



S U P P L E M E N T
TO THE
BOMBAY GOVERNMENT GAZETTE.

Published by Authority.

WEDNESDAY, 26TH AUGUST 1863.

PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

The following REPORT of the Select Committee of the Council of the Governor of Bombay for the purpose of making Laws and Regulations, together with the Bill as altered by them, is published for general information :—

*Report of the Select Committee appointed by the Council of the Governor of Bombay to Consider and Report upon a Bill intituled
“ a Bill to amend Act XXI. of 1848 (for avoiding Wagers).”*

Your Committee pursuant to the instructions of the Honorable Council have carefully considered the Bill to Amend Act XXI. of 1848 (for avoiding Wagers) and have the honour to report as follows :—

1. They have altered the Bill in the manner which appears in Appendix K. to this report and recommend that the Bill, if approved in its main principle by the Honorable Council, should be passed without any material departure from that form. To avoid repetition, your Committee here states that, throughout this Report, in speaking of the present Bill, they wish to be understood as referring to the Bill as it now appears in Appendix K. except where they expressly state the contrary.

2. Valuable information has been obtained, which, independently of the knowledge possessed of the subject by several members of your Committee, has satisfied it that Act XXI. of 1848, has been and is in this Presidency systematically and constantly evaded, and that if the Honorable Council be prepared to abide by the principle of Act XXI. of 1848, a supplementary measure, such as the present Bill or of similar character, is necessary in order to carry out that principle.

3. That the evasion of Act XXI. of 1848, has been chiefly promoted and effected by the active and interested intervention of Shroffs or Native Bankers is, in the opinion of your Committee, an established fact.

4. Your Committee have also arrived at the conclusion that agreements by way of gaming or wagering commonly called time-bargains, prevail extensively amongst the lower as well as the higher classes of the native community of this Presidency, and that the habit of making time-bargains has amongst the clerks and servants of native merchants in some cases led to the commission of crime; and lastly, that time-bargains have had the effect of causing great fluctuations in the *bond fide* markets for the commodities, the nominal subjects of such transactions, and your Committee observe that this has been more especially the case with Cotton—the price of which has at times been enormously increased by the operation of the time-bargain system. In support of the conclusions of fact to which your Committee have come, they refer to the Appendices to this Report, containing highly valuable letters from Sir Joseph Arnould, and Mr. Justice Couch, of the High Court; and Mr. Gavin Steel of the firm of Messrs. Grey and Co., and Mr. Mellwraith of the firm of Messrs. William Nicol and Co., both of which firms are extensive exporters of Cotton to England. Your Committee also refer to a copy of the agreement amongst the Shroffs (Appendix G.) which was produced and proved in the cases referred to by Mr. Justice Couch. The letter of Mr. Kelly, of the firm of Messrs. Kelly and Hore, furnishes some idea of the number of time-bargains. When one firm of Solicitors sends out in the course of two or three days at least 350 notices in respect of such transactions, there is no difficulty in concluding that multitudes of persons are concerned in like proceedings.

5. In revising the present Bill your Committee have kept three points steadily in view. *First*—To carry out the intention of Act XXI. of 1848. *Secondly*—To adhere as closely both in language and spirit to the mildest provisions of the modern Acts of Parliament in restraint of gambling and wagering as is compatible with the attainment of the first object. (*a*) *Thirdly*—To refrain from the enactment of pains and penalties.

6. The expressed intention of Act XXI. of 1848 is contained in its opening recital, namely: That “it is expedient to discourage gaming and wagering for money.” Its first Section enacts that “All agreements, whether made in speaking, writing, or otherwise, by way of gaming or wagering, shall be null and void: and that 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.” This rendered the principal parties to any agreement by way of gaming or wagering unable to enforce it in any Court of Justice in British India, but it has in many cases been ruled in the Supreme and High Courts that this Act did not disable the Sheriff or Agent who effected and supplied funds for carrying out the agreement (albeit discountenanced by the Legislature) from suing successfully for commission and reward for his trouble, or for money expended on behalf of his employer in paying the winner, or in brokerage paid for him to petty brokers. The ground on which the Courts have most reluctantly, as exemplified in the Judgment of the Chief Justice (referred to in the Statement of the Objects of and Reasons for this Bill), decided thus in favour of the Shroff was that the contracts on which he sued were not themselves time-bargains, but were only collateral to them and therefore not within the letter, howsoever much they may have been within the spirit of Act XXI. of 1848. The first Section of the Bill partly remedies this defect by declaring contracts collateral to agreements by way of gaming or wagering null and void, and by prohibiting suits upon such contracts, and it follows as nearly as possible the language of Section I. of Act XXI. of 1848, and of Section XVIII. of the Statute 8 and 9 Victoria, Chapter 107.

