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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 COUNCILS' Act, 1861."

The Council met at Poona on Monday, the 29th September 1873, at noon.

P R E S E N T :

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 MUNGULDASS NUTHOOBHoy, C.S.I.

The Honourable Colonel M. K. KENNEDY.

The Honourable Sir JAMSETJEE JEJEEBHoy, Bart., C.S.I.

The Honourable E. W. RAVESCROFT.

The Honourable NARAYAN VASUDEVJEE.

The Honourable GUNPUTRAO TATYA SAHIB PUTWURDHUN.

The Honourable Colonel W. C. ANDERSON.

The Hereditary Offices Bill considered in detail.

The Council proceeded with the consideration of the Hereditary Offices Bill in detail.

His Excellency the PRESIDENT—We proceed to-day with Section XXXIV. as printed.

The Honourable Mr. ROGERS—I think we ought to strike out any allusion to Section XXVI. in the first part of this section, because the Collector need not take into consideration whether the custom of rotation has existed or not for thirty years so long as the wuttundars wish it to be introduced.

The Honourable Mr. GIBBS suggested that the words "thirty years" should be struck out from line 9.

His Excellency the PRESIDENT thought it would be better to say "a period *not less than thirty years*," &c. He wished to make the first section apply to cases under thirty years, and which were not referred to by Section XXVI.

After a brief discussion His Excellency the PRESIDENT moved that the second paragraph of the section should be omitted, and the following sentence substituted:—"The practice observed during the period immediately preceding the date of this Act coming into force, whether such practice shall have existed for a period of not less than thirty years or for a period less than thirty years as the case may be."

The amendment was agreed to.

The fifth paragraph was struck out, and the following proposed to be substituted as a new Section:—"In the event of the wuttundar officiating dying before the expiration of his fixed period of service his heir shall be entitled to officiate for the remainder of that period."

The Honourable Mr. GIBBS—I understand that it was intended that the period of rotation should not in any case be less than ten years, and that in the event of an officiator dying during his period of service his heir should be entitled to complete the period of service.

The proposed amendment was agreed to.

His Excellency the PRESIDENT did not think the latter part of Section XLIII. in accordance with the general principle of the Bill, as he did not think a Collector should have power to elect a deputy wuttundar to officiate. The section as it stood at present gave the Collector absolute power to put in his own nominee without consulting any of the persons interested—a power which he objected to.

The remainder of the section from "deputies" in line 8 was struck out, and the section as amended was agreed to.

Regarding Section XLV. the Honourable Mr. GIBBS said—The Collector may refuse to accept the service of any representative wuttundar if he thinks he is physically or mentally incompetent to perform the duties of the office, but I believe it is suggested that the Collector should also have power to reject on the score of moral infirmity.

His Excellency the PRESIDENT objected. A definition of morality would then be required.

The Honourable Mr. RAVENSCROFT—But I suppose it will at all events be necessary to provide against the appointment of a man of known bad character.

His Excellency the PRESIDENT—Even that would require to be agreed to very cautiously. If a man were to get into a slight dispute, that might be construed into known bad character, and yet I do not think such an offence should disqualify a wuttundar from serving.

The Honourable Mr. ROGERS suggested that bad character should be judged of by the length of term of imprisonment a man was sentenced to, say six months.

The Honourable Mr. MUNGULDASS—I must object to that. For mere abuse a man may be sentenced to two years' imprisonment, and certainly when abuse among a certain class of natives is so rampant, I think it would be very hard to disqualify a man if he happened to commit the offence.

His Excellency the PRESIDENT—I think that in the rules we would enumerate the offences for which a man may be deprived of his right of service, and in the meantime I suggest that we should insert the words "of known bad character" after "is" in line 6.

The amendment was agreed to.

In consequence of the wording of Section XLVI. being considered defective, the Honourable Mr. GIBBS proposed the substitution of the following section:—"In the event any wuttundar entitled to officiate becoming physically or mentally incompetent the Collector shall in the former case call upon him to appoint a deputy, and in the latter case shall himself appoint a deputy. In the event of a deputy becoming physically or mentally incompetent the wuttundar entitled to officiate shall be called upon to appoint another deputy in his place."

The new section was agreed to.

His Excellency the PRESIDENT then proposed that the following section should be substituted for Section XLVII.:—"In the case of any nomination of a deputy the Collector shall allow a second nomination to be made in case of his rejecting the first nomination, and if he shall reject the second nomination he shall himself appoint a deputy."

This was agreed to.

The Honourable Mr. ROGERS having suggested that the wuttundar should be rejected or removed if of known bad character, the words "as being of known bad character" were inserted after the word "rejected" in line 2 of Section XLIX.

The Honourable Mr. ROGERS proposed the following new section LV. :—"Where any family distinct from that of the original wuttundars has enjoyed the right to serve as deputies for the latter, such practice shall be recognised, and the provisions of this Act shall apply to such deputies equally as if they had been the original wuttundars, and it shall be lawful for the Collector to exact service from and to provide for the remuneration of the officiator from such distinct family out of the wuttun in the same manner as if he had belonged to the original family of wuttundars." The honourable member asked the Honourable Colonel Anderson whether he had ever heard of any hereditary practice such as this section referred to?

