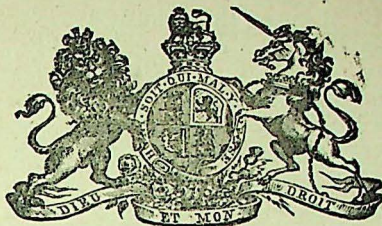


THE



Bombay Government Gazette

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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 Wednesday the 22nd July 1885.

PRESENT :

His Excellency the Right Honourable LORD REAY, LL.D., C.I.E., Governor of Bombay, *Presiding*.

His Excellency Lieut.-General the Honourable A. E. HARDINGE, C.B.

The Honourable J. B. PEILE, C.S.I.

The Honourable M. MELVILL.

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

The Honourable BUDRUDIN TYABJI.

The Honourable Ráo Bahádur KHUNDERAO VISHVANATH RASTE.

The Honourable KASHINATH TRIMBAK TELANG, C.I.E.

The Honourable F. FORBES ADAM.

The Honourable the Thákór Sáheb JASWATSINJI FUTEHSINGJI.

The Honourable J. R. NAYLOR.

The Honourable Rao Bahádur MAHADEV GOVIND RANADE.

Paper presented to the Council.

The following paper was presented to the Council :—

Letter from the Secretary to the Government of India, Legislative Department, No. 1116, dated 2nd July 1885, returning, with the assent of His Excellency the Viceroy and Governor General signified thereon, the authentic copy of the Bill (No. 5 of 1885) "to provide for the occasional appointment of a Deputy Municipal Commissioner for the City of Bombay."

The Honourable Mr. PEILE :—Sir, I move the first reading of Bill No. 1 of 1885 (“A Bill to amend the Bombay Local Boards Act, 1884, and the Bombay District Municipal Act, 1884”). It may be thought that it is rather early to amend these Acts, which only very lately came into operation. I am glad however to say that this Bill does not propose to interfere with the principles of the Acts but only to rectify some smaller matters. I will go over the Bill section by section. With regard to the first and fifth sections. In the Local Boards Act, 1884, Section 11, and the District Municipal Act, 1884, section 16, the disqualification or one of the disqualifications for membership, is as follows :—“No person convicted by any criminal court of any offence which may not be lawfully compounded” may be a member. I do not clearly recollect whence the Select Committee took these words. The idea was, of course, to confine disqualification for membership to serious offences. But it will be seen on reflection that the offences comprised in the short list in Section 345 of the Criminal Procedure Code which may be compounded at the discretion of the person injured, are not necessarily trivial offences, while on the other hand non-compoundable offences are by no means co-extensive with grave offences but rather the contrary, whilst non-compoundable offences comprise offences which are punishable by fine as well as imprisonment. Of course it was not the intention of the Legislature to disqualify for membership for such trivial but non-compoundable offences against the public as that of a banker who is fined two rupees for permitting dirty water to pass from his house into the street, which is the case of the unfortunate Mr. Liladhar Ramchandra, of Broach. Again, cases have occurred in which village patels have been disqualified by being fined under the Police Act. Similar cases may arise under the Abkari Act and others. The consideration then arises what provision should be substituted in these sections. On this point there appears to be considerable diversity of view. In the Bombay Municipal Act, 1872, disqualification is thus defined—“who shall be sentenced to imprisonment for six months or longer.” But in the Amendment Act of 1878 the words are—“is sentenced to imprisonment.” The Port Trust Act of 1879 has the same words. In the Madras Municipal Act of 1884 the words are—“has been sentenced to imprisonment for any offence;” while in the Central Provinces, N.-W. Provinces, and Oude Local Boards Acts a different principle is adopted. There it is left to the local Government to decide whether the conviction of an offence “implies a defect of character which unfits the person convicted to be a member.”

Mr. Peile moves the first reading of the Bill to amend the Local Boards Act, 1884, and the Bombay District Municipal Amendment Act, 1884.

