

THE



Bombay Government Gazette.

Published by Authority.

SATURDAY, 16TH OCTOBER 1875.

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 23rd September, at noon.

PRESENT :

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

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

The Honourable A. ROGERS.

The Honourable J. GIBBS.

The Honourable Major-General M. K. KENNEDY.

The Honourable E. W. RAVENSCROFT.

The Honourable Colonel W. C. ANDERSON.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK.

The Honourable NACODA MAHOMED ALI ROGAY.

The Honourable Khan Bahadur PADAMJI PESTONJI.

The Honourable DONALD GRAHAM.

The Honourable Rao Bahadur BECHERDASS AMBAIDASS.

Affirmation of office, &c., taken by Mr. D. Graham and Rao Bahadur Becherdass Ambaidass.

The Honourable Mr. Donald Graham and the Honourable Rao Bahadur BECHERDASS AMBAIDASS took the usual affirmation of office and declaration of allegiance to Her Majesty.

Papers presented to Council.

The following letters were presented to the Council:—

Letter from the Secretary to the Government of India, conveying the assent of His Excellency the Governor-General and Viceroy to the Bill to amend Bombay Act I. of 1865.

Letter from the Secretary to the Government of India, communicating the sanction of His Excellency the Governor General to the Bill for enabling Government to levy tolls on public roads and bridges with the proposed clause as to exemptions from toll being taken into consideration by the Local Legislative Council.

The Council then proceeded to the consideration of the Bills and Orders of the day.

The Honourable Mr. RAVENSCROFT, in moving the first reading of Bill No. 2 of 1875

Mr. Ravenscroft moves the first reading of the Bill to amend law relating to the Land Revenue administration of the city of Bombay. Explains that Bill is introduced because old regulation had been found deficient, and that a separate Bill for the town and island of Bombay is necessary because revenue administration system there differs from the system pursued in the Mofussil.

(a Bill to amend the law relating to the Land Revenue administration of the city of Bombay), said:—It was originally intended to devote a chapter in the Land Revenues Bill introduced last January to the town and island of Bombay; but on further consideration it was ascertained that the land revenue administration of the rest of the Presidency was not similar to the system carried on in the town and island of Bombay, and it was therefore considered advisable to include the provisions required for the town and island of Bombay in a separate Bill. This separate Bill he now laid before the Council. Some of the members of this Council were aware that the law regulating the land revenue of the city of

Bombay at the present time was Regulation XIX. of 1827. At the time that Regulation was passed no doubt its provisions were very suitable to the purposes for which it was intended. But as time went on, it was found that several modifications and alterations were requisite, because the old Regulation was not adequate to meet all the purposes for which it was originally passed. With the advice and concurrence of the Revenue Officers of Bombay, the Bill which he had now the honour to introduce had been drawn up with great care. The principles embodied in Regulation XIX. of 1827 had to a great extent been embodied in the present Bill No. II. of 1875. Certain alterations and modifications had, however, been introduced because they were essentially necessary; but all the amendments had been framed solely with the legitimate view of maintaining the lawful interests of the city at the same time that the rights of land-holders were left uninjured. When the Bill came to be discussed section by section, honourable members might differ as to particular portions of it, but the general principles would doubtless be approved. He might mention that there was one part of the Bill which was wholly new, and on this he would say a few words. It related to the Survey recently completed under the able management of Colonel Laughton and to the maintenance of the boundary marks which were found necessary for demarcating the different properties. This survey was carried through at great expense, and many of the survey records were most invaluable documents. It was important to maintain these records properly, and it was still more necessary to maintain due efficiency regarding the boundary marks. Different sections in this Bill had been framed to meet these contingencies. The provisions generally of the Bill had been borrowed from the law on the subject which had been in existence in the Mofussil for some time, and which had been found to answer its purpose well; and he had no doubt that the Bill now introduced to the notice of the honourable members of the Council would be found to carry out the views of those by whom the Bill had been prepared, and by whom alterations in the existing Regulation were considered necessary. It was hardly necessary, he presumed, to explain that the Bill was meant to apply solely to the city of Bombay. It was therefore essential that a full discussion of the measure should take place in Bombay, where the persons interested resided, and where moreover the survey records were kept. With the concurrence, therefore, of His Excellency the President, he would propose that nothing further be done with the Bill at present than to refer it to a Select Committee, whose report should be considered along with the Bill in Bombay.