7. To the first Section of the Bill the second Section of it is auxiliary. It consists of a portion of the first Section, as it stood originally, and of some additional matter necessary, in order to meet claims by Shroffs in respect of payments to petty brokers. It may be objected on the authority of the case of

(a) It has been found convenient and productive of fixity of interpretation to adopt, so far as may be, the phraseology and machinery of existing enactments on the same subject, which have already received a Judicial interpretation. The Committee has adhered to this rule, except where the circumstances of the counter or excessive technicality of language necessitate a departure from it.

Varney v. Hickman (5 Common Bench Reports, 271) that the prohibition of the maintenance of suits contained in this and the first Section is surplusage; because the declaration in the commencement of the first Section that all contracts collateral to wagering agreements shall be null and void would necessarily prevent the maintenance of any suit upon such contracts. No doubt that, would be one of the legal consequences of the declaration; but your Committee have nevertheless thought it desirable expressly to prohibit the maintenance of such suits, because this Bill, if passed into law, will be often applied by Judges who are not professional lawyers, and who, inasmuch as Act XXI. of 1848 not only declares wagering contracts null and void, but also prohibits suits upon them, might possibly be misled by a Bill which declared contracts collateral to such agreements void, but omitted to prohibit suits upon those contracts.

8. The third Section of the Bill has been introduced by the Committee. The original precedent for such an enactment will be found in the Statute 26 and 27 Charles II., Chapter 7, Section 3 (repealed by 8th and 9th Victoria, Chapter 109, 106 and 115), which declared void all contracts, judgments, &c. mortgages, conveyances, &c. bills, &c. given in respect of any sum exceeding £100 lost at play and directed (as the present Bill does not) that the winner should forfeit treble the value of the money or other thing won. When a copy of the Bill in an amended form (*b*) was seen by Sir Joseph Arnould and Mr. Justice Couch, the third Section did not contain the exception in favour of bills of exchange, hoondies, promissory notes and mortgages in the hands of a *bonâ fide* endorsee or holder for valuable consideration without notice at the time of taking such a document of the nature of the original gambling consideration, for which it was given. That proviso has, in conformity with the suggestion of Mr. Justice Couch in favour of the innocent holders of bills, hoondies and promissory notes, been introduced by the Committee, and the third Section of the Bill, as so altered, substantially follows the 1st Section of the Statute 5 and 6 William IV., Chapter 41, which was passed in the year 1835 in modification of the enactment already mentioned as contained in the Statute 26 and 27 Charles II., Chapter 7, and of a similar Statute 9 Anne, Chapter 14. The phraseology of the Statute of William, being of a technical character unsuited to the Mofussil, the Committee have endeavoured to carry out the same idea in different language.

9. The fourth Section has also been introduced by the Committee. It has been taken (with necessary variations) from the second Section of the Statute 5 and 6 William IV., Chapter 41, and is rendered indispensable by the adoption of the first Section of that Act excepting bills, &c., in the hands of innocent holders. It is in unison with the 7th and 8th Sections of this Bill (numbered III. and IV. in the Bill as read for a first time) and has been adapted by your Committee in order to prevent the indulgence shown, by the third Section of the Bill, to *bonâ fide* endorsees, holders or assignees, of bills, hoondies, promissory notes, and mortgages, from protecting the original grantees of such instruments. Were this precaution not taken, the winning gambler or his Shroff might by assignment of the bill, hoondie, note or mortgage, given to him, wholly frustrate the 7th and 8th Sections of the Bill. Those Sections are subsequently treated of by the Committee. The 4th Section, it should be noted, is limited, like the 7th and 8th Sections, to wagers and agreements by way of gaming and wagering as to the price or value of cotton, opium, or other article of merchandize.

10. The fifth Section (the second in the original Bill) speaks for itself, and does not in the opinion of the Committee require any special comment from them.

11. The sixth Section has been introduced by the Committee. The object of it is to retain so much of the Common Law, as enables either party to a wagering agreement to withdraw from it at any time before his deposit has been paid over to the winner or any person on his behalf, and to recover

(*b*.) Except in the instance noted in the text, and except the 4th Clause of the Bill now added, Sir Joseph Arnould and Mr. Justice Couch saw the Bill in very nearly its present form.

the amount of such deposit from the stake-holder. An express enactment is necessary for the purpose of preserving that rule of the Common Law, which would otherwise be overridden by the general prohibition contained in the first Section of suits on contracts collateral to wagering agreements. It is obviously desirable that the Common Law should not in this respect be abrogated.

