



Bombay Government Gazette.

Published by Authority.

MONDAY, 25TH AUGUST 1873.

 Separate paging is given to this Part, in order that it may be filed as a separate compilation.

PART V.

PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

The following Extract from the Proceedings of the Governor of Bombay, in the Legislative Department, is published for general information :—

Abstract of the Proceedings of the Council of the Governor of Bombay, assembled for the purpose of making Laws and Regulations, under the provisions of "THE INDIAN COUNCIL'S ACT, 1861."

The Council met at Poona on Wednesday, the 23rd July 1873, at noon.

PRESENT:

His Excellency the Honourable SIR PHILIP EDMOND WODEHOUSE, K.C.B., Governor of Bombay, *Presiding*.

His Excellency the Honourable SIR AUGUSTUS ALMERIC SPENCER, K.C.B.

The Honourable A. ROGERS.

The Honourable J. GIBBS.

The Honourable the ADVOCATE GENERAL.

The Honourable MUNGULDASS NUTHOOBHROY, C.S.I.

The Honourable COLONEL M. K. KENNEDY.

The Honourable SIR JAMSETJEE JEJEEBHROY, Bart., C.S.I.

The Honourable E. W. RAVENSCROFT.

The Honourable NARAYAN VASUDEVJEE.

The Honourable J. K. BYTHELL.

The Honourable GUNPUTRAO TATYA SAHIB PUTWARDHUN.

Affirmation of Office, &c.,
taken by Mr. Ravenscroft.

The Honourable Mr. Ravenscroft took the usual affirmation of Office and declaration of allegiance to Her Majesty.

The following papers were presented to the Council :—

1. Letter from the Secretary to the Government of India returning, with the assent of His Excellency the Governor General signified thereon, the authentic copy of the Bombay Municipal Bill of 1872.

Papers presented to the Council.

2. Letter from the Secretary to the Government of India returning, with the assent of His Excellency the Governor General signified thereon, the authentic copy of the Bombay Port Trust Bill.

The Council then proceeded with the Bills and Orders of the day.

The Honourable Mr. Rogers, in moving the first reading of Bill No. 2 of 1873 (a Bill to alter and amend the law relating to Hereditary Village Officers,) said—Sir,—I have the honour to move the first reading of this Bill. As may be seen from the Statement of Objects and Reasons, this Bill, in the first instance, was drafted by a committee, under the instructions of Government, for the purpose of making a settlement with regard to the status of all district and village hereditary officers. Owing, however, to a subsequent change in the law that part of the Bill relating to hereditary district officers became unnecessary, and only those sections have been retained which relate to the village officers. The committee consisted of two Revenue Commissioners and some of the most experienced Collectors in the presidency, and the experience of these gentlemen is our guarantee that everything which is really necessary under the circumstances has been provided for in this Bill. The importance of the measure as affecting the rural population of this presidency can hardly be exaggerated, as every village will probably be brought under its influence. There are two principal classes for whom this legislation is to be provided. One is the class of officers whose appointments are strictly hereditary in most parts of the country, and the other is that class of village servants whose offices, though they cannot, strictly speaking, be called hereditary, yet by custom have almost become regarded as such. In the former class we find the patell, or head man of the village, and the koolkurnie, or village accountant. I need hardly explain to the Council what the duties of these individuals are, but perhaps I may be allowed to do so briefly in order that the public may know what the main objects of the Bill are. The patell, as I have said, is the head man of a village, who under our system is chiefly entrusted with the duty of representing the villagers in all transactions between the villagers and the Government. The patells are divided into what are called revenue patells and police patells—the former of whom have the general charge of the village revenue, while the latter have charge of the police arrangements of the village. In some instances the offices of revenue and police patell are combined. The koolkurnies are the hereditary village accountants, and I need scarcely say that they as well as the patells are of great importance in our system of revenue administration. Throughout nearly the whole presidency the ryotwari system of revenue management prevails, and the responsibility of seeing that all the records relating to the realisation of Government revenue are properly kept is in the hands of these hereditary village accountants. The other class of village officers is a much more numerous one, and some of them render service only to the State, while some render service only to the villagers. It may be as well if I describe a few of these services. Those mentioned in Mr. Gooddine's Report on the Deccan Village Communities are as follows:—

Sootar.—The carpenter is at the head of the artisans, his services being most in requisition: he makes up and mends all wooden implements for agricultural purposes, the owners finding the material;

Lohar.—The smith makes and repairs the ironwork for all agricultural instruments, the owners finding the material;

Chambar.—The shoe-maker makes all leathern halters, whips, ropes, and bands for agricultural purposes, the owners finding the leather;

Nhawee.—The barber must shave all the farmers and artisans, —to the Mahars he merely lends a razor. He must attend the patell's wedding, at which he expects to receive a turban.