After considering these various views, we have come to the conclusion that it will suffice to amend the sections by substituting those numbered 1 and 5 in this Bill which will run thus—“who has been sentenced by a criminal court to imprisonment”—and here I shall move to add the words “or whipping,” “for an offence punishable with imprisonment for a term exceeding six months, or to transportation, such sentence not having been subsequently reversed or quashed”. And then we add words which embody a principle the reverse of that adopted in the Central Provinces, the N.-W. Provinces, and Oude, for, instead of the Government deciding what offence implies a defect of character which unfits a man to be a member we say—“whose disqualification on account of such sentence has not been removed by an order which the Governor in Council is hereby empowered to make, if he shall think fit, in this behalf”. The Government reserves the power to decide that any such sentence shall not disqualify.

Section 2 repeals the first paragraph of Section 42 of the Local Boards Act. This is done under instructions from the Government of India at the request of the Secretary of State in Council, who is empowered by statute to subject to restrictions and provisions the power of the Governor in Council to sell and dispose of all real and personal estate vested in Her Majesty. The first paragraph of Section 42 was considered not to have regarded this point sufficiently. The section of which I am speaking was inserted in the Act principally with regard to the words “with the consent of such board”. It was thought desirable to give local boards an assurance that Government would not vest main roads and the like in them without their consent; but my honourable friend Mr. Naylor has pointed out that if the section is repealed the result will be the same, because the vesting will be a matter of agreement or contract. There is no power given by law to Government to invest a board with property against its will.

Section 3 has been inserted at the request of the Accounts Department, the words “or of a letter of credit” having been inadvertently omitted from the Act. Section 4 merely corrects a mistake in wording.

Section 4 merely corrects a mistake in wording.

That is the whole purpose of the Bill. I move that it be read a first time.

The Honourable Mr. BUDRUDIN TYABJI:—May it please your Excellency. It is certainly humiliating to have to confess that our utmost efforts to frame an Act that should stand the test of criticism should have so soon proved futile. The Local Boards Act was passed after the greatest consideration in Council and every word of its language had received deep and anxious care at the hands of the Select Committee, and yet we find that within a very few months we have to pass an amending Act. I must confess that I am responsible for this misfortune, as I believe I was the author of the phrase “non-compoundable offence,” which has been condemned and which must now be abandoned. That phrase was adopted by the Select Committee and accepted by the Council as affording a clear mark of distinction between light offences, which ought not really to disqualify candidates, and other more serious offences, which affect a man’s character and should therefore disqualify him from a seat on the Boards.

It has been shown, however, by the honourable mover that in practice considerable difficulties have arisen in working the section in question and that some very light offences have been discovered to be “non-compoundable,” whereas others of a far more serious character are found to be compoundable. Under these circumstances it is clear that the intentions of the Legislature would be frustrated unless the section in question is amended; and I am of opinion that the amendments proposed in the Bill under consideration are fair and reasonable as they tend to contract, and certainly not to widen, the sphere of disqualifications. They, in fact, permit Government to make a special order where a case is made out showing that conviction in any particular case, or class of cases, does not necessarily imply any moral turpitude. I will therefore vote for the first reading of the Bill.

The Bill read a first time.

The Bill was read a first time.

The Honourable Mr. PELLE said:—Sir, the motion having been carried, I propose, if there is no objection, that the standing orders should be suspended and that the Council proceed with the Bill. The Bill is a very simple one and considerable inconvenience may be caused to gentlemen who are members of Local Boards if there is any delay in passing it.

Standing orders suspended and the Bill read a second time.

The standing orders were then suspended and the Bill read a second time.

Bill considered in detail.

On the Bill being considered in detail the following amendments were adopted *nem con* :—

- (1). “In line 2 of Section 1 (c) after the word ‘imprisonment’ the words ‘or whipping’ were inserted.”
- (2). “In line 2 of Section 5 (c) after the word ‘imprisonment’ the words ‘or whipping’ were inserted.”

Bill read a third time and passed.

The Bill was then read a third time and passed.

The Honourable Mr. PELLE :—Sir, I now move the first reading of Bill No. 2 of 1885

Mr. Peile moves the first reading of the Bill to amend Bombay Act III. of 1874.