12. The 7th and 8th Sections are with some important variations, however, the same as the 3rd and 4th Sections in the original Bill, and are perhaps more likely to evoke discussion than any other provisions in the Bill. It will be observed that Sir Joseph Arnould, in his letter (Appendix B), although approving of the other parts of the Bill, and thinking that Act XXI. of 1848 needs amendment, has objected to the provision now under consideration. The Committee attribute great weight to that opinion, and have anxiously considered, whether without the aid of Sections 7 and 8, or that of pains or penalties, the main object of the Bill could be attained. They have reluctantly arrived at the conclusion that it could not. That object is so to amend Act XXI. of 1848, as to discourage especially and effectually agreements by way of gaming or wagering on the price or value of opium, cotton, or any other article of merchandize, in which agreements no delivery of the article purchased or sold is ever contemplated. Although abundant precedents exist, both in the past and present Statute Law of England for the infliction of pains and penalties as well on those who maintain gambling houses as on those who engage in gambling transactions, your Committee have, as already stated, determined to avoid such legislation, and to seek in lieu of it, some other element of efficiency. They are unable to suggest any other course for the attainment of this purpose, than to render bets on the price or value of opium, cotton, or any other article of merchandize, so insecure as to deter those who have hitherto fostered or entered into such bets from continuing to do so. That can only be effected by rendering the Shroff, with whom any deposit on such a bet has been made, or the winner to whom any such bet has been paid, liable to be compelled to refund the money. The period of liability has been reduced by your Committee, on a suggestion kindly made by the Chief Justice to one of the Members, from three years, as it stood in the original Bill, to six months. The Bill is not retrospective, therefore there will not be any hardship either on the party betting or on the Shroff who represents or assists him, if they enter into wagering transactions on the price or value of commodities of merchandize, and thereby subject themselves to the risk entailed on them by the 7th and 8th Sections of the Bill. These Sections will not operate in any wagering transactions, even with regard to merchandize in any other respect save as to its price or value. Both in repealed and existing English Statutes, enactments similar to, but more stringent than Sections 7 and 8 of this Bill are to be found. The second Section of the repealed Statute 9 Anne, Chapter 14, and the Stock-jobbing Act 7, George II., Chapter 8, continued by Statute 10 George II., Chapter 8, both since repealed in 1860 (c) contain similar but stronger provisions. The fifth Section of the Act for the suppression of betting houses, Statute 16 and 17 Victoria, Chapter 119, which is now in full force in the United Kingdom, is as follows: "Any money or valuable thing received by any such person as aforesaid as a deposit on any bet, or as or for the consideration for any such assurance, undertaking, promise, or agreement as aforesaid, shall be deemed to have been received to or for the use of the person from whom the same was received, and such money or valuable thing or the value thereof, may be recovered accordingly, with full costs of suit in any Court of competent jurisdiction." It is worthy of remark that this power of recovery is by that enactment given to the depositor against the receiver without regard to the possibility of the latter having paid the money over to the winner. Your Committee, therefore, conceive that Section to be a sufficient precedent for Sections 7 and 8 of the present Bill.

13. In the same Section your Committee have omitted the word "time-bargains" and, following the phraseology of Act XXI. of 1848, Statute

(c.) By the Statute 23 and 24 Victoria, Chapter 28.

8 and 9 Victoria, Chapter 109, Section 18, and the preceding Sections of this Bill, have substituted for that word the expression "agreement by way of gaming or wagering." Your Committee have been unable to discover that any instance has occurred in which the Courts have held an agreement to have been one by way of gaming or wagering, in which such decision has been overturned or even impeached. The burden of proving that a transaction is an agreement by way of gaming or wagering lies on the party who alleges it to be so, and your Committee do not apprehend that the Courts will henceforward be less strict than they have hitherto been, in requiring clear proof of such an allegation.

14. The 9th and 10th Sections of the Bill are the same as the 5th and 6th Sections of the original Bill, and do not call for any remark.

15. Your Committee think it may be useful to extract the following passages from Mr. Serjeant Stephens' 4th vol. of Commentaries, pages 338 and 341 : "Against gaming-houses in particular the efforts of the Legislature have been directed with assiduous care. Thus the Statute 33 Henry VIII., Chapter 9, Section 11, prohibits the keeping any common house for dice, cards, or any unlawful games, under pecuniary penalties of 40 shillings for every day of so keeping the houses, and 6s. 8d. for every time of playing therein. Also by 9 Anne, Chapter 14, 12 George II., Chapter 28, 13 George II., Chapter 19, and 18 George II. Chapter 34, the games of faro, basset, ace of hearts, hazard, passage, roly poly, and roulette; and all other games with dice, except backgammon; are prohibited under a penalty of £200 for him that shall erect the same, and £50 a time for the players. (*d.*) And now by 8 and 9 Victoria, Chapter 109, and 17 and 18 Victoria, Chapter 38, various provisions are made for the punishment of those who keep or frequent common gaming-houses and for the suppression of such houses when discovered to exist. By these Statutes it is provided that the owner or keeper of any common gaming-house, and every person having the care or management thereof, and also every banker, croupier and other persons in any manner conducting the business of any common gaming-house, shall, on the conviction by the oath of one witness before two Justices of the Peace, be liable, *in addition* to the penalties of the Act of Henry the Eighth, to pay such penalty (not being more than £100) as shall be adjudged by such Justices, or in their discretion may be committed to the House of Correction, with or without hard labour, for not more than twelve Calendar months." "The same Statute (8th and 9th Victoria, Chapter 149) further enacted, that every person who shall by any fraud, unlawful device or ill-practice in play, betting, or wagering at any game, win any sum of money or valuable thing, shall be deemed guilty of obtaining the same by false pretence, and be punished accordingly, and that all contracts (whether by fraud or in writing,) by way of gaming or wagering, shall be null and void; and that no suit at law or in equity shall be brought to recover from a stake-holder a deposit on a wager; with a proviso, however, that this enactment shall not be deemed to apply to any subscription towards a plate or prize, at any lawful game, sport, pastime or exercise."

