



Bombay Government Gazette.

Published by Authority.

WEDNESDAY, 17TH SEPTEMBER 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 Bill, together with the Statement of Objects and Reasons accompanying it, is published in accordance with Rule 15 of the Rules for the Conduct of Business at Meetings of the Council of His Excellency the Governor of Bombay for making Laws and Regulations:—

Bill No. 12 of 1873.

A Bill to amend the Law relating to Hereditary Offices.

WHEREAS it is expedient to declare and amend the law relating to hereditary offices, it is hereby enacted as follows:—

PART I.—PRELIMINARY.

I.—This Act may be called the “Bombay Hereditary Offices Act.”

It extends to the Regulation Districts and to all villages therein whether alienated or otherwise.

It shall come into force on

II.—The enactments mentioned in the Schedule hereto annexed shall be repealed to the extent specified in the third column of the said Schedule.

III.—In this Act, unless there be something repugnant in the subject or context,

“Watan” means the moveable or immoveable property assigned for providing remuneration for the performance of the duty appertaining to a Hereditary Office.

Illustration.

A right to take skins of deceased cattle may be the Watan of the village Mhar.

v.—84

“Hereditary Office” means every office held hereditarily, for the performance of duties connected with the administration of the land revenue or of the village Police or with the settlement of boundaries or other matters of civil or village administration. The expression includes such office even where the right to demand the services originally appertaining to it has ceased.

“Watandar” means a person having a hereditary beneficial interest in a Watan. It includes a person adopted by an owner of a Watan or part of a Watan: Provided that in cases of adoption made since any village came under Government, the Government has assented to such adoption.

It includes a person claiming by inheritance or adoption as above provided under such adopted person.

“Officiator” includes a deputy appointed under this Act.

PART II.—WATANS AND PROFITS OF WATANS.

IV.—No Watandar shall sell, mortgage, or otherwise alienate or assign any Watan

or part thereof to any person not a Watan-dar of the same Watan estate without the sanction of Government.

V.—Watan assigned as remuneration of an officiator and the profits of Watan so assigned shall not be alienated or assigned to any person whatever without the sanction of Government.

VI.—When it shall appear to the Collector that any Watan property registered under Section 19 of Regulation XVI. of 1827, and whether assigned by Government as remuneration of the officiator or not, has been before the date of this Act coming into force alienated from the beneficial possession of the Watandars, it shall be lawful for the Collector after recording his reasons in writing to decree that the profits of such Watan property from the date of decree shall belong to the Watandars.

VII.—If such Watan property be land, it shall be lawful for the Collector to assess it at a rack-rent and the amount so assessed shall be considered as the profits.

VIII.—When it shall appear to the Collector that any such Watan property registered under Section 19 of Reg. XVI. of 1827 or under this Act has after the date of this Act coming into force been so alienated, it shall be lawful for the Collector after recording his reasons in writing summarily to resume such property, or to assess it at a rack-rent, as he may think fit, and it shall thence forward be part of the Watan in question.

IX.—When by decree of any Court made before the date of this Act coming into force, any land being Watan, but not heretofore assigned as remuneration of the officiator, has been given into the ownership or beneficiary possession of any person other than as officiator for the time being, it shall be lawful for the Collector to assess the said land at a rack-rent on the determination of the interest declared or created by the decree of the said Court, if it appears to Government that it is expedient so to do in order to increase the remuneration of the officiator. The amount so assessed shall in such case be applied towards such increase.

X.—Watan assigned as remuneration of an officiator and the profits of such Watan are not liable to process of any Civil Court.

On receipt of a certificate under the hand and seal of a Collector to the effect that certain property designated therein is Watan so assigned, the Court shall remove any attachment or other process placed on, or set aside any sale of or affecting such property or the profits thereof.

PART III.—COMMUTATIONS OF WATANS.

XI.—It shall be lawful for a Collector for reasons to be stated in writing to combine two or more hereditary offices whether in the same or different villages. From the date of the passing of the order of the Collector, the Watans appertaining to such combined hereditary offices shall be deemed to have become combined into one Watan estate.