His Excellency the PRESIDENT put the motion, that this Bill be read a first time.

The Honourable Rao Saheb VISHVANATH MANDLIK said he had no objections to offer against the Bill at this stage. He thought the principle that the Revenue Administration law for the city of Bombay required revision might be accepted, but there were some matters both of procedure and substantive law in regard to encroachments, (amongst others,) which

would require very careful consideration. The Select Committee would doubtless devote their attention to these matters, and in the meantime he would say nothing further about the Bill.

The Honourable Khan Bahadur PADAMJI PESTONJI remarked that Section 28 would require very great consideration.

His Excellency the PRESIDENT—Greater consideration in favour of those who have made encroachments?

The Honourable Khan Bahadur—No; but I think that the section as it stands is too severe. This, however, can be considered in Select Committee.

The Honourable Mr. ROGERS—With regard to what the Honourable Khan Bahadur has said about the penalties upon encroachments, I need only mention that the sections have been founded on the actual practice of a great many years.

The Honourable Khan Bahadur—There is a difference between practice and law.

The Honourable Mr. GIBBS—We are only going to make the practice into law.

Bill read a first time and referred to a Select Committee.

The Bill was read then a first time.

The Honourable Mr. RAVENSCROFT begged to move the appointment of the following Select Committee on the Bill:—The Honourable Mr. Rogers, the Honourable Major-General Kennedy, the Honourable Rao Sahib Vishvanath Mandlik, the Honourable Mahomed Ali Rogay, and the mover.

The motion was agreed to.

It was agreed that the Select Committee should report on the 8th December 1875, and that the report should be translated into Guzerathi and Marathi.

The Honourable Mr. GIBBS having remarked that a petition on the Bill had been received, it was agreed that the petition be referred to the Select Committee.

The Honourable Major-General KENNEDY, in moving the first reading of Bill No. 3 of 1875 (*a Bill for enabling Government to levy Tolls on Public Roads and Bridges in the Presidency of Bombay*), said that it had been previously before the Council in a different form, and would probably have become law by this time had it not been pointed out by the Government of India that this Council had gone somewhat beyond its powers in repealing Act XV. of 1864. The Bill had been returned by His Excellency the Viceroy in order to be amended in this respect, and therefore the part relating to Act XV. of 1864 had been omitted in the present Bill. Opportunity had at the same time been taken to make a further amendment, so as to enable Government to exempt such persons as they may think fit from the payment of tolls. In other respects the Bill was almost identical with the previous Bill.

The Honourable Rao Saheb VISHVANATH MANDLIK said he had carefully read the discussions which had taken place on this Bill when it was previously before the Council, and also those which had taken place upon it since. It was, no doubt, correct to say that this Bill was now, so to speak, coming only technically before the Council, because of a certain error for which, perhaps, this Council was scarcely responsible. But at the same time, since the responsibility now rested with the Council of passing the Bill in its present form, he thought it right to say that there were several matters in it to which he entertained very grave objections. He objected, in the first place, to Section 2, which was a sort of retrospective section—the Legislative remedy for such errors as this section sought to cure. In the next section he objected to lines 8 and 9—that is to say, he thought it advisable that the funds which had been expended on making roads under Act III. of 1869 should not be made the cause of again taxing the people by levying tolls upon these very roads a second time. He understood that it was difficult to make a clear distinction between provincial roads and local funds roads, and also that there was a scarcity of funds for roads; but his objections were, first of all, to tolls in general as a source of revenue, and in the next place, to tolls being placed too near each other. In other countries there might be tolls every six or eight miles; but he thought that that was no justification of repeating what he considered an error in any revenue administration. He would pay double the amounts laid down in the schedule, but it was not these amounts that people feared; it was having to pay them so often. Between Paladpur (or rather Kineshvar) and Nagotna there were five tolls, and moreover there were municipal tolls. Now, that

