SUPPLEMENT

TO THE

BOMBAY GOVERNMENT GAZETTE.

Published by Authority.

MONDAY, 27TH JULY 1863.

PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

THE following Bill, which it is intended to introduce into the Council of the Governor of Bombay for the purpose of making Laws and Regulations, is, together with a Statement of Objects and Reasons accompanying it, published for general information :—

A Bill to amend Act XXI. of 1848 *(for avoiding Wagers).*

Preamble.

WHEREAS it is expedient to amend Act XXI. of 1848 (for avoiding Wagers), it is enacted as follows :—

All contracts arising out of or collateral to agreements by way of gaming to be null and void.

I. All contracts, whether made in speaking, writing, or otherwise, arising out of or collateral or relating to or by way of security or guarantee for the performance of agreements by way of gaming or wagering shall be null and void; and no suit, (except as hereinafter in this Act is excepted,) shall be allowed in any Court of Justice for recovering any sum of money paid or payable in respect of any such contract or contracts, or for recovering any commission, brokerage, fee or reward in respect of the effecting or carrying out, or of the aiding in effecting or in carrying out, or otherwise claimed or claimable in respect of any such agreement by way of gaming or wagering as aforesaid, whether the plaintiff in such suit be or be not a party to such last mentioned agreement.

No Guardian of any minor and no personal representative of any deceased person to be allowed credit for any payment in respect of any such agreements as are mentioned in Act XXI. of 1848, Section I., or Section I. of this Act.

II. No Guardian, Executor, Administrator, Heir, or personal representative of any deceased person shall be entitled to or allowed credit in his accounts for or in respect of any payment by him on behalf of such deceased person, (or, in the case of a guardian, on behalf of any minor), in respect of any such agreement or agreements as are mentioned in Section I. of Act XXI. of 1848, or in respect of any such contract or contracts, commission, brokerage, fee or reward as are respectively mentioned in Section I. of this Act.

Any advance made or valuable thing entrusted to any Shroff to abide the event of a time-bargain to be recoverable by

III. Any advance made, or sum of money, or valuable thing, entrusted to any Shroff, Banker, Agent or other person to abide the event of any time-bargain, or the depositor, if he be the loser, of such time-bargain.

other wager upon or relating to the price or value of Opium, Cotton, or any other article of merchandize whatsoever shall be recoverable from him by suit by the depositor, if he lose such time-bargain or other wager, at any time within three years next after the occurrence of such loss, whether or not the person to whom such advance was made, or such sum of money or valuable thing as aforesaid was entrusted, has paid or made over the same to the winner, or any person on his behalf.

Any sum of money, &c. made over in respect of a time-bargain to the winner to be recoverable by the party making over the same if he be the loser of such time-bargain.

IV. Any sum of money or valuable thing paid or made over in respect of any time-bargain or other wager upon or relating to the price or value of Opium, Cotton, or any other article of merchandize to the winner of such time-bargain or other wager, or to any person on his behalf shall, if not previously recovered under Section III. of this Act, be recoverable by suit (brought at any time within three years after such payment or making over), by the party paying or making over the same as aforesaid from the said winner or other person to whom the same was paid or made over on his behalf. If the suit under this Section or under Section III. be in respect of any such valuable thing as aforesaid, it shall be competent for the Court to award pecuniary damages in lieu thereof.

The Act not to be restrospective.

V. This Act shall not be construed so as to give it a retrospective effect.

Interpretation Clause.

VI. In the construction of this Act words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number; and words importing the masculine gender shall include females.

STATEMENT OF THE OBJECTS OF AND REASONS FOR THIS BILL.

This Bill is intended to aid in carrying into effect the intent of Act XXI. of 1848.

Previously to the passing of that Act several actions had been instituted in the Supreme Court of Bombay for the enforcement of wagers (commonly called time-bargains) on the price of Opium at the Government sales in Calcutta. It appeared that the party, whose interest it was that the price should be high, had employed agents to bid to an extravagant amount at the Government sale. The Supreme Court of Bombay held that the Plaintiffs could not recover. Sir E. Perry, (then Puisne Justice), however, dissented from that judgment. On appeal to the Privy Council the decision was reversed, and the actions were held to be maintainable.