I need not give you the details of all the other village servants, but briefly they are the pureet, or washerman; the bhut, or village astrologer, who casts nativities, and keeps the farmers informed of the proper time for sowing and reaping; the gooroo, or officiating priest of the temple; the moolla, or Mussulman priest; the sonar, or goldsmith; the bheel, or village watchman; the kolie; the mang, the rope and basket maker; the mahar, or guardian of the village.

Such is a brief description of the classes for whom we now propose to provide legislation. This Bill will settle what has never been settled before by legislation on the subject. Under the old regulation No. XVI. of 1827 the settlement of village wuttuns was contained in the sections from seventeen to twenty. These sections were found to be unsuitable

and after a good deal of correspondence Act XI. of 1843 was passed, sections seventeen and eighteen of the old regulations were cancelled and sections nineteen and twenty were allowed to remain on the statute-book. The Act of 1843 applies both to district hereditary officers and to village hereditary officers. It has, however, been found to be almost unworkable in practice. One great reason for this state of affairs with regard to the officers in my first class—viz., that of the patells and hereditary accountants—has been the custom which has sprung up of taking service in rotation. Section 4 of Act XI. of 1843 merely laid down in general terms that when the performance of the duties was claimed in rotation by different sharers they should nominate some one to serve, and in the event of their not so nominating, the Collector or other controlling officer should exercise the power of selection, but it provided no rules for fixing the order of rotation, and it has become the practice, not unnaturally, for the Collectors to determine the matter for themselves. I have looked over the correspondence which led to the passing of the Act, and have come to the conclusion that it was intended that service by rotation should not be allowed at all—in fact, it was so proposed in the draft Act which was sent down from the Supreme Council, although that proposal was subsequently modified and the words in Section 4 of Act XI. of 1843 adopted. The Supreme Government, in their desire that service in this manner should be prevented as far as possible, proposed that it should be competent to the Collector to refuse any nomination to service by rotation. That, however, as I have said, was not finally agreed to, and the Act was carried in such a form as to permit service by rotation in those places where that custom was found to exist. One of the chief objects of the present Bill is to remove all doubts upon that head. At present, if there is any dispute about service by rotation, the Collectors have to decide as well as they can, without being guided by any legal authority, and the result is that their decisions might be taken into the civil court and upset at any time. At present there is no authority who can initiate a settlement of any of these wuttuns. By the order of the Executive Government there has lately been prepared a register of all the wuttuns laying down the order of rotation in which services shall be performed, and thus endeavouring to settle the numerous complaints relating to wuttuns that continually occur. I have heard it said that there is an idea that the present Legislature, by this Bill, intends to interfere with the prescriptive rights of village officers. But that is very far from being the case. It is of the greatest importance to Government that its own concerns in the villages should be managed legally and properly, and it is the interest of Government to settle these wuttuns in such a manner as shall allow people to remain happy and contented, and not to be continually litigating, as the present state of the law allows them to do. It is not in any way meant to set aside the system of service by rotation where it actually exists. We find in practice that owing to there being no law on the subject Collectors in different parts of the country have taken various ways of settling matters, and we propose that the Executive Government shall have power to issue an authentic register of all village wuttuns, by which it shall be determined once and for all in which of them the practice of service by rotation shall be recognised, and what and in whom vested shall be the order of such rotation where it is admitted. Before concluding I may point out a few of the sections of the Bill which affect the main principles of the measure. It has always been the custom—at all events since Regulation XVI. of 1827 was passed—to set apart certain portions of the emoluments of those hereditary offices for the performance of duties by one or more persons who may be selected from the wuttun as officiators. That power is continued by Section 3. Section 4 contains provisions which will settle disputes with regard to emoluments claimed by the hereditary officers of the inferior class (such as mhars and dthers) from the villagers as a matter of private arrangement. It has been found in some places where our system of revenue surveying has rendered the registration of land so perfect that there is very little use for the services of some of these hereditary officers, that the villagers who have been in the habit of paying them with grain or some small perquisite now refuse to pay them anything at all; and it is suspected that the mhars, seeing no probability of recovering their rights, or what they imagined to be their rights, except by the expensive process of going to law, have resorted to the poisoning of cattle. This section will provide a simple means for remedying this state of affairs. By it a punchayet will be appointed, and the matters in dispute will thus be satisfactorily settled. In Section 7 the existing power that there is by law to set aside both lands and allowances for the purpose of remunerating officiators is continued. Section 9 gives the power which I have alluded to already—that is, that it shall be the duty of the Collector to determine who is the head of a family, or branch of a family holding any wuttun, or (where the wuttun is shared among various persons) the number and names of the principal sharers and the value of their shares in fractions of a rupee. A subsequent section

