



SUPPLEMENT
TO THE
BOMBAY GOVERNMENT GAZETTE.

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SATURDAY, 18TH JULY 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 Poona, on Wednesday, the 15th July 1863.

PRESENT:—

His Excellency Sir H. B. E. FRERE, K.C.B., Governor of Bombay, Presiding.
His Excellency Sir W. R. MANSFIELD, K.C.B.,
The Honorable Mr. W. E. FRERE,
The Honorable Mr. J. D. INVERARITY,
The Honorable Mr. H. L. ANDERSON,
The Honorable Mr. RUSTOMJEE JAMSETJEE JEJEEBHOY,
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 CHIEF SECRETARY administered the usual declaration of office to Mr. H. M. BIRDWOOD, appointed Under-Secretary to Government.

The CHIEF SECRETARY also administered the usual declaration of office and the oath of allegiance to Her Majesty the Queen to Mr. M. R. WESTROPP, appointed an additional Member of the Council of the Governor of Bombay for the purpose of making Laws and Regulations.

The Honorable Mr. WESTROPP then took his seat.

The PRESIDENT informed the Council that the list of Bills which were set down for discussion during their present sittings was not a long one, but it comprised some measures of very great importance.

The Bill for regulating proceedings in cases of Insolvency was a measure of the greatest importance, and would, he hoped, prove a very valuable addition to the Statute Book.

It would require careful consideration to determine how far it was within the powers of this Council to pass the measure as it stood, or whether it would be requisite to invoke the authority of the Council of the Governor General. But in either case it would be desirable to put the measure into as perfect a shape as possible with reference to the requirements of this Presidency.

He hoped also that Government would be able to lay before the Council a Bill to give legal effect to the provisions of the Revenue Survey Rules, and to define the rights and liabilities of all parties connected with the land which had been subject to the Survey and Assessment. This was a measure which it was the wish of the late lamented Mr. Goldsmid and Major Wingate, who organized the Survey, to have passed, as soon as practical experience had shown that the Survey Rules were calculated to effect the objects aimed at. The Council was aware that those objects had been more than fulfilled, and that the Survey had been productive of the best results to every interest affected by it. To it, he (the President) believed, might fairly be attributed much of the present prosperity and contentment of the agricultural classes in every part of the Presidency into which the Survey rates had been introduced, and it was most desirable to give that legal validity and security to the measure which, owing to a variety of causes, had been so long postponed.

But where so many interests were affected, it was most desirable that all parties concerned should have the fullest notice of the details of the measure, and ample opportunity for discussing them, and therefore, though he (the President) hoped the measure would be very shortly laid before the Council, its final passing would probably be deferred till the Council met in Bombay.

The principal other measures which were in a state to be laid before the Council were:—

1. A Bill for the periodical Survey of Steam Vessels.
2. A Bill to repeal the Regulation which makes it necessary that a Sub-Collector should also be *ex-officio* Joint Magistrate of the District.

There were a few other measures of minor importance which might probably be laid before the Council during their present sitting. But they were not at present in a shape which rendered their early submission to the Council a matter of certainty.

Besides the Bills there is one more subject of considerable importance, which will engage the attention of the Council, and that is, the revision of the Standing Rules for the transaction of business in the Council. It is the desire of Her Majesty's Secretary of State that these Rules should as far as practicable be assimilated throughout the three Presidencies. This has been done by the Madras and Bengal Councils, and it is desirable that the subject should now engage the attention of this Council.

The Council then proceeded to consider the Orders of the Day.

The Honorable Mr. INVERARITY moved the first reading of the Bill to provide for the periodical Survey of Steam Vessels in the Ports, Harbours, Rivers or Waters of the Presidency of Bombay. In doing so, the Honorable gentleman said: "The question of a law of more general application than that now proposed has been under discussion on various occasions during the last 12 or 13 years, but there have been circumstances and differences of opinion which have interposed and stood in the way of its enactment. The necessity for a law such as that now proposed was exemplified so long ago as towards the close of the year 1853, when in the postal contract entered into with the Bombay Steam Navigation Company, a clause was inserted empowering Government to appoint an officer periodically, to survey the Company's Vessels employed in carrying the mails. The necessity which existed ten years ago has augmented with the increase of steamers frequenting the Ports and Waters of this Presidency.

"The Bombay Chamber of Commerce and other authorities who have been consulted, consider that a measure such as that now proposed is in the highest degree desirable, and that the Bill is well calculated to effect the object in view. The principle of the Bill has been already affirmed on the other side of India by the passing of the Bengal Act V. of 1862, of which the present Bill may be said to be a transcript; as it meets the want now felt in this Presidency of some guarantee to the public for the seaworthiness and efficiency of Steamers frequenting its Ports and Rivers, I beg to move that this Bill to provide for the Periodical Survey of Steam Vessels in the Ports, Harbours, Rivers and Waters of the Presidency of Bombay, be read a first time."

The question was then put that the Bill be read a first time.

Carried.

The Honorable Mr. INVERARITY then moved that the Bill be referred to a Select Committee consisting of

The Honorable Mr. SCOTT,
The Honorable Mr. ROBERTSON,
And the MOVER.

Carried.

The Honorable Mr. FRERE noticed that in the Statement of Objects and Reasons, no provision was made for the translation of the Bill into Canarese. He thought that it was advisable that the Bill should be translated into Canarese.

The Honorable Mr. INVERARITY concurred in this suggestion.