XII.—The Collector may, with the consent of the holders of a Watan given in writing, relieve them and their heirs in perpetuity of their liability to perform service in consideration of such conditions as to resumption of the Watan or profits of the Watan or part of such Watan or profits as may be agreed upon by the Collector and such holders.

XIII.—Any such settlement made before the date of this Act coming into force by any Collector or other officer acting on behalf of Government with the holder of any Watan shall have the same force as if made under this Act.

Every such settlement as is alluded to in Section 12 shall be binding upon both Government and the holder or holders of the Watan and his or their heirs and successors.

The word "holder" includes any sole owner or the whole number of joint owners or any person dealt with as representative of the persons beneficially interested or entered as such in the Government books at the time of the settlement.

XIV.—When a Watan or part thereof consists of payments of whatever description whether in money or kind made by Jaghirdars, Inamdars, Mewasi Chiefs, or others owning or occupying immoveable property wholly or partially free from assessment, it shall be lawful for the Collector from time to time to assess the amount of such payments recoverable, upon an average of the ten years next preceding.

XV.—When a Watan or part thereof consist of a right to levy in money or kind directly from individuals, it shall be lawful for the Collector to cause the nature and extent of such right and of the duties to be performed and the persons, families or classes liable to make payment and to perform the duties to be defined in writing by a Punchayet of five persons, whereof two shall be appointed by the villagers, two by the Watandars and one who shall be Sir-Punch by the Collector. The decision

shall be in accordance with the opinion of the majority of the Panchayet, provided that in case the villagers or the Watandars fail to nominate members within a reasonable time to be specified by the Collector, the Collector shall appoint such members as may be required to constitute a Panchayet of five.

Provided also that in case the Panchayet do not come to a decision within a reasonable time to be fixed by the Collector, the Collector shall himself pass a decision.

The decision of the Panchayet or of the Collector as above provided shall be final and binding on all persons or classes named in it.

XVI.—Except as above provided, when the profits of a Watan or part thereof are of fluctuating amount, or are payable in kind, it shall be lawful for the Collector to fix the amount payable by or on behalf of Government on an average of the past ten years immediately preceding the date of this Act coming into force as may seem just either in kind or money.

XVII.—Any such settlement as is described in Sections 14, 15 or 16 of this Act made before the date of this Act coming into force by a Collector or other officer of Government shall have the same force as if made under this Act.

XVIII.—Settlements made after this Act comes into force, shall be made for periods of and at the expiry of the said periods it shall be lawful for the Collector to again fix the amount on the average of the period aforesaid; for further periods of years in succession.

XIX.—Nothing in this Act contained shall affect the right of Government to conclude any settlement or any lawful conditions which may be agreed upon.

PART IV.—CREATION OF NEW WATANS.

XX.—When a Watan has lapsed from long abeyance or has been confiscated or otherwise resumed by Government, or when a Watan does not exist, or when the right of any person or family to hold a Watan is not established, it shall be lawful for Government to create a hereditary office and to assign as Watan such property of Government as to Government may seem fit.

Such Watan and hereditary office shall be subject to all the provisions of this Act, and the Watandars shall exercise the powers and perform the duties conferred and imposed by this Act and any other Law for the time being in force.

PART V.—REMUNERATION OF OFFICIATORS.

XXI.—Subject to the provisions of this Act and of any other law for the time being in force regarding Service Inams, Cash allowances and Pensions, it shall be the duty of the Collector to fix the annual emoluments of officers appointed under the provisions of this Act, and to direct the payment thereof to the officers for the time being.

It shall be lawful for the Collector for this purpose to assign a Watan or part thereof or the profits of a Watan or part thereof towards the emoluments of officers. With the sanction of Government the Collector may as occasion arises alter the assignment and may increase or diminish it in value.

XXII.—All assignments, agreements, orders, sales and securities of every kind made by the person entitled to any emolument whatever as officer in respect of any money not payable at or before the making thereof on account of any emolument whatever as officer or for giving or assigning any future interest therein are null and void.