The French Code also prohibits the bringing of actions to enforce gambling contracts (*e*).

(*d*). See also 30 George II. Chapter 24, Section 14, prohibiting under a pecuniary penalty gaming in public houses by labourers or servants.

(*e*) Code Civil Book 3, title 3, Chapter 1, Articles 1965 and 1966.

(Signed)	W. R. WESTROPP,
"	W. E. FRERE,
"	H. L. ANDERSON,
"	MICHAEL H. SCOTT,
"	PREMABHAI HIEMABHAI,

Poona, Saturday 22nd August 1863.

(Appendices (A to E) to the Report of the Select Committee.)

APPENDIX A.

Extract from a Letter addressed by the Honorable Mr. M. R. Westropp, to the Honorable Sir Joseph Arnould and the Honorable Mr. Couch, Judges of Her Majesty's High Court of Judicature.

"It has fallen to your lot occasionally to try actions relating to time-bargains as to the price of articles of merchandize, and in other cases to hear incidentally of such transactions.

You will much oblige me by stating:—

1.—Whether in your opinion a measure to amend Act XXI. of 1848, is needed at this side of India?

2.—Whether the Bill now before the Legislative Council of Bombay, when amended in the manner shown by the copy accompanying this note, will be a measure suitable for that purpose?

3.—Whether the evil against which Act XXI. of 1848, and the present Bill are aimed, prevails in the lower as well as the higher classes of the native community?

4.—Whether Act XXI. of 1848, has been evaded by the intervention of Shroffs and Native Bankers?"

APPENDIX B.

Reply of the Honorable Sir Joseph Arnould, dated 5th August 1863, to the Honorable Mr. Westropp's Letter.

In answer to the questions contained in your note of yesterday, I reply:—

1.—That, in my opinion, a measure to amend Act XXI. of 1848, is needed.

2.—That the Bill now before the Legislative Council of Bombay, when amended in the manner shown by the copy accompanying your note is, in some of its provisions, a measure suitable for that purpose, in others, not suitable; as I will point out after replying to your two remaining questions.

3.—There can be no doubt that the evil against which Act XXI. of 1848, and the present Bill are aimed, prevails in the lower as well as the higher classes of the native community. I know this not only from ordinary experience and observation, which can leave no doubt on the point to any resident in Bombay who does not close his eyes and ears to all that is passing in daily life, but also from the fact that in my judicial capacity suits arising out of gambling transactions have come before me, involving members of the lower as well as of the higher classes of the native community.

4.—There can be no doubt whatever that Act XXI. of 1848 has been, and is constantly being, systematically evaded by the intervention of Shroffs and Native Bankers.

I now proceed to explain in what respects your Bill goes beyond what appears to me to be requisite or expedient.

The principle of legislation I take to be this:

The State ought not to permit the machinery of Courts of Justice to be employed in enforcing wagering contracts, either directly or indirectly.

The weakness of Act XXI. of 1848 was, that it applied only to direct wagering contracts between principals; not to collateral contracts between agents.

In so far as your Bill seeks to remedy this defect, I go with it entirely, and it further appears to me that the clauses of the amended Bill, which seek to effect this object, are well adapted to this purpose. But I would not go further.

The man who enters into a gambling contract is (it is conceded) guilty of an immorality; but the man who having entered into a gambling contract, afterwards breaks it, to avoid loss, is guilty of a double immorality.

The State ought not to permit the machinery of Courts of Justice to be employed in order to protect, from the consequences of one immorality, a litigant whose only *locus standi* is a second immorality.

APPENDIX C.

Reply of the Honorable Mr. Couch, dated 5th August 1863, to the Honorable Mr. Westropp's Letter.