(“A Bill to amend Bombay Act III. of 1874”). Act III. has, as is stated in the Statement of Objects and Reasons, been in force for nearly ten years, and the settlement of village officers’ watan under its provisions is now far advanced. The principles of the settlement are well understood and accepted, and no necessity has arisen for any alteration of them, or of the construction of the Act. But though it is not necessary to make any alteration in principles, yet certain amendments have suggested themselves, which are embodied in the Bill before the Council. I may mention here that as private interests are affected by this Bill and the Bill which will succeed it, I shall move that both Bills be referred to Select Committees. I may therefore briefly state the objects of this Bill for the information of the Council. Sections 1 and 2 make an important change in section 5 of the Act (1) as regards alienation by a representative watan-dar of his right of office, (2) as regards alienation to and inheritance by females. As the Act stands a representative watan-dar may dispose of his rights of office to any watan-dar of the same watan without the sanction of Government and thereby frustrate the settlement made under the Act. Section 5 (b) forbids this except with the sanction of Government. Secondly, the Act does not in any way affect the ordinary law of inheritance, and therefore there is a pos-

sibility that watan property may be acquired through females by a family other than the original watandárs family. Now the old Regulation XVI. of 1827 enacted that watan property shall not leave the family "in which the office is vested," and the Southern Mahratta Country watandárs in a memorial presented to Government, desire to re-establish this provision, which they call "a sacred doctrine," urging that it is "established by the universal custom of the country from time immemorial that watans should on no account pass into the hands of persons other than those who are male members of the family." Section 2 of the Bill deals with this matter. Sections 3, 4, and 5 make corrections in the wording of Act III. Section 6 introduces a new section required to regulate in a reasonable way periods of service under Act III. In section 7, section 47 of Act III. is recast to make the meaning more clear. I propose to move in the Select Committee the addition of a simple educational test and some few others, and also a revision of section 46, which will contain among other things a provision for the removal of a deputy on the request of his principal for good and sufficient reasons. This is only fair, as principals may suffer through the misconduct of deputies nominated by them under section 61. An exception is introduced in section 8 in favour of such representative watandárs as His Highness Scindia, who can hardly be expected to comply with the provision in section 53 of Act III. Section 8 also extends the field for the selection of deputies from those who have an hereditary interest so as to include collaterals who have not, but who should have, a possibility of succeeding. Section 9 revises section 60 of Act III. regarding the forfeiture, or rather, I should more truly say, the resumption of watans. The purpose of the new sections is that if the representative watandár or his deputy is convicted of aiding or abetting offences against the State, or certain other very grave offences, the Government may direct the forfeiture of the whole watan or any part of it. If the same persons are convicted of less grave offences the Government may direct the forfeiture of the share of the watan of the convicted representative watandár. These sections are, I think, fully justified by the theory of the State's right of resumption, and when considered in conjunction with clause 3 section 1 of Act III. of 1874, are rather in the nature of restrictions on the exercise of that right than anything else. As these sections will naturally receive close attention from the Select Committee I will not discuss them in detail now. Section 10 modifies section 70 of Act III. so as to give power to the Collector to enforce the production of public documents in the custody of watandárs. These are the provisions of the Bill. I move that it be read a first time.

Bill read a first time.

The Bill was read a first time.

The Honourable Mr. PEILE:—Sir, I move that the Bill be referred to a Select Committee, with instructions to report in two months; and I propose as members of the Select Committee the Honourable M. Melville, Honourable J. R. Naylor so long as he is with us, Honourable Ráo Bahádúr M. G. Ránade, the Honourable the Thákore Sáheb of Limri and the mover.

Bill referred to a Select Committee.

Report to be translated into the Native languages.

This motion having been carried, it was ordered that the Report should be translated into Maráthi, Gujaráti and Kánarese.

The Honourable Mr. PEILE:—Sir, I now move that Bill No. 3 of 1884 ("A Bill to amend the Bombay Hereditary Offices Act, so far as it relates to Matádárs") be read a first time. As I have just said that the Bombay Hereditary Offices Act has worked well, and as this Bill proposes to amend it, it is necessary that I should explain to the Council why some part of it has proved unsuited to the case of the matádárs of Gujarát. The object of the Bill is given in the Statement of Objects and Reasons in these words: "The provisions of the Bombay Hereditary Offices Act III. of 1874 are unsuitable to the case of the matádári village watans in Gujarát, because that Act restricts the recognition of watandárs as 'representative watandárs' entitled to office in their own right to those who are recorded as heads of families which have actually served, whereas it is admitted to be the custom of matádár watans that all registered matádárs have the right of service, whether they or their ancestors have actually served or not." I have read through the debates in this Council at the time when Act III. was passed, and I have not been able to find that the case of the Gujarát matádárs was specifically discussed as exceptional. But in a report written by Mr. Rogers, the member of Government in charge of the Bill, as the report of the Select Committee on the Bill which became