The Honorable Mr. ROBERTSON said that he did not see the necessity for translating the Bill into Canarese as any cases arising out of the Act would be tried in Bombay. He thought that the translation of the Bill into Canarese would only delay its introduction; he did not, however, wish to divide the Council, but would give his assent to the Honorable Mr. Frere's proposal.

It was then agreed that the words "Sindhee and Canarese" should be substituted for the words "and Sindhee" in the Statement of Objects and Reasons.

The Honorable Mr. WESTROPP then asked for leave to introduce a Bill to amend Act XXI. of 1848. The Honorable gentleman said: "That Act XXI. of 1848 declared wagers and wagering contracts to be null and void, and prohibited the maintenance of any action or suit upon them in any Court of Justice. So far, therefore, as regarded the principals in such transactions, neither of them can maintain against the other any action upon the wager or contract of that description. Nevertheless the object of the Legislature, namely, the prevention of the system of gambling which pervaded and still pervades at least Western India, has been wholly frustrated. Time bargains as to the prices of Opium and Cotton are made to an enormous extent in Bombay and its provinces, and have a very injurious effect on the real markets for Opium and Cotton and especially on the latter. He (Mr. Westropp) believed that his Honorable friend Mr. Scott would support him in that statement. Act XXI. of 1848 had been systematically evaded by means of a combination amongst Shroffs. Had the Act declared wagers or wagering contracts to be illegal, all collateral contracts founded upon such transactions would be tainted by the illegality of the original contract and could not be enforced by suit. The infliction of a penalty on the parties to wagers or wagering contracts would have been equivalent to a declaration of their illegality. In the absence of any such implied or of any express declaration of illegality, the Supreme Court, and the High Court, following like decisions made in England upon an analogous English Statute, had been reluctantly compelled to enforce contracts, collateral to wagers and wagering contracts. Time-bargains on the prices of Opium and Cotton, where no delivery of the commodity itself is contemplated, are wagering contracts. By the present system, pursued in the Bazars, time-bargains are effected through shroffs, who charge brokerage and commission for permitting the employment of their names as those of the principals in the contracts, their constituents the real wagers remaining often wholly unknown to each other. The shroff of the winner pays to the shroff of the loser the difference between the wagering price and the real or conventional market price of the day on which the wager is to be decided. The shroffs generally keep faith with each other. The instances

to the contrary are rare, and a shroff, who in his time-bargains is a defaulter, suffers a species of excommunication, inasmuch as his brethren not only cease to effect time-bargains with him, but decline to cash his hoondies, or have any other monetary dealings with him. Hence the original wager is generally carried out. The shroff of the loser having paid the amount of the loss, brings an action against the loser, if he do not voluntarily pay, to recover the money paid on his behalf, and the brokerage and commission, that is to say, the shroff sues the loser not on the wagering contracts, (it having been fulfilled when the amount of the loss had been paid to the shroff of the winner) but on collateral contracts in respect of the money paid and the trouble and risk in entering into the original contract. In any event the shroff recovers a verdict for the brokerage and the commission, and if the loser, before the amount of the loss has been actually paid, have not prohibited his shroff from actually making that payment, the latter will also recover a verdict for that amount. The proposed Bill will not go so far as to annex a penalty to wagers or wagering contracts. Such legislation might seem of too harsh a character. The Bill, therefore, will not probably have the effect of completely preventing time-bargains, yet as it will prohibit the maintenance, by any shroff, broker, agent or other person, of actions on contracts collateral to such transactions, he (Mr. Westropp) trusted it would greatly discourage time-bargains, of which at present shroffs are, undoubtedly, the main upholders."

The PRESIDENT said that under Rule 13, no Member could move for leave to bring in a Bill without giving three days' previous notice of the title and subject to the Secretary. No such notice had, he believed, been given in the present instance. But considering the importance of the measure proposed by the Honorable Member, he (the President) had no objection to suspend the Standing Order.

Rule 13 was then suspended and the question was put that leave be given to the Honorable Mr. Westropp to introduce a Bill to amend Act XXI. of 1848.

Carried.

The Honorable Mr. WESTROPP then asked whether the proposed Insolvent Debtors Act for the Mofussil would contain any enactment declaring that the sons or grandsons of a Hindoo should be liable in respect of his debts to the extent only of such property of their parent as might come to their hands. In the Mofussil of this Presidency, the sons and grandsons of a Hindoo are still by the Hindoo Law liable to pay the debts of their deceased ancestor, although he may not have left any assets available for the purpose. This legal liability was originally founded upon religious reasons. The injustice of it had, however, for a long time past been recognized by Hindoos themselves, and the time had come for relieving them from it. In the Supreme Court or in the High Court, at its original side, the heir of a Hindoo is permitted to plead to an action for the debt of his ancestor that he (the heir) has not received any property of his ancestor available for the payment of his debts. So an administrator or executor may plead *plene administravit*. Such pleas form a good defence in Bombay, and there is no valid reason why the Law in the Mofussil should not be the same. If there were no provision in the Insolvent Debtors Bill to alter the Hindoo Law as administered in the Mofussil on this subject, he (Mr. Westropp) would ask for permission to bring in a Bill for that purpose.

The Honorable Mr. FRERE said that the Involency Bill was in his hands, and that it contained provisions for amending certain points in the Law of Debtor and Creditor. These provisions, however, could be more conveniently discussed when the Bill was before the Council.

The PRESIDENT then adjourned the Council to Wednesday the 22nd instant, at 3 P. M.

By order of His Excellency the Governor in Council,

H. M. BIRDWOOD,

Officiating Under-Secretary to Government.