In answer to your 3rd question, whether the evil against which Act XXI. of 1848 and your Bill are aimed, prevails in the lower as well as the higher classes of the native community, I can say that my experience leads me to think that it does, and facts have been proved before me in Court, showing that the clerks and servants of the native merchants are in the habit of making time-bargains, and that in some cases it has led to the committing of crime. To your 4th question, whether Act XXI. of 1848 has been evaded by the intervention of shroffs and native bankers, my answer is that it undoubtedly has, and not only been evaded, but the practice of gaming and wagering has, I think, been greatly promoted and encouraged by the combination amongst them, and the rules they have made for their conduct with respect to time-bargains. This was illustrated by several cases tried by me, in which it appeared that a writing was drawn up, and signed by the various shroffs and native bankers, or their representatives, for regulating time-bargains in cotton, and providing for the fixing of the prices at which they were to be settled. This writing required that the price should be fixed, having regard to the actual price of cotton; but on an occasion when the price had arisen to a great extent, the shroffs, after several meetings and great discussion, fixed the price at a much lower sum, with the view, as it appeared, of promoting an easy settlement of the bets, and I think also of preventing the practice of making bets in this manner by their agency from receiving a check or discouragement.

I think some measure to extend Act XXI. of 1848, and further discourage gaming and wagering, is needed, (whether on this side of India only I cannot say,) and speaking generally, and without reference to its precise terms, I think your Bill, when amended as proposed, is suitable for that purpose. It however deserves consideration whether the 3rd Section should be adopted, and it certainly ought not, I think, to extend to bills of exchange, hoondies, or promissory notes, which when within that Section would not be good against the acceptor or maker even in the hands of an endorsee for value.

APPENDIX D.

Letter from Charles Kelly, Esquire, Solicitor, High Court, Bombay, to the Honorable Mr. M. R. Westropp.

I find that I cannot lay my hands upon any papers which will show exactly the number of notices which I have sent out at any particular period of excitement. There is no doubt that very many time-bargains are made upon cotton, linseed, and gunny bags, by persons who trade in those goods, as well as by other persons. There is generally some fixed day upon which, or some fixed period within which, the goods are to be delivered, and if there has been much speculation, there is considerable excitement as the day for delivery approaches, or the period for delivery is expiring. I have on such occasions sent out, on behalf of a client, upwards of 60 notices in one day, and at the same time sent out 10, 20, or as many as 50 notices for other clients. On one particular occasion, I think, I must, in the course of two or three days, have sent out at least 350 notices.

APPENDIX E.

Letter from Robert McIlwraith, Esquire, to the Honorable Mr. M. H. Scott, dated the 15th August 1863.

I very willingly express my cordial approval of Mr. Westropp's Bill, and if the opinions of the Merchants were called for, W. Nicol and Co. in common with I believe every respectable and legitimately trading Firm in Bombay, would gladly join in a representation to the Legislative Council in favour of it.

I think it will be effectual in stopping time-bargains, as it in a manner closes up the only channel by which they can be conducted with any approach to certainty that they will be completed; and the necessity for the Bill is abundantly proved by this very circumstance, that these pernicious transactions are now almost exclusively confined to the one agency, the shroffs, who, under the present defective law, are enabled to hold out a prospect of the winner receiving his gains at settling time.

When this principle is withdrawn, I think the practice will probably almost disappear, as I do not think that amongst those who speculate or rather gamble in the manner indicated, there is much faith in mutual-honor.

To state (as has been attempted to be shown) that these are legitimate transactions is absurd. They are most correctly described as bets or wagers, no *bona fide* interest on a commodity being ever understood. And they are the most objectionable of all bets, for they afford the strongest incentive to both parties to use improper means to cause a fictitious value to be current at a particular time; by which one section of traders, either buyers or sellers, must inevitably be the innocent victims.

I really do not think it is necessary to enter into lengthened arguments in favour of the measure. I hope it may speedily pass, and anticipate much good from it.

APPENDIX F.

Letter from Gavin Steel, Esquire, dated 13th August 1863, to the Honorable Mr. M. H. Scott.

I do hope that the supporters of the Bill for disabling time-bargains, will succeed in carrying it through the Legislative Council, and I am glad that the mercantile community is so faithfully represented by yourself, seeing that a portion of the Press attempts to justify this mischievous system, and to dignify it by the name of trade. It is in my opinion no more worthy of the name of trade than are the operations of a professed gambling house. A makes a contract with B respecting a certain quantity of say cotton or opium, fixing a certain price, for a certain future day, agreeing to receive or to deliver, not cotton or opium, but the difference in cash, for or against him as the event may prove. Is this trade or is it gambling? If it were confined to A and B, they might be allowed to pursue their perilous game till one or other be cleaned out, but unfortunately the whole alphabet has now taken up this business, which requires neither capital nor labour; the wealthy and the penniless, the master and his man alike go at it, and if not checked by legislative enactment, it promises not only to interfere hurtfully with the course of trade, but to cause widespread ruin, moral and material, amongst those who indulge in it. I need not tell you the effect of a powerful combination of interests brought to bear upon one side of a market in order to raise or depress the value of a commodity "for settling day." We have all seen and suffered from it in the cotton market during recent years, and no one is better able than yourself to speak from experience on this point.

