



SUPPLEMENT
TO THE
BOMBAY GOVERNMENT GAZETTE.

Published by Authority.

THURSDAY, 20TH AUGUST 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 Saturday the 8th August 1863, at 3 P. M.

P R E S E N T :—

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. RUSTOMJEE JAMSETJEE JEJEEBHoy,

The Honorable Mr. MADHOWROW VITTUL VINCHOORKUR,

The Honorable Mr. PREMABHAI HEMABHAI,

The Honorable Mr. A. D. ROBERTSON,

The Honorable Mr. M. H. SCOTT,

The Honorable Mr. M. R. WESTROPP.

The UNDER-SECRETARY presented a petition from some Mahomedan inhabitants of Bombay, praying that they be allowed to bury their dead in the burying grounds that have hitherto been used by their community.

The PRESIDENT ordered the Petition to be transferred to the Judicial Department of the Secretariate, for disposal.

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

The Honorable Mr. INVERARITY proposed that in Section III. of the Bill "to provide for the Periodical Survey of Steam Vessels in the Ports, Harbours, Rivers, or Waters of the Presidency of Bombay," the words "liable for each offence to a penalty not exceeding Five

hundred Rupees, commutable to simple imprisonment under Section 67 of the Indian Penal Code," be omitted, and that the following words be substituted for them :—

"deemed guilty of contempt of lawful authority and punishable under Section 176 or 186 of the Indian Penal Code, whichever may be applicable to the case."

Carried.

The Honorable Mr. INVERARITY proposed that the word "boats" be inserted between the words "machinery" and "or" in line 14 of Section III. and between the words "machinery" and "and" in line 20 of the same Section.

Carried.

The Honorable Mr. INVERARITY proposed that in Section XII. the words "incur a penalty not exceeding Five hundred Rupees commutable to simple imprisonment under Section 67 of the Indian Penal Code" be omitted; and that the words "be deemed guilty of contempt of lawful authority and be punishable under Section 175 of the Indian Penal Code," be substituted for them.

Carried.

The Honorable Mr. INVERARITY moved that in Clauses 1 and 3 of Section XIII. the word "boats" be inserted between the words "hull" and "equipments," and that in the last line but one of the same Section the words "boats, equipments and machinery" be inserted between the words "vessel" and "again."

Carried.

The Honorable Mr. INVERARITY said that it was desirable to introduce a new Section into the Bill, similar to Sections 292, 293, and 294 of the Merchant Shipping Act, which provided that no vessel should go to sea without having her proper complement of boats on board. Such a Section would properly come between the present Sections XIV. and XV. of the Bill. The Honorable gentleman said that as he had given no previous notice that he would introduce such a Section, it could not be introduced unless Rule 26 of the Standing Orders were suspended.

The PRESIDENT said that, as the proposed amendment was in accordance with the general object of the Bill, it would be desirable that Rule 26 be suspended.

This was agreed to, and the Honorable Mr. INVERARITY proposed that the following words stand as Section XV. of the Bill :—

"It is hereby declared that Sections 292, 293, and 294 of the Merchant Shipping Act, (17 and 18 Vic. Chapter 104) and Schedule S of that Act, are and shall be applicable to all steam Vessels proceeding to sea from any port or place in the Presidency of Bombay or its dependencies."

Carried.

The Honorable Mr. INVERARITY proposed that an explanatory Clause be added to the last Section of the Bill as follows :—

"When the survey of a steam vessel is contemplated by any part of this Act, such survey shall be held to include a survey of such vessels, hull, rigging, machinery, boats, equipments, and other appurtenances."

Carried.

The Honorable Mr. INVERARITY proposed that the word "boats" be inserted between the words "engines" and "and" in the declaratory part of Schedule A.

Carried.

The Honorable Mr. INVERARITY proposed that the Bill be reprinted as now amended before it be read a second time.

Carried.

The PRESIDENT reminded the Council that as the Bill contained penal clauses it would, under the instructions recently issued by Her Majesty's Secretary of State for India, require to be submitted to His Excellency the Right Honorable the Governor General before it was read a second time and passed.

His Excellency Sir WILLIAM MANSFIELD asked whether it would not have been better to have submitted the Bill for previous sanction before it had been read a first time. He thought that in cases where the previous sanction of the Supreme Government was required for any Bill under the consideration of the Council of the Governor of Bombay, it was not a safe plan to wait until the Bill had been modified by this Council before it was submitted for sanction. The assent now required was not an assent to the whole Bill but to the penal clauses contained in it, and this assent could as well be given at first as after the Bill had been amended. There was this advantage too in submitting a Bill for sanction before it had been considered in Council, that in case the Bill were rejected by the Supreme Government on account of its penal clauses, the time of this Council would not needlessly be taken up in modifying other parts of it. He did not anticipate that the present Bill would be rejected on account of its penal clauses, for its principle had already been affirmed on the other side of India. But he thought that it was a dangerous precedent to establish to submit a Bill for sanction, and to submit it therefore to the chance of rejection after it had been matured in Council. In other cases in which the consent of the Supreme Government to a measure could not be counted on, this Council might have the mortification of having all its work undone, simply because a measure contained some penal clauses that were not absolutely necessary to it, but which nevertheless might prove fatal to it, simply because the decision of the Supreme Government in regard to these clauses had not been obtained before this Council had deliberated on the measure as a whole. Sir William Mansfield, said that the law provided a time when a Bill, as amended and approved of by this Council, was to be submitted for the sanction of the Governor General. This was after the Bill had been passed by this Council. Until a Bill had arrived at this stage the law allowed the local Council a certain amount of independence in connexion with the measures before it, and he thought they would be compromising their independence in this respect if they were to subject to the possibility of rejection a measure that had virtually received the final approval of this Council, though it had not been formally passed by them.