—Section 33—lays down that the civil court cannot entertain “any suit questioning the decision of the Collector under this Act, or the orders of the Revenue Commissioner or Government thereon, except in so far as the rights of private parties *inter se* to recognition as the holder of any headship of a family or principal share are concerned.” The Collector, in the first instance, is to prepare the register, and it is to be hoped from the manner in which inquiries will be conducted by them in the presence of the villagers themselves that there will seldom be any reason for referring to civil courts at all. As it is a matter of no importance to Government who may be the head of a family, of course parties will be at liberty to dispute that point in court. By Section 10 the Collector is to determine the number of officiators required, and what persons are entitled to serve. Section 11 was introduced for the purpose of softening the blow, as it were, in some cases where it was found necessary to appropriate a large portion of the hereditary revenue of the wuttun to the remunerating of the officiators. The remainder of the sections to Section 23 are mostly subsidiary to those main points which I have mentioned. Section 24 establishes a different procedure in the case of the hereditary officers and that of the inferior village servants, whose offices, as I have said, are not properly hereditary, although custom has made them to be so considered. Section 25 lays down the manner in which records shall be kept of the lands and allowances belonging to hereditary officers, and when the Bill goes into Select Committee it will very likely be necessary to introduce another section by which registers, which have been already made, shall be legalised so far as they may be consistent with the rules which Government, under this Bill, have power to frame. Perhaps some persons may take exception to the powers granted to the Collector under Section 7 to summarily take possession of land held by officiators if, before the passing of this Act, that land is in the occupation of other than the person performing the service. Under the old law the alienation of any wuttun is most distinctly forbidden, and reasonably so, seeing that these wuttuns exist in lieu of services rendered. Therefore, if it is found to be the case that people have illegally alienated any portion of these official emoluments, and others have been so foolish as to take these emoluments as security for debts or so forth, the Collector ought to have the power granted under this section in order to take possession summarily of these lands or assess them to their full value. The case of mortgagees is provided for under Clause three of the section which I am now alluding to. I need only add that it is the intention of Government to give every publicity to this Bill, and ample time will be allowed in order that its provisions may be known throughout the length and breadth of the mofussil. Government have no wish to do anything in this Act which shall interfere with the hereditary rights of the wuttundars except in so far as these concern the interests of Government and the property set apart on behalf of their service. I beg to propose that this Bill be now read a first time,

The Bill was read a first time and referred to a Select Committee, composed of
 The Honourable Mr. MUNGULDASS NUTHOOBHoy,
 The Honourable Mr. NARAYEN VASUDEVJI,
 The Honourable GUNPUTRAO TATYA SAHIB PUTWURDHUN,
 The Honourable Mr. RAVENSCROFT, and
 The MOVER.

The Honourable Mr. Rogers having proposed that the Committee should be instructed to report within six weeks, His Excellency the President enquired if it was necessary to have six weeks for this purpose. In reply

The Honourable Mr. Munguldass Nuthoobhoy said that he thought the proposed time was necessary and observed that although the Council may gain official information from the Revenue Collectors, it ought also to know what the people who are or will be affected by the Bill have to say. Most of these people are comparatively ignorant he said, and he would suggest that Government should direct all the Mamlutdars to take steps to publish this measure in the language of the districts and also to inform the people to make their representations within a prescribed time.

The Honourable Mr. Rogers remarked that as this measure had been very long delayed already, he thought it was of considerable importance that it should be passed this session. If Mr. Munguldass' suggestions could be carried out so as not to interfere with this object, he would not object to them.

The Honourable the Advocate General called attention to the fact that according to the rules of the Council it would form a question whether the report of the Select Committee should not be translated into the vernaculars of the Presidency.

His Excellency the President said that that would cause still further delay, and suggested that the report of the Select Committee should be returned within a fortnight in order to permit of the report being circulated and the Bill passed this session.