It has been urged that the proposed Bill is an interference with the liberties of trade; but I cannot see it in this light. It is certainly calculated to

interfere with the liberty of the gambler, but on the other hand, it will only secure the liberty of the merchant to trade at a market price free from *undue* influences;—a species of protection, but no more than the law should in common fairness provide. I wish the Bill all success.

APPENDIX C.

Agreement signed by Sixty Shroffs in regard to Time-Bargains.

The writing, upon the authority of which the Gujarathi Shroffs (*i. e.* Bankers) carry on a trade in Dholera cotton for fixed (*a*) times, a copy of that writing caused to be printed and published by a cotton banker.

(*a*)
(*i. e.* deliverable within certain appointed times.)

Obeisance for (the deity) Shri Gunnesh !

On the 10th day of Jet Sood, in the year Sumvat 1919, the day of the week Tuesday, the 18th of June, in the Christain year 1861. Be it known that the undersigned merchants, jointly, have made this day an agreement to carry on dealings in cotton. It is agreed to, and binding on, all the merchants.

Clause First.—With regard to the particulars of the observing of the fixed time appertaining to the trade in cotton, there are to be observed three fixed periods in one year. The enumeration of the dates thereof are as follows :—

(*b*)
(The corresponding Christian dates here given are for the respective periods immediately following the 18th June 1861.)

One fixed period from Asi Vud 2nd 20th (*b*) (October 1861) to Kartag Sud 2nd (4th November 1861).

A second fixed period from Kartag Vud 2nd (19th November 1861) to Magsar Sud 2nd (3rd December 1861).

A third fixed period from Waishak Sud 2nd (30th April or 1st May 1862) to Waishak Sud 15th (13th May 1862).

Clause Second.—As to the dealings in cotton that may take place, the purchaser of cotton shall pay to the seller at the rate of Rupees 5, namely, five as earnest for each one candy, and the seller shall obtain payment (of the same) from the purchaser. Those rupees for earnest are to be paid by (expiration of 18 days from the date of the agreement relating to the dealings)

(*c*)
The meaning of the above provisos, with regard to the interest, appears to be that interest is to be charged at 8 annas for the 8 days, and at Rs. 1 per cent. should that period be exceeded for the time it may be exceeded.

ing the earnest (*c*).

and should (the same) not be paid accordingly, then (as) agreeably to the custom of shroffs, it is customary to receive and pay interest at the rate of 8 annas (per cent.), that (interest) is to be received. Besides that for as many days as may elapse beyond the abovementioned time, credit is to be taken for double interest at the rate of 8 annas for one hundred (rupees) from the party paying

Clause Third.—It is written above (that) within one year three fixed periods are to be observed. As to the two fixed periods thereof, the trade of Kartag (November 1861) and (that) of Magsar (December 1861) are to be carried on together, and after price of Kartag has been fixed, the trade of Vaysak (April—May 1862) is to be carried on, and unless the price of Vaysak be settled, a new trade is not to be carried on.

Clause Fourth.—Within the abovementioned period, Dholera and Blow-nuggur cotton, the commodity having been examined, (and) having been weighed, is to be delivered and received.

Clause Fifth.—As to the dealings in cotton appertaining to the fixed periods that may take place, the price of such residue of cotton as may remain

to be delivered and received upon transfers being made, and received reciprocally on the expiration of the fixed periods, and on (the cotton) being examined, and got examined, for the office people, (d) and for the undersigned, the assembly having met, shall fix, in conformity with the below written clauses. That is agreed to by, and binding on all.

Clause Sixth.—Should any of the Tezi (e) or Mandi people, committing fraud increase or decrease the price then without directing attention to that price, but directing attention to the Dholera and Bhownuggur and Europe prices, and along with that looking at the prices of all kinds of cotton in the market, here the assembly are to fix the price. In order to fix that price, the assembly having met at the counting house _____ are to fix the

price.

Clause Seventh.—The trade appertaining to each fixed time is to go on till 6 o'clock in the evening of the time (f). The agreement, for as much trade as may have taken place, the brokers shall bring and deliver before the price is fixed; should they not deliver the same then commission is to be duly received from the broker.

Clause Eighth.—Within the period of eight days after the expiration of the fixed period, the assembly having met, should they cause the price to be fixed at the first "meeting," it will be well, otherwise in the same week another "meeting" is to be held, that is to be agreed to by, and binding on all, and that is to be held as valid.