The Honorable Mr. WESTROPP said that a Bill was frequently so much altered by the Select Committee to which it was referred, that the measure recommended by the Committee, and, generally speaking, subsequently adopted by the Council, bore a very faint resemblance to that which had been originally introduced. New provisions very often entailed the necessity of new penalties; so that a Bill presented to the Governor General for his preliminary approbation would sometimes be scarcely recognizable when submitted for his final assent. It would seem therefore to be desirable that in such instances as the Statute 24 and 25 Vic. Chapter 67, did not preclude such a course, a bill inflicting penalties should be submitted in, as nearly as possible, its ultimate form for sanction of the Governor General previously to its being passed into law. The Bill that gave rise to the present discussion had been that very day considerably altered in its penal clauses, and a fresh clause of a penal character had been imported into it from the Merchant Shipping Act. Therefore, if the Bill had been submitted for approbation of the Governor General in its original shape, it would not have correctly represented the measure that would have been finally tendered for his assent after it had passed through all its stages in this Council. He (Mr. Westropp) thought it might fetter the deliberations of the Council to an injurious extent if the assent of the Governor General were to be obtained to penal provisions while in a crude state, and much time might be thus wasted. The original penalties in a Bill though sanctioned by the Governor General, might not meet the approbation either of the Select Committee or of a majority of the Council, and there would be difficulty in altering them. If they were altered or added to after they had been sanctioned, the whole Bill, in which they were incorporated, might afterwards be rejected simply because it contained penal clauses, different in manner and character from those which had been previously sanctioned. He did not mean to say that Sir C. Wood's letter was to be regarded as rendering it indispensably necessary that in every case a penal clause should be submitted for the preliminary approval of the Viceroy, but he thought that time would probably be saved and the probability of the final rejection of a Bill avoided by forwarding it to the Governor General after it had passed through the hands of a Select Committee, and had assumed nearly its final form. The 43rd Section of the Statute 24 and 25 Vic. Chapter 67, no doubt rendered it necessary that before this Council can even take into consideration any act altering in any way the Penal Code, the previous sanction of the Viceroy should be obtained. That proviso would, however, scarcely be applicable to a Bill inflicting penalties with reference to a special subject not at all embraced within the Penal Code. Although that Code abrogated most of the pre-existing Criminal Statutes and Acts, yet it excepted existing special and local laws. Of special laws, the Postage Act, the Electric Telegraph Act, and the Railway Act, were examples. The present Bill (relating to Steam Vessels) was a special measure, and although of course

not coming within the exception of the Penal Code, inasmuch as that applied only to pre-existing special laws, yet it in some measure fell within its spirit; and the Government of India would probably not be disposed to give any very rigorous construction to Section 43 of the Statute 24 and 25 Vic. Chapter 67 in this case, as the Bill did not, in its present shape, alter any provision of the Penal Code, although it did create new penalties for new offences.

The PRESIDENT said he was not prepared to agree with His Excellency Sir William Mansfield that it was now too late to ask for sanction for the present measure. On the contrary, the present seemed to him the most convenient time for that purpose, and the Executive Council had already arrived at the same decision when considering the Despatch of Her Majesty's Secretary of State in regard to the subject under discussion. By sending a Bill for previous sanction after it had been amended in Council those evils would be avoided that had been dwelt on by the Honorable Mr. Westropp, and he did not think that the independence of this Council would in any way be compromised by submitting Bills for sanction when in this state. The object of sending a Bill containing a penal clause for sanction was not to ascertain the will of the Viceroy in regard to the principle of the Bill, but to let the Government of India know that a local Council was engaged in penal legislation, so as to enable the Supreme Government to check such legislation in case it provided any thing that was not consistent with the principle of the Indian Penal Code. It was never supposed that the Penal Code or any other of the new Codes was perfect or final; but it would be very objectionable if modifications of these Codes were made in the several local Councils independently of the guidance of the Supreme Government. The Codes were intended to be comprehensive and generally applicable, and it was necessary that in all extensions or alterations of the Codes, uniformity should, as far as possible, be preserved whenever it was found necessary to resort to special penal legislation in any of the local Councils. The duty of maintaining this uniformity devolved, by Law, as the Secretary of State observed, upon His Excellency the Governor General in Council. He thought therefore, that the present Bill might be submitted at its present stage for the criticism of the Governor General in Council without the danger of establishing a precedent prejudicial to the independence of this Council.