PART VI.—REPRESENTATIVE WATANDARS.

XXIII.—The duties appertaining to any hereditary office shall be performed by representative Watandars or by deputies as hereinafter provided and by no other persons.

XXIV.—It shall be the duty of the Collector to determine what persons shall be recognized as representative Watandars for the purpose of this Act, and to register their names under the following rules.

XXV.—When after enquiry it appears to the Collector that with regard to any hereditary office it has been customary during a period of not less than thirty years immediately before the date of this Act coming in force for the Watandars or some of them to perform the duties in rotation, the custom shall be recognized and continued.

XXVI.—Where the aforesaid custom with regard to any hereditary office has existed for a period less than the aforesaid period it may be recognized, if the majority of the Watandars interested make written application to that effect at the time before the completion of the register to be prepared by the Collector as herein provided.

XXVII.—When after enquiry it appears to the Collector that no custom of rotation of performance of the duties of a hereditary office exists, or when application shall

not have been made as above provided, the aforesaid custom shall not be recognized.

XXVIII.—In determining what persons shall be recognised as representative Watandars, the Collector shall take into consideration the practice heretofore observed during the period of thirty years immediately preceding the date of this Act coming into force in appointments to the hereditary office to which the Watan in question appertains.

XXIX.—If it shall appear to the Collector that the practice has been to appoint a member of one family only or a member of one distinct branch of a family only, the Collector shall register the name of the head of such family or of such distinct branch of a family only as representative Watandar and no other person.

XXX.—If it shall appear to the Collector that the practice has been to appoint a member of each of several families or of each of several distinct branches of families, the Collector shall register the name of the head of each of such families or distinct branches of families as representative Watandars and no other persons.

Provided that when after investigation in writing it shall appear to the Collector that the interest of any family or of any distinct branch of a family is or has become less than one-eighth share of the Watan, the Collector shall call upon the Watandars belonging to such family or distinct branch to nominate one member thereof as representative, and the Collector shall register as such the name of the person so nominated by the majority of Watandars. This proviso does not apply to Matidar Patels in Gujerat,

XXXI.—On their failure to nominate within a reasonable time, not less than thirty days, to be fixed and notified to them by the Collector, he shall himself determine what person is the head of the family, and shall register the name of such person as representative Watandar under the above proviso.

XXXII.—Except as otherwise provided in this Act, or in any other law for the time being in force relating to Service Inams, Cash allowances and Pensions, the Collector shall not recognize, or register as representative Watandar any person who is not a lineal descendant or descendant by adoption sanctioned by Government of some person whose name appears in the Collector's records on the occasion of a previous appointment to a hereditary office as

a sharer in the office, or Watan attached thereto.

XXXIII.—When any representative Watandar dies it shall be the duty of the village Police Patel to report the fact to the Collector: and the Collector shall, if satisfied of the truth of the report, register the name of the eldest son or other person appearing to be nearest heir of such Watandar as representative Watandar in place of the Watandar so deceased: Provided that a certificate of heirship granted by a competent Court shall until revoked or set aside be conclusive proof of the facts stated in such certificate. When any representative Watandar is under the age of eighteen years, the guardian of the minor shall exercise all powers and perform all duties conferred and imposed by this Act.

PART VII.—ROTATION PERIODS OF SERVICE.

XXXIV.—In cases to which Sections 25 and 26 of this Act apply the Collector shall determine and register the periods during which each representative Watandar shall as such be entitled to perform the duties of the hereditary office. For this purpose he shall take into consideration:

The practice heretofore observed during the period of thirty years immediately preceding the date of this Act coming into force as regards order and terms of rotation;

The entries in the Collector's or village books as to the proportions in which the Watan of the office in question is enjoyed by the several families or distinct branches;

The statements of the representative Watandars as to the above matters, and any agreements which they may have executed among themselves: and any such statements or agreements made by their ancestors or other persons under whom they inherit.

Provided that in no case shall the period during which the representative Watandar is entitled to perform the duties of the office be fixed at less than ten years, nor in the case provided for in Section 26 less than for life.