Clause Ninth.—Should any broker (ask to) have entered any different price, then no merchant is to enter (the same), and should he enter it, he will certainly forfeit his true religious faith.

The brokerage of the broker (to be) at the rate of 4 annas per one hundred rupees out of that percentage, and perquisites according to the usual rate, and an allowance for religious and charitable purposes at the rate of $\frac{1}{4}$, namely a quarter of an anna for one candy being deducted, the settler shall duly pay (the remainder).

With the merchants who have signed this writing, dealings in cotton are to be carried on but are not to be carried on with those who had not signed, and should it be carried on (the party so trading) shall forfeit his true religious faith, and shall certainly become an offender against the assembly. In this way, agreeably to what is written above, an agreement has been made. It is agreed to by, and binding on all the undersigned.

Here follow the signatures of sixty Firms of Shroffs.

(A true Translation.)

(Signed) J. FLYNN,

Chief Translator.

Supreme Court, Translator's Office, 28th July 1862.

APPENDIX H.

Form of written authority to enter into a Time-Bargain addressed to a Shroff by his Constituent.

To Shaw _____
written by _____
To wit; the cause of this being written is as follows: At your house I have caused to be entered; at your house cotton appertaining to the fixed time of the 2nd Kartug Sud of S. 1918 (4th November 1861) and cotton appertaining to the fixed time of the 15th Waishak Sud of S. 1918 (13th May 1862),

I am to pay commission for the same at the rate of Rs. $\frac{1}{4}$, 2 annas, namely, annas six per candy, and I am duly to pay brokerage at the rate of Rs. $\frac{1}{4}$, namely, annas four per cent. Moreover as to the prices for the above mentioned two fixed times, I agree to pay, and receive accordingly, to such division as may be made in the banking house of your shroff.

Further no dispute shall be raised. I have given (this) in writing in my sound mind. It is valid. Friday, 8th Bhadurwa Vud of S. 1917 (29th September 1861.) The handwriting of _____

Here the attestation.

(A true Translation.)

(Signed) J. FLYNN,

Chief Translator.

Supreme Court, Translator's Office, 8th July 1862.

APPENDIX I.

Form of written authority to enter into a Time-Bargain addressed to a Shroff by his Constituent.

To Shaw _____

written by _____

To wit; Cotton, candies 225, namely candies two hundred and twenty-five, of the fixed time of the 15th of Waishak Sud of (Sumvut) 1918 (13th May 1862) has been purchased through the broker _____

The particulars of the prices thereof are (as follows).

Cotton candies 175, at the rate of Rs. 165-2, namely, rupees one hundred and sixty-five and a half per candy; 175 Cotton candies 50 at the rate of Rs. 165-3, namely Rupees one hundred and sixty-five and three quarters per candy.

In this manner the same has been purchased. Do you be pleased to enter the same. The 2nd of Asso Sud of (Sumvut) 1917, the day of the week Sunday (6th October 1861). His own handwriting.

(A true Translation.)

(Signed) J. FLYNN,

Chief Translator.

Supreme Court, Translator's Office, 11th August.

APPENDIX J.

Form of written authority to enter into a Time-Bargain addressed to a Shroff by his Constituent.

To Shaw _____

written by _____

To wit; Cotton, candies 75, of the fixed time of the 15th of Waishak Sud of the year (Sumvut) 1918 (13th May 1862) has been sold at the rate of Rs. 168, namely, rupees one hundred and sixty-eight per candy, through the broker _____

Do you be pleased to enter the same, the 14th of Bhadurwa Vud of (Sumvut) 1917, the day of the week Thursday, the English date the 3rd October 1861. His own handwriting.

(A true Translation.)

(Signed) J. FLYNN,

Chief Translator.

Supreme Court, Translator's Office, 14th August 1862.

BILL AS IT ORIGINALLY STOOD.

A BILL

To amend Act XXI. of 1848 (for avoiding Wagers).

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

Preamble.

I. All contracts, whether made in speaking, writing, or otherwise, arising out of or collateral to agreements by way of gaming to be null and void. All contracts arising out of or collateral to agreements by way of gaming to be null and void. of 1848 (for avoiding Wagers), it is enacted as follows :— 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.

BILL AS AMENDED BY THE SELECT COMMITTEE, ON THE 22ND AUGUST 1863.

A BILL

To amend Act XXI. of 1848 (for avoiding Wagers).

WHEREAS it is expedient so far as regards the Presidency of Bombay to amend Act XXI. of 1848 (for avoiding Wagers), it is enacted as follows :—

Preamble.

I. All contracts, whether made in speaking, writing, or otherwise, arising out of or collateral to agreements by way of gaming or wagering to be null and void. No suit to be allowed on such contracts. Contracts collateral to agreements by way of gaming or wagering to be null and void. No suit to be allowed on such contracts. 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.