The Honourable Colonel ANDERSON replied in the affirmative.

The Honourable Mr. ROGERS mentioned that the section had been framed from actual information given by the Collector of Dharwar.

The Honourable Mr. GIBBS asked whether there were any hereditary deputies in patellships and koolkurnieships?

The Honourable Mr. ROGERS answered in the affirmative and said that these were the very cases about which Mr. Robertson told him.

The section was then agreed to.

Regarding Section LV. (as printed) the Honourable Mr. MUNGULDASS observed that under Act XI. of 1843 the action of the Collector had to be sanctioned by the Governor in Council, but according to this section as it stood the Collector might do as he pleased without opposition.

The Honourable Mr. NARAYAN thought that in cases of suspension of officiators for a period of six months, an appeal to the Revenue Commissioner should be provided for.

Should a whole wuttun be forfeited for the misconduct of an officiator? or merely the life-interest in it of the offending officiator?

The Honourable Mr. GIBBS suggested that the subject should stand over until the penal sections were being considered.

The Honourable Mr. RAVENSCROFT thought Section LVII. unnecessary, considering that previous sections excluded persons of "known bad character" from being elected.

The Honourable Mr. ROGERS thought it advisable to allow the section to remain, as it would work beneficially in hanging *in terrorem* over careless officiators in hereditary offices.

The section was agreed to.

His Excellency the PRESIDENT considered Section LVIII. to be a very severe one. He did not think that on an officiator being convicted in a Criminal Court of any offence in the discharge of his official duties, Government should direct the forfeiture of the whole or part of the wuttun and profits.

The Honourable Mr. ROGERS said that the question was fully discussed when Act XI. of 1843 was passed, and this penalty was in that Act.

His Excellency the PRESIDENT nevertheless thought it was very harsh.

The Honourable Mr. MUNGULDASS—In the Select Committee we did our best to get the honourable member to withdraw this section because we considered it harsh.

The Honourable Mr. NARAYAN—It is certainly unjust to render a whole wuttun and profits liable to forfeiture because a man who has only a life-interest in the wuttun has committed some fault. It must be remembered that minors as well as officiators are interested in the property, and if their interests are swept away because of the fault of a person who has only a life-interest in the wuttun the procedure cannot be just. If a Hindoo cannot sell ancestral property, surely ancestral rights cannot be alienated in this manner.

The Honourable Mr. ROGERS—It must not be forgotten that this power cannot be put in force except for offences of no ordinary importance—namely, malversation or fraud.

The Honourable Mr. MUNGULDASS—I remember there being a provision, showing that where a man has been found guilty of such offences the property concerned reverts to the minor.

The Honourable Mr. GIBBS—I think that where a villager has been convicted of any of these offences his life-interest, at all events, ought to be confiscated.

The Honourable Mr. RAVENSCROFT—At the time when we took possession of the country a system of joint security prevailed. One of the men of a village had, on behalf of his fellow-villagers, to give a jampli-bund—that is, joint security—that no crimes would be committed in that village. If a crime were perpetrated, notwithstanding this undertaking on the part of the villagers, the people in the village were subjected to pay fines in proportion to the enormity of the offence committed. I repeatedly, when a magistrate in Guzerat, had to fine a village Rs. 1,000 in which an offence had been committed, and this, too, notwithstanding that the real offender was never found out. The same principle is laid down in this section, where a village wuttun must be held responsible for the offences committed by officiators. I think the system, however, is a relic of the old times of feudalism which we may modify now-a-days.

The Honourable Mr. GIBBS—There is a good deal of force in what the Honourable Mr. Ravenscroft has said. I remember that after Sir Charles Napier conquered Sind he found that the result of punishing the murder of women with severity led to female self-destruction prevailing to an alarming extent. This was a novelty, but he met the case by an arrangement with the villagers, holding them responsible for every case of female suicide that occurred in each village. This had the effect of reducing the evil to a minimum.

The Honourable Mr. NARAYAN—Such a practice might be justified in a province which was in a peculiarly unsettled state, but I do not think it is called for in the greater part of this Presidency.

The Honourable Mr. ROGERS—The section, I repeat, applies only to cases in which fraud or malversation is committed, and a patel cannot commit any of these offences without the other wuttundars being cognisant of it.

The Honourable Mr. NARAYAN—Whatever we do, we should only touch life-interest. The present section is extremely arbitrary. If a patel commits a fraud in the measurement of a field, and the other villagers are not aware of it, why should the penalty for such an offence be visited upon minors, who had nothing to do with the transaction?

The Honourable Mr. ROGERS—During the last twenty-five years I do not believe that more than three wuttuns have been confiscated in this Presidency.

The Honourable Mr. NARAYAN—Take the case of an English peer. Can his children be deprived of their interest in the estate in entail for an act of grave misconduct on his part?

The Honourable Mr. GIBBS having answered in the affirmative,

The Honourable Mr. NARAYAN said that that would be done only in cases of treason.

The Honourable Mr. ROGERS proposed that the section should stand.

His Excellency the PRESIDENT asked whether this power existed before the Act of 1843?