The Honourable Mr. Munguldass said that his apprehension was that according to the rules of the Council parties interested in a measure could not give evidence before the whole Council—evidence being only permissible before the Select Committee, and that if the Committee's time for reporting be shortened in the manner proposed the mouths of a number of people whose interests were affected might be shut.

His Excellency the President recalled the procedure which was adopted during the consideration of the Municipal Bill last session when almost up to the moment of its being passed a number of objections were received against it. He thought that looking to the apparent necessity of passing this session the Bill now before the Council, the Select Committee should proceed at once to take the best information; that the discussion by the Council should commence as soon as the Committee presented their report; and that the third reading of the Bill should stand over for a little in order to give time to persons to send in objections against it. If six weeks were now given to the Select Committee to report, the passing of the Bill might be postponed indefinitely, although, according to what he had been told by experienced gentlemen to whom he was bound to give every credence, there was the greatest necessity for the Bill being passed at once. The questions raised by the Bill had been discussed for many years, and it could scarcely be supposed that any more information on the subject could be collected now. The Bill would not enact anything oppressive to the wuttun-holders, and there was no disposition on the part of the Government to deprive them of anything which they possessed at present. All that was desired was that their rights should be put upon a legal footing.

The Honourable Mr. Gibbs concurred with the remarks made by His Excellency the President.

The Honourable Mr. Narayen Vasudevji hoped that at least a month might be allowed to the Select Committee. The provisions of the Bill would affect the vested interests of a large number of people in this Presidency, and besides this as the decision of the Collector in many cases would be final, he deprecated any hasty action.

After some further discussion,

His Excellency the President suggested that the Committee should report within three weeks, and that the Bill be taken into consideration on the 20th August; and that the report should be translated into Canarese, Marathi, and Guzerathi, and widely circulated.

Select Committee to report on the Bill within 3 weeks.

This was agreed to.

The Honourable Mr. Ravenscroft, in moving the first reading of Bill No. 3 of 1873 (a Bill to alter and amend the Bombay Municipal Act of 1872) said that this very short measure was introduced to legalise the arrangements made for the first election, because it had been found impracticable, owing to the period at which the Bombay Municipal Act came into operation, to adhere strictly to the

precise terms of the Act. In the exercise of the powers conferred upon the Government by the 306th Section of Act III. of 1872, which related that the Act should come into operation from a date hereafter to be notified by the Governor in Council, and that it should be lawful for His Excellency to declare the day before which the payment of the municipal rates should qualify a person to be appointed a member of the Corporation and to vote at the election of any such members, also that His Excellency should fix the time for electing, nominating, and appointing the members and officers of the Corporation, the necessary dates and days had been duly notified in the *Government Gazette*. And under Section 8 of Act III. of 1872 the next municipal election after the present one must be held in 1875 on some date before the 26th July of that year. But ratepayers have not usually paid their full amount of house, police, and lighting rates so early in the year as that month, and consequently this Bill had been introduced, declaring that the "Municipal Corporation shall be rate-payers, residents in the city of Bombay, who have attained the age of twenty-five years, and shall have severally paid, before some day to be declared by notice in the *Government Gazette* by the Governor in Council, the following municipal rates for the year next preceding the election," &c.; also that the thirty-two members to be elected by rate-payers will be eligible if they have "severally paid, before some day to be declared by notice in the *Government Gazette* by the Governor in Council, the municipal

rates specified in Section 4 of this Act for the year next preceding the election to the amount of not less than fifty rupees," while the elections shall take place at such date as may be fixed by the Governor in Council. The Honourable the Advocate General, the fresh dates and days having as before mentioned, been duly notified on the *Government Gazette*, had pointed out that a third section should be added to the Bill in the following terms:—

"III.—This Act shall be deemed to have come into force on the 20th day of June 1873; and any election of members of the said Municipal Corporation that may take place according to the provisions of this Act between the said 20th day of June 1873 and the passing of this Act shall be valid, and shall have the same effect as if made according to the provisions of the Bombay Municipal Act of 1872."

He (the Honourable Mr. Ravenscroft) agreed that this section was desirable, and he, therefore, begged to add it to the two sections of which the Bill previously consisted. As a matter of form he asked His Excellency the President to suspend the standing orders, so as to permit of the Bill being passed at once.

The standing orders having been suspended, the Bill was read a second time and considered in detail. The 3rd Section as suggested by the Honourable the Advocate General was added to the Bill.