The Honorable Mr. ROBERTSON said that he thought that it was discretionary with the Council to submit the present Bill for the previous sanction of the Supreme Government. It would be observed, that the instructions of Her Majesty's Secretary of State were rather directory than mandatory; and in the endorsement of the Government of India forwarding these instructions, it was stated that they were forwarded for information, whereas, if they had been meant to be followed in the case of every Bill containing a penal clause, they would have been forwarded for "information and guidance."

The Honorable Mr. FRERE said that he never anticipated the present discussion, and was not therefore prepared for it. He was under the impression however, that contradictory orders had been received by them from the Government of India. On a former occasion a number of Bills, that had been submitted by this Council for approval before they had been passed, were returned with a request that, in future, Bills should not be sent for sanction until they had been passed, unless they came under the provisions of Section 43 of the Indian Councils' Act. He might, however, be wrong in his impression. He thought that the proper time for submitting a Bill that contained penal clauses for the sanction of the Supreme Government could be decided better by the Select Committee that would be appointed that day to revise the Rules for the conduct of the Business of the Council, than in a debate of the present character.

The PRESIDENT then directed the Under-Secretary to submit the Bill to provide for the Survey of Steam Vessels, in its present state, for the remarks of His Excellency the Governor General in Council, with special reference to the penal clauses.

The Honorable Mr. FRERE in moving the first reading of the "Bill to remove any doubts which may arise as to the legality of Acts done, and Proceedings held in the Collectorate of Sattara, between the 1st January and 14th April 1863, both days inclusive," said that Honorable members were aware that up to the passing of Act III. of 1863, Sattara had not been under the Acts and Regulations of the Presidency of Bombay. It had been a non-Regulation Province. The Collector had been the chief local judicial authority, and appeals lay from his decisions to the Governor in Council. When the draft Act III. was prepared, it was intended to bring Sattara under the Regulations from the 1st January last. The Council had anticipated that this Act would have become law before that date, but unforeseen delays had occurred in introducing it. No one who had not taken a part in preparing such a Schedule as that attached to Act III., could appreciate the labour and time required for it. Frequent alterations had to be made in the list of Villages, and these alterations involved repeated

correspondence with the local officers. The result of all this was that the Act was not introduced until the 10th September, when it was read a first time; the Council was then adjourned *sine die* and the Bill was not read a second time till the 19th December, when it was passed, but it did not receive the assent of the Governor General until the 25th March and was not published in the *Government Gazette* until the 15th April last. A promise had long before been made to the Collector of Sattara that the Province should be brought under the Regulations on the 1st January 1863, and in fulfilment of that promise the Act had been drafted; and though the delay which had arisen rendered it impossible that the promise should be fulfilled, the wording of the Section by some oversight remained unaltered, and consequently, though by the Act Sattara was from the 1st day of the present year, by law under the Regulations, Civil and Criminal cases and all business, Civil and Criminal, had nevertheless been carried on by the same officers, under the same rules and in the same manner as they had been before the 1st January.

It was not to be imagined that the officers who had so long conducted the administration of Sattara would have committed more injustice in the 105 days between the 1st January and 15th April than they had done before they were the same officers and equally capable to do strict justice then as they had been before; but there was the technical objection to their proceedings that an act had been passed which required that the work should have been performed by them under titles and appointments different from those they had held before, to declare that their proceedings for more than 105 days were as legal as if Act III. of 1863 had not been passed, was the object of the Bill he now introduced; and as men's minds might be unsettled by these technicalities, he thought it desirable that the Bill should be passed without any delay; and to enable this to be done, he would ask His Excellency the President to suspend the Standing Orders.

The PRESIDENT said that as the object of the Bill was merely to correct a clerical error, there could be no objection to suspending the Rules in order that the error that had been made might be corrected with as little delay as possible.

The PRESIDENT then suspended Rules 12th, 17th, 20th, 21st, and 24th.

Mr. FRERE then moved that the Bill be read a first time.

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

Carried.

On the question that Section I. stand part of the Bill, the Honorable Mr. WESTROPP proposed that the words "and decrees" be inserted between the words "orders" and "made" in line 2; that the words "in any suit or other proceeding, Civil or Criminal, now pending or hereafter to" be inserted between the words "court" and "to" in line 10; that the words "sentences, orders, and decrees on the ground aforesaid" be inserted between the words "proceedings" and "but" in line 11; and that the words "or decrees" be inserted between the words "orders" and "made" in line 12 of the Section.

Carried.

Mr. FRERE then moved that the Bill, as amended, be read a second time.

Carried.

The Bill was accordingly read a second time and passed.

The PRESIDENT then proposed that His Excellency Sir W. MANSFIELD and the Honorable Mr. FRERE, the Honorable Mr. ANDERSON, the Honorable Mr. JUGONNATH SUNKERSETT, and the Honorable Mr. SCOTT, be appointed a Select Committee to consider and revise the Rules for the conduct of Business at Meetings of the Council.

Carried.

The PRESIDENT then adjourned the Council to Saturday next the 15th instant, at 3 p. m.

By order of His Excellency the Governor in Council,

H. M. BIRDWOOD,

Officiating Under-Secretary to Government.

Poona, 8th August 1863.