Provided also that in the event of the representative Watandar officiating dying within the time fixed, it shall be competent for the Collector, anything contained in this part notwithstanding, to appoint that representative Watandar whose period of rotation comes next to perform the duties for the remainder of the unexpired term or during the minority of the heir of the de-

ceased Watandar, but not so as to exceed the unexpired term.

XXXV.—This part and Parts VI., X. and XI. shall not apply to hereditary offices of lower degree than Patel or Kulkurnee, nor to Watans appertaining to such offices.

PART VIII.—INFERIOR VILLAGE HEREDITARY OFFICES.

XXXVI.—This part applies only to hereditary village offices of lower degree than that of Patel or Kulkurnee.

XXXVII.—The Collector is empowered, subject to the general control of the Revenue Commissioner and Government,

(a) To register the names of individual Watandars as holders of the office or to register it as held by the whole body of Watandars.

(b) To determine when individual names are so registered, the rights, duties, and responsibilities among themselves of the persons so registered: and the mode in which they shall be selected to perform the duties, whether by selection by the Collector or by defined rotation, or by election by the Watandars or otherwise as may be expedient.

(c) To require, in cases where the registration is made in the name of the whole body of Watandars, that they appoint so many fit persons to perform the duties as may to the Collector seem expedient; such appointment to be made within a reasonable time to be previously fixed and notified to them by the Collector. In default of such appointment being made the Collector may himself appoint.

(d) To pass order in regard to appointment, remuneration, period of service, suspension, fining up to five Rupees and dismissal of persons officiating, the grant of leave of absence and other matters of discipline not expressly provided for by this or any other law for the time being in force.

PART IX.—THE REGISTER.

XXXVIII.—The Collector shall prepare and keep a Register of all immoveable property and allowances appertaining to hereditary offices.

The Register shall be in the form which Government may from time to time prescribe. It shall distinguish the lands and allowances in consideration whereof liability to perform service exists from those the holders whereof are exempted from service by virtue of a settlement made by the authority of Government.

XXXIX.—In recording lands and allowances the holders whereof are exempt from service, the Collector shall specify,

(a) The area of the lands, the Survey number and assessment, the quit-rent leviable and the net revenue alienated by Government.

(b) The amount and nature of the cash or other allowances and the source from which they are payable.

(c) The terms of the settlement under which the exemption is enjoyed.

(d) The names of the parties to such settlement with Government as indicated in the Sunnuds issued to them.

(e) Such other particulars as Government may from time to time order to be recorded.

XL.—In recording lands and allowances in consideration whereof liability to serve still exists, the Collector shall specify,

(a) The area of the lands, the Survey Number and Assessment, the quit-rent if any leviable and the net revenue alienated by Government, the amount and nature of the cash or other allowances, the source from which they are payable and the land and allowances assigned for the remuneration of officiators.

(b) The names of the representative Watandars and the names of the families or distinct branches which they belong to.

(c) Whether the service is performed in rotation, and if so the order in which the representative Watandars are to succeed each other and the share possessed by each.

(d) The number of officiators required to perform the duties.

(e) The nature of the settlement of inferior village Watans referred to in Part 8.

(f) Such other particulars as Government may from time to time order to be recorded.

XLI.—The Register shall be corrected or added to on the occasion of any change being made in the office or the Watan or of a new appointment of a representative Watandar.

PART X.—OFFICIATING WATANDARS AND DEPUTIES.

XLII.—Where the practice of service by rotation exists, the representative Watandar according to his turn as herein before provided and elsewhere the sole representative Watandar shall, on being so required by the Collector, either perform the duties of the hereditary office himself if a fit and proper person, or shall appoint a fit and proper person as his Deputy.

XLIII.—The Collector may determine the number of officiators required for the proper performance of the duties of any office from time to time, and for this require-

ment may either call upon the representative Watandar aforesaid to appoint a sufficient number of fit and proper persons as Deputies or may himself appoint as deputy or deputies one or more of the Watandars registered as beneficially entitled to not less than one-eighth share of the Watan.