II. No suit (except as hereinafter is excepted) shall be allowed in any Court of Justice 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, or for recovering any sum of money paid or payable on account of any persons by way of commission, brokerage, fee, or reward in respect of any such agreement by way of gaming or wagering as aforesaid.

III. All judgments, decrees, razeenamas, mortgages, conveyances, assurances, bonds, bills, hoondies, promissory notes, promises, covenants, agreements, and other acts, deeds, documents, and securities whatsoever, which shall be obtained, made, given, acknowledged, or entered into, either wholly or in part, for security or satisfaction of, or for any money or other valuable thing lost or paid in respect of any agreement by way

Judgments, Decrees, &c., to secure money, &c. lost on wagering agreements to be null and void.

of gaming or wagering, or for any such commission, brokerage, fee or reward, or for any sum of money paid or payable on account thereof, as are respectively mentioned in the second Section of this Act, shall be void and of none effect: Provided always that no bill, hoondee, promissory note, or mortgage, in the hands of a *bond fide* endorsee, holder or assignee, for valuable consideration, not being an original party to the same and not having notice at the time of taking the same, of the nature of the original consideration for which such bill, hoondee, promissory note or mortgage was made or executed, shall be so far as such endorsee, holder, or assignee is concerned, invalidated by any thing contained in this Act.

IV. In case any person shall after the passing of this Act, accept any bill, or make,

Special proviso in the case of Bills, Hoondees, Promissory Notes, and Mortgages.

draw, give, or execute any bill, hoondee, promissory note or mort-

gage, by way of advance, security, guarantee, or in or towards performance of any wager or agreement by way of gaming or wagering relating to the price or value of opium, cotton, or any other article of merchandize, or any contract arising out of, collateral or relating to any such wager or agreement as last aforesaid, and such person shall actually pay to any endorsee, holder or assignee of such bill, hoondee, promissory note or mortgage, the amount of the money thereby secured or any part thereof; such money so paid shall be deemed and taken to have been paid for and on account of the person to whom such bill, hoondee, promissory note or mortgage was originally given by way of such advance, security, guarantee or performance as aforesaid, and shall be deemed and taken to be a debt due and owing from such last named person to the person who shall have so paid such money, and shall accordingly be recoverable by suit with full costs in any Court of Justice of competent jurisdiction.

V. 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

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

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, or money paid or payable in respect thereof as are respectively mentioned in the first and second Sections of this Act.

VI. 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 agreement by way of gaming or wagering, shall be recoverable from him

Advances in respect of wagering agreements &c. recoverable by the depositor, whether winner or loser, before paid over to winner.

by suit by the depositor or his personal representative at any time before the person to whom such advance was made, or such sum of money or valuable thing as aforesaid was entrusted, has actually paid or made over the same to the alleged winner or any one on his behalf, whether such depositor be or be not the loser upon such gaming or wagering agreement, and whether such depositor or his personal representative shall or shall not have countermanded the authority of such person to pay or make over the same, or shall or shall not have assented to such person paying or making over the same.

VII. 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

Any advance made or valuable thing entrusted to any Shroff to abide the event of any time-bargain to be recoverable by the depositor if he be the loser of such time-bargain, within six months.

wager or agreement by way of gaming or wagering upon or relating to the price or value of

opium, cotton, or any other article of merchandize whatsoever, shall be recoverable with full costs from him by suit by the depositor or his personal representative, if either of them be the loser on such wager or agreement as last aforesaid, at any time within six months 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 with or without the assent of the said depositor or his personal representative.

VIII. Any sum of money or valuable thing paid or made over in

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

respect of any wager or agreement by way of gaming or wagering upon or relating to the price or value of opium, cotton, or any other article of merchandize, to the winner on such wager or

agreement as last aforesaid, or to his personal representative, or to any person on behalf of either of them shall, if not previously recovered under Section VI. of this Act, be recoverable with full costs by suit, (brought at any time within six months after such payment or making over) by the party paying or making over the same as aforesaid or his personal represent-

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 other wager upon or relating to the price or value of opium, cotton,

Any advance made or valuable thing entrusted to any Shroff to abide the event of a time-bargain to be recoverable by the depositor if he be the loser of such time-bargain.

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.

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.

IV. Any sum of money or valuable thing paid or made over in

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.

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

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.

This Act not to be retrospective.

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

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.

active from the said winner or his personal representative or other person to whom the same was paid or made over on behalf of either of them. If the suit under this Section or under Section VI. be in respect of any such valuable thing as aforesaid, it shall be competent for the Court to award pecuniary damages in lieu thereof.

This Act not to be retrospective.

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

X. 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.

By order of His Excellency the Governor in Council,

H. M. BIRDWOOD,

Officiating Under-Secretary to Government.