



Bombay Government Gazette.

Published by Authority.

FRIDAY, 11TH OCTOBER 1878.

 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 COUNCILS ACT, 1861."

The Council met at Poona on Thursday the 26th September 1878, at noon.

P R E S E N T :

His Excellency the Honourable Sir RICHARD TEMPLE, Bart., G.C.S.I., C.I.E.,
Governor of Bombay, *Presiding.*

His Excellency the Honourable Sir CHARLES STAVELEY, K.C.B.

The Honourable J. GIBBS, C.S.I.

The Honourable the ADVOCATE GENERAL.

The Honourable E. W. RAVENSROFT, C.S.I.

The Honourable Colonel W. C. ANDERSON.

The Honourable DOSABHOY FRAMJEE, C.S.I.

The Honourable M. BALFOUR.

The Honourable Colonel C. J. MERRIMAN, C.S.I., R.E.

The Honourable MORARJEE GOCULDASS, C.I.E.

Paper presented to the Council. The following paper was presented to the Council, viz. :—

Letter from the Secretary to the Government of India, Legislative Department, No. 1228, dated 14th September 1878, conveying the assent of His Excellency the Viceroy and Governor General to the Bombay Abkari Bill (No. 2 of 1878).

The Honourable Mr. Gibbs moved the first reading of Bill No. 7 of 1878,—a Bill to

Mr. Gibbs moves the first reading of Bill No. 7 of 1878, to amend the Bombay Municipal Act.

remove doubts as to the time when certain portions of the Bombay Municipal Act Amendment and Continuance Act, 1878, were intended to come into force. Mr. GIBBS said :—Your Excellency and the other members of the Council will remember that on the 20th July last, at a meeting of this Council, I explained the reason why I did not bring forward a Bill which had been prepared to amend the new Municipal Act. The reasons I gave were that Government, having had the benefit of the opinion of the Honourable the Advocate General and another learned counsel, were of opinion that there was no occasion to legislate for the period at which the Act came into operation, but since then it has unfortunately turned out that, by some mistake in the Municipal Commissioner's Office, the lists which he (the Municipal Commissioner) is bound under the Act to prepare and publish by the 1st July, were not so published, but were issued from the Municipal Commissioner's Office only on the 1st July, and did not appear in the public papers until the 2nd July. This having been brought by the Municipal Commissioner to the knowledge of the law officers of the Corporation, they arrived at the conclusion that it was quite open to any one interested in the coming elections to take objection either to a voter or candidate on account of the notice of these lists not having been published in the public papers before the 1st July. The only way of correcting this blunder of the Municipal Commissioner's Office is to bring in a short Act setting aside the doubt which has arisen on that point, and clearly setting forth the fact that the lists having been published on the second instead of on the first day of July, should not be invalidated, but that the elections should be just as good as if the lists had been published on the 1st July. The necessity for a short Bill having arisen in this way, advantage was taken of the opportunity to make clear a point which has led to some legal consultations, as to the meaning of the Act coming into operation "on the date of the passing thereof." Those words have led to some doubts in the minds of counsel, and so a section has been added to this short Bill to clear that point up thoroughly. There is another matter which has turned up in the meantime and on which counsel's opinion has been taken by the Municipality; and the opinion of one learned counsel was entirely in favour of the Municipal Commissioner's view of the case, while another learned gentleman, although favouring that view, still said he thought there was considerable doubt on the point. The point in question is whether the new schedule came into operation with the Act "on the date of the passing thereof," or whether it does not come into operation until the 1st January next. There being, as I said, a necessity for a short Act, this question also has been taken into consideration, and a section has been added to clear up the doubt. How the doubt arises and the reasons for legislation on this point I will leave my honourable friend the Advocate General to explain. To these few observations I would merely add that the preparation for the Municipal elections being now about to take place, it is advisable that this Bill should become law as soon as possible; and for that reason, and because it does not affect the interests of the people of Bombay in any way, except perhaps the lawyers, in that it will prevent actions being brought, I shall ask Your Excellency to suspend the Standing Orders so as to allow the Bill to be passed through all its stages to-day.

The Honourable ADVOCATE GENERAL :—Your Excellency, I think I can in a very few words put before the Council an explanation of the difficulty, referred to by the Honourable Mr. Gibbs, with regard to the levying of town duties. The Council are probably aware—at all events those gentlemen who are connected with the Municipality will be aware—that by the provisions of the Act the Municipal Commissioner must prepare before the close of each year an estimate of Municipal expenditure for the ensuing year, which is laid before the Town Council, who make an estimate of the duties which will be requisite to provide for the expenditure; and then, under Section 115 of the Act, it is provided that at a special general meeting the Corporation shall fix the rates and town duties to be levied for the year following. It is provided also that the rates so levied shall be the town duties leviable for the next ensuing year. Now, the town duties for the current year were fixed by the Corporation, in pursuance of that Section 115, at their meeting last November. At that time, under the old Act, town duties were leviable in respect of metals amongst other matters, and the town duties fixed last November for the year following of course included the duties leviable upon metals. But in course of the preparation of the Amendment Act, the question arose, I think in Committee, as to whether it would not be desirable to omit metals from being subject to town duties and to put firewood into the schedule instead; and that amendment was adopted, and the Act, so amended, passed. The result was that in the Amended Act a new schedule was inserted, in which firewood

was included in place of metals. Thus, on the face of the amended Act, it would appear that metals will not be subject to any duty under it, but that firewood would be substituted : but upon the construction of the Act I think there can be no doubt whatever, that it was the intention of the Legislature that the duties fixed by the Corporation in November last should be continued on the articles then made subject to them for the ensuing year. There is no power given by the Act to enable the Corporation to fix town duties at any period of the year except at the meeting in November ; and the difficulty of course is this—if it be held that in consequence of the amending Act metals are no longer liable to town duties, the Corporation would lose all the duties it would otherwise derive from metals, and which are necessary to provide for the expenditure for the year, and it would not be able this year to levy any duties whatever on firewood to meet the loss of the duties on metals. Had it been the intention of the Legislature, in altering the schedule, to exempt metals from town duties during the present year, provision would have been made for levying duties on firewood in substitution. It has been suggested, in consequence of the doubt which has arisen, that the Act should be amended in the way proposed in the Bill now before the Council.

Bill read a first time.

The Standing Orders having been accordingly suspended, the Bill was read a first time.

The Honourable Mr. GIBBS :—It is unnecessary for me to take up the time of the Council with further explanations, because the Statement of Objects and Reasons contains every thing that I might say upon the present occasion. I have already explained the necessity for bringing the Bill in, and that the object and principle of the Bill is to prevent any difficulties arising during the remainder of the present year and the beginning of the next year, as regards Municipal matters generally, and particularly as regards the elections which are about to take place. With these observations, I beg to move that the Bill be read a second time.

The Bill read a second time and considered in detail.

The motion was put by His Excellency the President, and carried, and the Bill was read a second time.

The Bill read a third time and passed.

On the motion of the Honourable Mr. Gibbs, the Bill was next considered in detail and read a third time and passed.

His Excellency the President then adjourned the Council.

By order of His Excellency the Honourable the Governor in Council,

J. MONTEATH,

Acting Under Secretary to Government.

Poona, 26th September 1878.