Act III. in one of its stages, but which report was not I think adopted, I find this passage:—“It is no doubt desirable that, as a general rule, the extension of the system of service in rotation should be discouraged as far as possible, but there are many cases, more especially in Gujarát, where to refuse now to admit of such service in rotation in its least objectionable form would be to commit a palpable injustice, inasmuch as, though never formally recognised by Government, the system has virtually existed ever since the introduction of the British rule. In these instances the present *matádárs* (so called from their having a right to affix their signatures *mata* to the village revenue records), who to some extent correspond to the *bhao-bund* in the Konkan and Deccan, have possessed a general right to nomination to the post of *pátel*, both revenue and police, and from amongst them an officiator has almost invariably been appointed, either by the vote of the majority of the *matádárs*, or by the Collector *suo motu*; but they have never been appointed in any fixed order, and the principle of rotation has never been formally sanctioned or recognised. The Select Committee are not therefore prepared to recommend the abolition of service in rotation in all circumstances save when it is proved to have existed for not less than thirty years. They would on the other hand allow it to be formally recognised and permanently adopted in certain cases where it had not previously received official authorisation, but would at the same time only sanction its introduction subject to certain fixed conditions. To carry out this view they have inserted a new section (No. 20) legalising the introduction of the system of service in rotation if at the time of the preparation of the register (and then only) all the principal sharers agree to a service in rotation for life.”

The section 20 of which Mr. Rogers here spoke now appears substantially as section 31 of Act III., and under section 31 it appears to have been supposed by the Legislature that provision was made for the case of the *matádárs*. But the *matádárs* have not taken advantage of section 31, because the persons on whom they agree as representative *watandárs* under that section are (section 38) to officiate in successive periods for life, and this offers but small prospect of actually officiating to those who are eligible for office. Moreover, it has been held by the Government law officers that the families named in sections 29 (clause 2) and 31 are those families from whom the Collector has actually in past times made selection and not those also from whom he might have selected, but did not. The advantages of these sections therefore cannot be extended to all *matádárs*. In a paper of instructions issued by Government in September 1875, to explain how it was intended that Act III. should be applied it is stated: “There is no doubt that in Gujarát *matádári* villages the practice has always been to recognise the head of each branch of the family which has formed a distinct *mata* as *matádár* or representative *watandár*, and this practice should, as a general rule, be maintained.” It is then suggested that this may be done by use of section 29 (1) of Act III. read with sections 26 and 28. But here comes in the difficulty that in determining under these sections what persons shall be recognised as representative *watandárs* (that is, the persons exclusively qualified in their own right to perform the duties of an hereditary office,) the Collector has to be guided by the facts as to service, the representative *watandárs* being those only whose families have actually served, and not those who are merely counted eligible. In the end therefore the attempt to settle *matádári* *watans* under Act III. has been abandoned, and it has been admitted that a change in the law is necessary to meet their case.

Honourable members will see from this explanation that the Bill now before them only does what Government intended to be done by Act III: that is, it places the recognized *watandárs* in the position of representative *watandárs* under Act III. as qualified for office and qualified to elect an officiator when a vacancy occurs in the office of *pátel*. The reason why a deviation from the principle of Act III. is proposed on behalf of the Gujarát *matádárs* is to be explained thus. Their peculiar position is said by Mountstuart Elphinstone to have originated in the taking the farm of the Government revenue rights in a village, not by a single *pátel*, but by the members of a *pátel* family, in shares, with joint responsibility for the revenue. The head of each branch of the family holding a share is a *matádár*; and the *matádárs* jointly managed the village affairs. Thus each *matádár* has an individual right of office as member of a body of joint officiators, and it is merely for administrative convenience that one of the body has been selected under British rule for the office of police or revenue *pátel*. In the Deccan the *pátel-ki-watan* is rather an individual office, which Act III. seeks to bring back as far as possible into the line of the original sole officiator. It is true that there are in the Deccan *watans* distinct *takshims* which are treated in some respects as separate *watans*, and

the matas are not very different from takshims; but the matas cannot be treated as takshims because of the difficulty about actual service. The recognition of matádárs in our records has, it seems, gone somewhat beyond the jointly held villages above described, but there has been for a long period a definite record of recognised matádárs, which was carefully revised under orders of Government in 1866, and we are advised by the committee of experienced officers who prepared the draft of the Bill that "no name which has heretofore been customarily admitted on the list of matádárs should now be excluded from the register."