was a state of things which should be guarded against in this country, where it is not so much the amount to be paid as the number of times it was required to be paid, which requires to be seriously considered. As regards taxing foot passengers, he noticed that the Council had actually gone beyond Act VIII. of 1851; but as the present Bill was in accord with the Act of the Government of India (Act XV. of 1864), it might be assumed that the members of this Council were legislating in the footsteps of the higher Legislature. But in his opinion this Council was to a certain extent an independent Legislature, and except in those cases where taxes on foot passengers would be justifiable—such as in the case of bridges over navigable rivers where people had formerly to pay ferries—he did not think a foot passenger's tax should be sanctioned by the Council. It might be said that there was power reserved to the Executive Government to exempt persons, and that as a matter of fact no tax upon foot passengers was levied except at Matheran and some other places, but here the law was going to be entered on the statute book, and if it was not necessary, he did not see why the Council ought again to legalise it.

After some discussion, it was decided that it was unnecessary to refer the Bill to a Select Committee, as all the points raised by the Honourable Rao Saheb could be discussed in full Committee of the Council.

Bill read a first time.

The Bill was then read a first time.

The Honourable Mr. GIBBS begged to move the first reading of Bill No. 4 of 1875

Mr. Gibbs moves the first reading of the Bill to enable Municipality of Bombay to subscribe Rs. 50,000 towards the reception of His Royal Highness the Prince of Wales.

(*a Bill to empower the Municipal Corporation of the City of Bombay to aid in the reception of His Royal Highness the Prince of Wales on the occasion of his visit to India*). He said:—The Statement of Objects and Reasons showed the objects of the Bill very clearly. The Municipality of Bombay was anxious to contribute to the Fund which had

been raised by private subscription to make a right hearty and loyal reception of His Royal Highness the Prince of Wales on his approaching visit; but doubts arose as to whether the Corporation had authority, without special legislative powers, to vote money for such a purpose. Hence the present Bill had to be introduced to enable the Municipality to subscribe towards the Reception Fund. The sum it proposed to give was Rs. 50,000, and the second section of the Bill showed by what means this sum would be recouped by payments spread over three years. The Corporation of Bombay is bound, at the end of every year, to have a cash balance of one and a half lakhs of rupees; and it was now proposed to have a cash balance at the end of 1875 of only one lakh; while at the end of 1876 and 1877 it should be one lakh and seventeen thousand rupees and one lakh and thirty-four thousand rupees respectively.

The Honourable Rao Saheb VISHVANATH MANDLIK said that speaking for himself as a member of the Corporation he approved of the Bill. It had been unanimously supported by the members of the Corporation, and it was a matter in which the native community took very great interest.

Native members, on behalf of native community, express their approval of Bill.

The Honourable Khan Bahadur PADAMJI PESTONJI said he did not think that the Corporation could spend its money in a better way than that which was indicated in the Bill.

The Honourable Mr. GIBBS said that as the Bill had the entire approval of the representatives of the native community, and moreover had the approval of the Corporation of Bombay, the Government of Bombay and His Excellency the Viceroy, he would ask His Excellency the President to suspend the standing orders and permit the Bill to be passed at once.

His Excellency the PRESIDENT suspended the standing orders, and the Council proceeded to read the Bill a second time. Sections 1 and 2, the preamble and title, were agreed to without alteration. The Bill was then read a third time and passed.

Standing orders suspended, and the Bill read first, second, and third time and passed.

The Honourable Mr. ROGERS, in moving the first reading of Bill No. 5 of 1875 (*a Bill to consolidate and amend the law relating to the powers and procedure of Māmlatdārs' Courts*), said that the objects were fully set forth in the Statement of Objects and Reasons. The members of this Council would be aware that the Collectorate in the Bombay Presidency are sub-divided into small portions which are presided over by native reve-

Mr. Rogers moves the first reading of the Bill to consolidate and amend the law relating to the powers and procedure of Māmlatdārs' Courts.