Bill read a third time and passed.

The Bill was then read a third time and passed.

The Honourable Mr. Gibbs moved that Bill No. 4 of 1873 (a Bill to legalise certain payments made from the proceeds of the fees levied under (Bombay) Act IX. of 1863) be read a first time. He said that the reason for the introduction of this Bill was briefly this—to formally legalise certain payments and advances which had from time to time been made from the Fund raised under the Cotton Frauds' Act for objects connected with the introduction of new sorts of seed and the general improvement of the cultivation of cotton, but regarding which doubts had arisen as to whether they came within the letter of the Act, viz. Bombay Act IX. of 1863. Section 13 of that Act stated that the funds were to be appropriated by His Excellency the Governor in Council solely to the carrying out of the objects of that Act. By a strict reading the object of the Act was solely to stop cotton frauds, although it had been intended when it was passed that the funds should be applied, when necessary, to the introduction of superior descriptions of cotton. Certain payments for this purpose had actually been made, but as doubts about the strict legality of this procedure had been expressed, the present Bill had been prepared. The honourable gentleman moved that the Bill be read a first time and referred to a Select Committee, consisting of—

The Honourable Mr. BYTHELL,
The Honourable Mr. RAVENSCROFT,
The Honourable Sir JAMSETJEE JEJEEBHoy,
The Honourable Mr. NARAYEN VASUDEVIJ, and
The MOVER,

their report to be submitted within two weeks.

His Excellency the President doubted the necessity of referring Bills to Select Committees when no special points were involved in them. This, he said, was contrary to the usage of Parliament at home, where Bills were submitted to Select Committees only when there was something special to be discussed.

The Honourable Mr. Gibbs remarked that it was advisable in the present case that the Bill should be referred to Committee, because there was a question whether certain payments which were made towards a collection of samples of cotton for Bombay Exhibition were justified under Act IX. of 1863 as it already stood. The Select Committee would also have to consider a certain statement which would be submitted to them.

The Honourable the Advocate General asked if there was any necessity at all for the Bill. Could His Excellency the Governor not dispose of the matter in his executive capacity?

The Honourable Mr. Ravenscroft said that the original resolution passed by Government on the subject stated that the disbursements did not seem to have been made in strict accordance with law, and therefore to set aside all doubt, it would be advisable to agree to the Bill.

After some further discussion it was decided that there was no necessity to refer the Bill to the Select Committee, but that it should be read a second time at the next meeting of Council.

Bill read a first time.

The Bill was then read a first time.

The Honourable Mr. Rogers moved for permission to withdraw the Mofussil Boilers Inspection Bill (No. 1 of 1873). The reason for the withdrawal was that this Bill should be incorporated in another Bill which it is intended shall supersede the present Bombay Boilers Act. In that Act a serious defect had been discovered, viz., that while the law provided for the inspection of steam boilers it did not provide for the inspection of the men who work them, so that a great means of protecting the lives of people was wanting. In the Bill which it was contemplated to introduce, in order to cure the defect just alluded to, the Bill now withdrawn would be incorporated, so that one Boilers Act would apply to Bombay and the Mofussil.

Bill withdrawn.

Leave was given and the Bill withdrawn accordingly.

The Honourable Mr. Rogers moved that a Select Committee be appointed to examine and report on the petitions relating to the Burial and Burning Grounds Bill (No. 7 of 1870). Since the Bill was before the Council last session a great many petitions had been sent to Government against it, and it was necessary that the complaints should be inquired into carefully. The Select Committee proposed were—

The Honourable Colonel KENNEDY,

The Honourable Sir JAMSETJEE JEJEEBHoy,

The Honourable Mr. MUNGULDASS NATHOOBHoy,

The Honourable Mr. NARAYEN VASUDEVJI,

and (in place of the original introducer of the Bill, the Honourable Mr. Tucker) the MOVER.

The Honourable Mr. Gibbs thought that the contemplated Mofussil Municipalities Bill would render this Burial and Burning Ground Bill unnecessary.

The Honourable Mr. Narayen thought that the Bill should be rejected altogether, because it was only likely to create dissatisfaction.

After a few remarks the motion was carried and the Select Committee were instructed to report within a fortnight.

His Excellency the President then adjourned the Council to 11th August 1873.

By order of His Excellency the Governor in Council,

JOHN NUGENT,

Acting Under Secretary to Government.

Poona, 23rd July 1873.