The Bill now before the Council has to a great extent been received with approval by the officers, both English and native, who have tendered opinions on it since its publication. If it is admitted that the object of this Bill is one for which it is desirable to legislate, the precise way in which this is to be done will be for consideration by the Select Committee.

Some alterations in the Bill as submitted to the public have already been suggested, and there are various details which will have to be carefully weighed, and on which the Select Committee will have to advise the Council. I will therefore refrain from further examination of the details of the Bill at this stage. I move that Bill No. 3 of 1884 be read the first time.

The Honourable Mr. TELANG :—Your Excellency, I do not wish to say anything at this stage of the Bill, as it is to be referred to a Select Committee, but I cannot refrain from expressing my objection to those sections in this Bill, as well as in the one already referred, for amending the Hereditary Officers Act, under which provision is made for resuming or forfeiting a whole watan for the offence of any single individual of a watanár family. I remember this question being discussed when the Hereditary Officers Act came before the Council in 1874, and some remarks made by the honourable member who has just spoken seem to imply that the resolution which the Council came to on that occasion, is a resolution which the Council ought to adopt on this. I confess I was not satisfied then with the reasons given in support of the resolution and am not satisfied now. I hope the Select Committee when considering this and the other Bill will reconsider that question, without regarding themselves as bound by the resolution the Council then arrived at.

The Honourable Mr. PEILE :—Sir, I must remind the honourable member that the resumption of a whole watan for the offence of one member is confined to offences against the State and to two or three others of a very grave character, while we have been careful to provide, when the offence is not so grave, that only the share of the offender himself or his deputy shall be affected. Of course, this is a matter for the consideration of the Select Committee, and I have no doubt we shall have it most carefully discussed.

Bill read a first time.

The Bill was read a first time.

Bill referred to a Select Committee.

On the motion of the Honourable Mr. Peile the Bill was referred to a Select Committee consisting of the same members as the Committee on Bill No. 2 of 1885 and it was ordered that the Report be translated into Gujaráti.

The Honourable Mr. MELVILL :—Your Excellency, I move the first reading of Bill No. 3 of 1885 ("A Bill to amend the Bombay General Clauses Act, 1866, and to shorten the language of the Enactments of the Governor of Bombay in Council"). Although I am sponsor for this Bill and therefore ready to bear the burden of any imperfections which may be found in it, yet the real parent of the Bill is my honourable friend the Legal Remembrancer. He has discovered that what is called the Bombay General Clauses Act, 1866, contains some definitions which are erroneous or defective

and some which are superfluous. Subsequent Acts in which the use of the terms found in that Act occur, ought of course to be governed by the definitions in that Act. These subsequent Acts however have not always been drawn up in accordance with those definitions. It has, therefore, been thought desirable to introduce another General Clauses Act containing amended rules and definitions, and the opportunity has been taken, at the same time, to make certain verbal alterations in several Bombay Legislative Acts, which will have the effect of bringing the whole of the Bombay Statute Book into harmony with those rules and definitions. The scope of the measure is so fully set forth in the Statement of Objects and

Reasons that I do not think it necessary to say anything more on that point. The matter is one involving much very minute detail, and no doubt the Bill will require very careful investigation and analysis at the hands of the Select Committee. It will now be sufficient that I ask that the Bill may be read a first time.

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

The Bill was read a first time and, on the motion of the Honourable Mr. Melvill, referred to a Select Committee consisting of the Honourable the Advocate General, the Honourable J. R. Naylor, the Honourable Ráo Bahádur M. G. Ránade and the mover, with instructions to report within six weeks.

His Excellency the President then adjourned the Council.

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

C. G. W. MACPHERSON,
Under Secretary to Government.

Poona, 22nd July 1885.