XLIV.—If any requisition of the Collector under Sections 42 or 43 of this Act is not complied with within two months from the date thereof, the Collector may himself appoint a deputy or deputies.

XLV.—The Collector may refuse to accept the service of any representative Watandar, otherwise entitled to serve, or of any deputy nominated by him, if the Collector has good reason to believe that such Watandar, or deputy is unfit by reason of physical or mental inability, or by reason of other employment or calling, to perform efficiently the duties of the office.

XLVI.—The Collector may also on account of physical or mental incompetency, remove from office any representative Watandar, or any deputy. In such case the representative Watandar entitled so to do, may appoint a deputy.

XLVII.—The Collector may if he see fit allow a second nomination of a deputy to be made in case of his rejecting the first person nominated as deputy.

XLVIII.—The representative Watandar, if otherwise entitled and fit, may himself perform the duties in place of any deputy removed, or rejected by the Collector.

XLIX.—When a representative Watandar has been rejected, or removed on account of grave misconduct, the Collector himself may nominate and appoint a deputy.

L.—No female shall perform in person the duties of any hereditary office, but if a representative Watandar, she may appoint a deputy.

LI.—During the suspension of an officiating representative Watandar or deputy, the duties shall be performed by a deputy appointed by the Collector whether a Watandar or not.

LII.—In all other cases except as provided in Section 56 of this Act no stranger shall be appointed as deputy whether by the Collector or a representative Watandar if there be a Watandar of the same Watan fit and willing to serve.

LIII.—When the Collector appoints a deputy, it shall be for a term of five years.

When a representative Watandar appoints a deputy, it shall be for a term not less than five years or for life: Provided al-

ways that the term of appointment of a deputy shall cease and determine on the right of his principal ceasing.

Provided also that the appointment of a deputy on behalf of a minor shall terminate with the minority.

LIV.—In the event of temporary absence or illness, a representative Watandar officiating may arrange with any fit person for the temporary conduct of the duties and shall be liable in penalties for the acts of the substitute.

PART XI.—PENALTIES.

LV.—It shall be lawful for the Collector to punish officiators for misconduct or neglect of duty by suspension from office for a period not exceeding six months, or by fine not exceeding five Rupees or not exceeding the fourth part of the annual emolument provided for the officiator. In such cases the order of the Collector shall be final.

LVI.—It shall be lawful for the Collector in case of malversation, fraud, the wilful framing of incorrect records or other grave misconduct of an officiator to remove him from office and appoint a deputy, selected from the Watandars or not as to the Collector may seem expedient.

LVII.—Whoever is removed from office under the preceding Section shall be ineligible for re-employment in any Hereditary office except with the sanction of Government and in case he be a representative Watandar, and of his period of performing the duties recurring, the Collector shall appoint a deputy under the provisions of Part X.

LVIII.—When an officiator is convicted by any Criminal Court or by the Collector under the provisions of this part of any offence in the discharge of his official duties, it shall be lawful for Government to direct the forfeiture of the whole or part of the Watan and profits.

LIX.—All deputies appointed under this Act are subject to the same rules in performance of the duties of their offices, and to the same penalties except as otherwise provided as the representative Watandars officiating, and in the case specified in Section 58 of this Act it shall be lawful for Government to direct the forfeiture of the Watan whether the officiator guilty of misconduct be a Watandar or a deputy.

LX.—No order shall be passed under this part except upon perusal of the judgment of a Court or after investigation recorded in writing.

PART XII.—MISCELLANEOUS.

LXI.—All hereditary officers of whatever denomination whose liability to serve

has not been commuted are legally bound to render such service as has been customary or as is required by law.

LXII.—All records which have been or may be prepared by any hereditary officer in pursuance of the duties of the office, or by order of his superior officer or Government or the Native Government, are hereby declared to be the property of Government and the Collector is hereby empowered to demand their production.