To remedy such an objectionable state of the Law, the Legislature of India passed Act XXI. of 1848. It recites that "it is expedient to discourage gaming and wagering, for money." Its first Section is as follows: "All agreements, whether made in speaking, writing or otherwise, by way of gaming or wagering, shall be null and void: and no suit shall be allowed in any Court of Law or Equity for recovering any sum of money or valuable thing alleged to be won on any wager or entrusted to any person to abide the event of any game or on which any wager is made." That Section is very nearly a transcript of the previous enactment passed for the United Kingdom, Statute 8 and 9 Vic. C. 109, Section 18, which, so far as it is material, is as follows:—

"That all Contracts or Agreements whether by Parole or in Writing, by way of gaming or wagering, shall be null and void; and that no suit shall be brought or maintained in any Court of Law or Equity for recovering any sum of money or valuable thing alleged to be won upon any wager or which shall have been deposited in the hands of any person to abide the event on which any wager shall have been made."

Act XXI. of 1848 having thus rendered suits to enforce time-bargins unsustainable between the principal parties to such contracts, gave a temporary check to such transactions. Subsequently, however, under the fostering patronage of many Shroffs, time-bargains as to Opium again became frequent, and especially so since it became known that although the original contracts could not be enforced, contracts collateral to them might be successfully sued upon. Since the commencement of the American war time-bargains have been made to an enormous extent in Bombay and its provinces with respect to Cotton, with a very injurious effect upon the *boná fide* market.

In time-bargains, no delivery of the commodity, the subject of the contract, is contemplated, although the payment of earnest money and stipulations for the examination of the Opium or Cotton, and for its delivery, are generally mentioned in the written agreements, with a view to lend to such dealings the aspect of real sales and purchases, and in the hope (generally a vain one) of blinding Courts of Justice to the wagering nature of the transactions.

By arrangement amongst the Shroffs they appear as the principals in most time-bargains. The ultimate winners and losers are generally unknown to each other. They transact their betting business through their respective Shroffs, who, on behalf of these their constituents, wager with each other as the apparent principals in the time-bargains. As a general rule the Shroffs, in consequence of the power which that community possesses over its defaulting members, keep faith with each other, and the original time-bargain is thus carried into effect without resort to litigation. The doubt, which for some time existed in Bombay, as to whether the Shroff of the loser could maintain a suit against the loser to recover the money paid on his behalf to the Shroff of the winner, and brokerage and commission for his (the Shroff of the loser's) agency and risk in the time-bargains, was solved in the case of *Joravermull Sewlall* and *Byramjee Dadabhoy*, determined in the Supreme Court in November 1859, when the Plaintiff, a Shroff, recovered a verdict for Rs. 11,000 for money paid by him on behalf of the Defendant on losses in respect of Opium time-bargains and for brokerage and commission. The Court decided thus in conformity with precedents in the English Courts on the Statute 8 and 9 Vic. above quoted, to the like effect. The Chief Justice (Sir M. Sausse), however, expressed himself as follows :—

" We regret very much that we are compelled even indirectly to afford the sanction of the Court to such transactions, but we are bound by the decisions on the English Act analogous to Act XXI. of 1848. We the more regret it because the Plaintiffs are the persons who have enabled the Defendant to engage in those wagers and time-bargains, but, when this case was before the Court on the demurrer, the authorities that were then cited showed plainly that the Act does not exclude such an action as the present by an agent for brokerage and commission and for money paid for losses, incurred by the person for whom he is acting, on wagers."

Many similar actions have been since decided in the like manner in the Supreme Court and in the High Court. One of these decisions was made at the Appellate side of the latter Court.

The knowledge of this state of the law has stimulated the Shroffs to ply their time-bargain trade with renewed vigour. In this respect their establishments have become betting offices on a great scale, and have demoralised this side, at least, of India, as well as injuriously affected the Opium and Cotton markets. This measure is intended to prevent Shroffs and others from recovering on contracts collateral to time-bargains or other wagers, and thus powerfully to counteract, if not by penalties wholly to crush, gambling of this nature.

The 3rd and 4th Sections may be deemed stringent, but the preceding Sections would be rendered nearly nugatory by a change of tactics on the part of the Shroffs and others, who would ptotect themselves by requiring advances, or security, if the earlier Sections were not supported by Sections 3 and 4; which it is not unreasonable to expect will so completely undermine and destroy the stability of all such time-bargains and wagers, as fall within the scope of those Sections (3 and 4), as to go far in effectuating, to that extent at least, the intention of the Legislature in passing Act XXI. of 1848.

A much severer measure (Statute 16 and 17 Vic. C. 119) has been adopted by Parliament for the suppression of betting offices in the United Kingdom.

(Signed) M. R. Westropp,

20th July 1863.

By order of His Excellency the Governor in Council,

H. M. BIRDWOOD,

Officiating Under-Secretary to Government.

Poona, 22nd July 1863.