nue officers, who are therefore conveniently situated for the purpose of settling on the spot, and without loss of time, any dispute which may arise with regard to possession at any time of the year, but especially at the critical period, the monsoon. It was therefore enacted in 1864 that the Mámlatdárs should have summary jurisdiction in cases where people had been dispossessed or kept out of possession of lands, premises, trees, crops, fisheries, and of all profits arising from the same. That Act had been in force for eleven years, but it was found to be defective, inasmuch as it gave no powers to the Mámlatdárs to settle disputes with regard to the rights to wells, water-courses, &c. A delay of a few days in deciding the right to take water from a well or water-course might prevent a field from being cultivated at all, and a whole season's crop might be lost. These Mámlatdárs were as well able to settle disputes regarding the possession of water as they were with regard to land, &c. ; and this Bill therefore proposed to make it lawful for them to give immediate possession of the right to water from wells, tanks, canals, or water-courses, or of the profits arising from the same. The procedure of the courts presided over by the Mámlatdárs in these matters had been found to be defective, and the opportunity had been taken in the present Bill to amend it. Another matter which had been omitted from the original Act, and which it had now been found necessary to supply, was a provision relating to the question of costs. This Bill provided for the expenses of witnesses. It also proposed to lay down that decrees should be executed through the village officers. The only other point he would wish to notice was the question whether decrees passed in the Mámlatdárs' Courts should be subjected to appeal to the higher authorities. The framers of the Bill had come to the conclusion that as possession was merely meant to be temporary and to be carried out only until the dissatisfied party should obtain a verdict in a Civil Court, it was upon the whole advisable that the law should remain as it is, and that no appeal should lie from the decision of the Mámlatdárs.

The Honourable Mr. GIBBS said that it was advisable for the Council to know that by a decision of the High Court, before Sir Richard Couch, and

Mr. Gibbs mentions that civil courts have co-extensive powers with Mámlatdárs' Courts.

Messrs. Newton and Warden, Judges, it was found that this power of the Mámlatdárs to give summary possession was not confined to Mámlatdárs' Courts alone, for since the introduction of the Civil Procedure Code of 1859 the civil courts were invested with powers co-extensive with those of Mámlatdárs' Courts. There was therefore no occasion for a person to go into the Mámlatdárs' Courts, for a Munsiff's Court would do just as well.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK thought that the Mámlatdárs' Act should now be amended thoroughly, so that its

Rao Saheb thinks opportunity should be taken to make proceedings in Mámlatdárs' Courts similar to proceedings in Civil Courts. He also objects to village officers executing decrees of Mámlatdárs.

procedure might, as far as possible, be on a par with the amended procedure which was being devised for the Courts of Civil Judicature. Questions as to possession were often, he had found, decided by Mámlatdárs in a way which might be amusing to themselves, but which was certainly not amusing to the people who had to suffer. He also hoped

that Kulkarnies and Patels would not be permitted to have anything to do with the execution of decrees, which ought to be carried out, as they had been hitherto, by the Mámlatdárs' establishment. Local feeling in village communities was in itself a sufficient reason why village officers should not be asked to carry out the Mámlatdárs' decrees. If necessary, one or more bailiffs should be employed, and the necessary fees should be charged to suitors.

After some further discussion, the Honourable Mr. Rogers' motion was agreed to, and the Bill was read a first time.

The Honourable Mr. ROGER : proposed that the Bill be referred to a Select Committee composed of:—The Honourable Mr. Gibbs, the Honourable

The Bill read first time and referred to a Select Committee.

Colonel Ander on, Rao Saheb Vishvanath Narayan Mandlik, Fao Bahadur Becherdass Ambaidass, and the mover.

This was agreed to, as also that the Select Committee should submit their report on or before the 15th October, and that the report should be translated into Marathi, Guzerathi, and Canarese.

The Honourable Mr. RAVENSCROFT, for the reasons previously mentioned, made the following notice of motion :—That the Bill No. 10 of 1873 (Bill to provide for the Survey, &c., of the lands of the City of Bombay and Island pertaining thereto) be withdrawn.

The motion was carried.

His Excellency the PRESIDENT then adjourned the Council till Thursday, the 30th September 1875.

By order of His Excellency the Governor in Council,

W. LEE WARNER,

Acting Under Secretary to Government.

Poona, 23rd September 1875.