LXIII.—With regard to hereditary offices not inferior to that of Patel or Kul-kurnee, it is hereby declared that the principal Watandars, that is to say, those recognized by the Collector as entitled to not less than one-eighth share in the Watan shall have the privilege of signing the abstract of village land and revenues or other village papers on which it may be customary that they sign. The above restriction as to amount of share does not apply to Matidar Patels in Gujerat.

PART XIII.—PROCEDURE AND APPEALS.

LXIV.—No order under Part 3 directing commutation of a Watan or under Part 5 assigning the emolument of officers, or under Part 6 determining whether a custom of rotation exists and what persons should be registered as representative Watandars or under Part 7 determining the rotation periods of service, shall be passed unless after an investigation recorded in writing and a proper opportunity afforded for the hearing of claims and the production of evidence.

LXV.—The proceedings of the Collector shall be under the general control of the Revenue Commissioner appointed under Regulation V. of 1830, or other Law in force for the time being and of Government.

LXVI.—The Collector may require any investigation under Part 8 of this Act, to be made by a Mamlutdar or Mahalkari, but the decision thereon shall be made by the Collector.

LXVII.—No appeal shall lie from any order made under this Act before final order, nor in any case not expressly provided in this Act.

LXVIII.—Except as herein before provided, an appeal shall lie from every decision passed after investigation in writing by a Collector, or by an Assistant Collector, or Deputy Collector empowered under the provisions of Bombay Act I. of 1868.

Such appeal, if from the decision of an Assistant Collector, or Deputy Collector so empowered, shall lie to the Collector,

and shall be made within sixty days from the date of the order appealed against.

Such appeal, if from the decision of the Collector, shall lie to the Revenue Commissioner, and shall be made within sixty days from the date of the order appealed against.

In computing the above periods, the time required to prepare a copy of the order or decision appealed against shall be excluded.

LXX.—Every petition of appeal shall be accompanied by a copy of the order or decision appealed against: and it shall be competent for the officer before whom the appeal is presented to reject the appeal if on perusal of the petition it appears to him that there is no sufficient ground for questioning the correctness of the decision, or for interfering with the order appealed against.

LXXI.—Government may call for and examine the record of the proceedings of any officer for the purpose of satisfying itself as to the legality or propriety of any order passed, and may reverse or modify the order as shall seem fit, or if it seem necessary, may order a new enquiry.

LXXII.—No order passed under this Act shall be subject to the revision of, or be liable to be set aside by any Civil or Criminal Court.

LXXIII.—Service of any notice given under this Act shall be deemed to have been made by the notice being affixed in writing to the wall of the village Chowree or other public place in the village.

LXXIV.—All recoveries of profits, assessments, emoluments or penalties under this Act may be made as provided by any law for the time being in force relating to the recovery of the land revenue.

LXXV.—Government may frame rules not inconsistent with this Act for the guidance of its officers in cases not expressly provided for, and may from time to time modify or revoke any such rules.

LXXVI.—Government shall have power in cases where doubt exists to determine what duties appertain to any hereditary office.

LXXVII.—Nothing in this Act contained shall be deemed to affect Bombay Act VIII. of 1867 or any other law for the time being in force, defining the duties and powers of village officers or imposing penalties for misconduct, and all references in such laws to Act XI. of 1843 shall be taken as to this Act.

SCHEDULE.

Regulation XVI. of 1827 Sections 19 and 20.
Regulation V. of 1833, Section 4.

Act XI. of 1843. The whole Act.
Bombay Act III. of 1862. The whole Act.

STATEMENT OF OBJECTS AND REASONS.

The present Bill is introduced in the place of Bill No. 2 of 1873 which has now been withdrawn—to obtain the same objects and for the same reasons. In its main principles it differs but little from the provisions of the Bill withdrawn, but in the phraseology employed, in the classification of its provisions and the arrangement of its sections it varies from and is much clearer and more concise than Bill No. 2 of 1873.

(Signed) A. ROGERS.

17th September 1873.

By order of His Excellency the Governor in Council,

JOHN NUGENT,

Poona, 17th September 1873.

Acting Under Secretary to Government,