The Honourable Mr. ROGERS said that at all events the Act was fully discussed before that Act was passed, and the Government of India gave its sanction to it.

The Honourable Mr. RAVENSCROFT—If fraud or malversation were committed in a wuttun, all persons concerned in the wuttun would know of it, I think.

The Honourable Mr. NARAYAN—I doubt that. I had an interest in a wuttun in the Concan, but I never took any interest in it. The emoluments are something like Rs. 136 per annum, and that is divided among twenty-six sharers. Now a fault might be committed of which all these could not possibly be cognisant.

The Honourable Mr. RAVENSCROFT—There is no doubt that Collectors and district officers place great reliance upon a section of this description, because it induces patels and others to be very careful. In my opinion this section will never work harshly.

The Honourable Colonel ANDERSON—The section is exactly in accordance with the ancient customs of the country.

The Honourable Mr. NARAYAN—That is not a very good argument. Although formerly men were hanged for committing forgery, yet scarcely the same punishment would be inflicted now.

The Honourable Colonel KENNEDY—I feel that the section is harsh, and I would vote for the punishment being confined to forfeiture of life-interest.

After some further discussion, the Honourable Mr. NARAYAN moved the omission of the words “whole or part of the wuttun and profits,” in lines 6 and 7, and the substitution of the words “life-interest of such officiator in the wuttun and profits.”

The Council divided :—

Ayes—6.

Noes—3.

His Excellency the Honourable Sir AUGUSTUS ALMERIC SPENCER.

The Honourable MUNGULDASS NUTHOOBHOY.

The Honourable Colonel M. K. KENNEDY.

The Honourable Sir JAMSETJEE JEJEEBHOY.

The Honourable NARAYAN VASUDEVJEE.

The Honourable GUNPUTRAO TATYA SAHIB PUTWURDHUN.

The Honourable J. GIBBS.

The Honourable A. ROGERS.

The Honourable Colonel W. C. ANDERSON.

The motion was carried.

The Honourable Mr. RAVENSCROFT declined to vote.

Lines 9 and 10 of Section LIX. were struck out and the following words added after the word “the” in line 8:—“life interest in the wuttun and profits of the representative wuttundar by whom such deputy was appointed, and likewise the life interest, if any, in the wuttun and profits of such deputy.”

The Council then reverted to Part VIII.

After a brief discussion the words “the Revenue Commissioner and” were struck out from lines 2 and 3 of Section XXXVII. The words:—“to perform the duties as may to the Collector seem expedient” were also struck out, and the words:—“as may be necessary to perform the duties which the Collector may assign to them severally and jointly” substituted. The words :—“up to five rupees” were struck out from line 28.

Regarding Section XXXVIII., the Honourable Mr. ROGERS thought that a distinct form of register ought to be agreed to, so that it might be shown that it was not intended to register the lower classes of village officers.

The Honourable Mr. GIBBS was of opinion that it was perfectly well understood that the lower description of officers were not to be registered, but he objected to the Council fixing upon any particular form of register, as that might be altered in a short time.

The Honourable Mr. ROGERS—If we agree to a register now, Collectors will be able to point out its defects and make suggestions before the third reading comes on.

The Honourable Mr. GIBBS—Even at the third reading, I do not think it would be advisable to agree to a certain form of schedule, for, however complete we may consider it to be, it will be sure to want altering in a short time. Look at the Sind Act schedule, and the Council will have an example of how often a schedule may have to be amended.

The Honourable Mr. ROGERS—We must lay down in this register those people who are entitled to officiate besides describing properties in it.

His Excellency the PRESIDENT suggested that two registers instead of one should be referred to in the section.

The Council approved of the suggestion, and the section was amended as follows :—“Registers” was substituted for “a register,” and the latter paragraph was altered to read thus—“The registers shall be in the form which Government may from time to time prescribe. There shall be one register of the lands and allowances in consideration whereof liability to perform service exists, and another of lands and allowances in respect of which no such liability exists.”

In line 1 of Section XXXIX. "In recording" was struck out, and the words "the register of lands and allowances" substituted.

In the first line of Section XL. "In recording" was struck out, and the words "the register of" inserted.

On the suggestion of the Honourable Mr. ROGERS paragraphs *c.* and *d.* were amended as follows:—the words "and if so the order in which the representative wuttundars" should be struck out, and the following words inserted after "rotation":—"or not: if not performed in rotation the name of the person or persons solely entitled to serve and the capacities in which they are so entitled to serve: if performed in rotation, the order in which the representative wuttundars or wuttundars entitled to officiate." As paragraph *d.* the following words should be inserted:—"The share possessed by each representative wuttundar."

The Honourable Mr. GIBBS thought that all this was already provided for.

The Honourable Mr. ROGERS said that this was merely a description of the register and he did not see why any objections should be raised to it?

The amendments were agreed to.

In line 1 of Section XLI., the words "Under the preceding section" were inserted after "Register."

His Excellency the PRESIDENT then adjourned the Council.

By order of His Excellency the Governor in Council,

JOHN NUGENT,

Acting Under Secretary to Government.

Poona, 29th September 1873.