Select Committee upon the Bill for the establishment and regulation of Reformatory Schools for Juvenile Offenders.

On the question that Section VIII. stand part of the Bill, the ADVOCATE GENERAL said that under Act XXV. of 1858 the Municipal Funds were vested in the Municipal Commissioners, and Government had no power to dispose of them. He did not think that arrangement ought to be disturbed by legislation upon another subject.

Mr. ROBERTSON said that the Magisterial Fines thrown into the Municipal Fund and thus vested in the Commissioners under Act XXV. of 1858, had been intended for the purpose of supporting Reformatory Schools, and ought, he thought, to be so appropriated.

The PRESIDENT said that he thought there were many reasons why Government should not have such power to put its hand into the Municipal purse.

The question was then put that the words following the word "promoters" in line 13 to the end of the Section be omitted.

Carried.

The Bill, as amended, was read a second time and passed.

Mr. THURSTON moved, pursuant to notice, for leave to introduce a "Bill to confer certain powers on the Bombay Gas Company (Limited)." The Bill, he said, required but little advocacy. Its object was a practical one which commended itself to all. The main provisions of the Bill had been copied from Act No. V. of 1857, under which a Company had been established for supplying Calcutta with Gas; and which Act itself had been transcribed almost *verbatim* from the English Statute on the same subject. Certain modifications might, perhaps, appear desirable in some of the provisions of the Bill, but no doubt, he thought, could be felt as to its principle.

Leave was then given to introduce the Bill.

The PRESIDENT then adjourned the Council until Wednesday, the 28th instant, at 2 p.m.

By order of His Excellency the Governor in Council,

R. WEST,

Officiating Under-Secretary to Government.

Bombay, 26th January 1863.