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PART V.

PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

The following Report of the Select Committee of the Council of His Excellency the Governor of Bombay on the Bill to amend Bombay Act III of 1874, and the Bill as amended by the Select Committee, are, in accordance with Rule 25 of the Rules for the Conduct of Business at Meetings of the Council, published for general information :—

Report of the Select Committee appointed to consider Bill No. 2 of 1885 (a Bill to amend Bombay Act III of 1874).

We, the Select Committee appointed to consider Bill No. 2 of 1885, have the honour to report as follows.

We suggest some modification of Sections 1 and 2 which deal with the prohibition of alienation of watans and the limitation of the right of females to inherit.

We propose to strike out the word *lease* in new Section 5 (a), as we see no good reason why a watandár should not lease watan property; and to strike out the words "to or for the benefit of any female or" and the word "male," as we attain in Section 2 the object for which these words were inserted.

Section 5 (a) will then stand thus :—

"(a) To a watandár to mortgage, charge or alienate any watan or any part thereof or any interest therein, to or for the benefit of any person who is not a watandár of the same watan."

We have re-drafted Section 2 in such manner that it shall restrict interference with the ordinary law of inheritance by females exactly to what is required and no more.

We propose that Section 5A shall stand thus :—

"5A. No female and no husband, child or other descendant of any female in whom, but for this Act, any watan or part thereof or interest therein, would vest by inheritance, shall acquire such watan, or part thereof or interest therein

Limitation of right of inheritance of watans by or through females.

by inheritance, if such female has married with any person who is not a member of the watandár family to which she belongs.

“And if any female in whom any watan or part thereof or interest therein has vested by inheritance or otherwise marries with any person not a member of the watandár family to which she belongs, the said watan or part thereof or interest therein shall thereupon vest in such person as would be entitled to the same if the said female had then died.”

Under the section as thus amended it is the act of marrying with any person who is not a watandár of the same watan which bars inheritance by a female after such marriage and divests a female on her so marrying of watan rights and property previously vested in her by inheritance or otherwise. The section will not affect watandárs other than Hindus whose daughters may marry watandárs of the same watan.

Our attention has been called to an omission in the Act, *viz.*, that there is no provision for giving effect to the order of the Court passed on receipt of the Collector's certificate under Section 10. The best course appears to us to be that power should be given to the Collector to give effect to the order of the Court just as he gives effect to his own order passed under Section 11. We therefore recommend the insertion of the following sections, numbered provisionally 3A and 3B, between Section 3 and Section 4 of the Bill :—

Repeal of portion of Section 11.

“3A. The last portion of Section 11 of the said Act commencing with the words ‘and shall either’ is repealed.

New section added after Section 11.

“3B. After Section 11 of the said Act the following section should be inserted (namely) :—

“11A. The Collector shall either summarily resume possession of all

Resumption of property to which an order made under Section 10 or 11 applies.

property to which an order of a Court passed on receipt of his certificate under Section 10, or his own declaration under Section 11, relates, or assess it at the rate prescribed in clause 2 of Section 9, as he may think fit, and the said property shall thenceforward revert to the watan.”

In Section 6, amending Section 38 of the Act, we suggest in clause (b) that some discretion shall be given to the Collector in fixing the periods of service for patels and kulkarnis by substituting the following words for those opposite the bracket :—

“For such period as the Collector shall in each case determine, the same being not less than ten nor more than fifteen years for a patel, and not less than five nor more than ten years for a kulkarni;”

and in both clauses the words “two or more” should be struck out and the word “the” substituted.

We suggest that Section 7 should be somewhat amended and enlarged as follows :—

For Section 45 clause (b) as it stands in the Bill should be substituted :—

“(b) is disabled by lunacy or imbecility of mind, or by deafness, blindness or other permanent infirmity of body.”

In clause (c) line four for “in” read “with”.

After clause (c) add the following clauses :—

“(d) is under eighteen years of age ;

(e) has not passed such educational test, if any, as Government think fit from time to time to prescribe in this behalf ;

(f) has attained fifty-five years of age, except when such person's appointment or continuance in office is specially permitted by the Collector ;

(g) has been sentenced by a criminal court to imprisonment 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 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.”

After Section 7 we suggest the insertion of the following section, provisionally, numbered 7A :—

New section substituted
for Section 46.

“46. If a representative watan-dár whose duty it is to officiate, is, or at any time becomes, unfit to officiate for any of the reasons set forth in the last preceding section, the Collector shall call upon him to appoint a deputy, or if he is disabled by lunacy or imbecility of mind, the Collector shall himself appoint a deputy.

Procedure when representative watan-dár or his deputy is unfit to officiate.

“7 A. For Section 46 of the said Act the following shall be substituted (namely) :—

“46. If a representative watan-dár whose duty it is to officiate, is, or at any time becomes, unfit to officiate for any of the reasons set forth in the last preceding section, the Collector shall call upon him to appoint a deputy, or if he is disabled by lunacy or imbecility of mind, the Collector shall himself appoint a deputy.

“If a deputy so appointed becomes unfit to officiate for any of the reasons aforesaid, the Collector shall call upon the representative watan-dár to appoint another, or himself appoint another, as the case may be.

“A deputy appointed by a representative watan-dár may at any time be removed from office by the Collector at the request of the representative watan-dár, if, in the opinion of the Collector, there are good grounds for such request.”

We have carefully considered the new Sections 60 to 60C substituted in the Bill for Section 60 of the Act and the grounds on which the insertion of these sections was recommended by the Committee appointed to report on the amendments needed in the Act. We concur in the opinion of the Committee that offences against the State may justly entail the forfeiture of emoluments granted for the service of the State, and also that the offences of screening and harbouring dacoits and other important criminals may be visited with like consequences, and that in these cases the punishment of forfeiture may extend to every person who by enjoying a share of the watan emoluments accepts a joint liability with the other sharers to prevent offences which may reasonably be assumed to come within his cognizance. We therefore recommend the addition to Section 60 of the offences named in the second schedule which we have appended to the Bill. But inasmuch as Section 58 of the Act read with Section 61 empowers Government to direct the forfeiture of the life interest in the watan of any representative watan-dár entitled to officiate who in person or through a deputy appointed by him is guilty of any grave misconduct, we do not deem it necessary in addition to give power as is proposed in Section 60A to direct the absolute forfeiture of a representative watan-dár's share in the watan, and thus to punish his heirs, on account of his conviction of any of the offences named in Section 60A, some of which are not of such extreme gravity as to be attended with consequences so far reaching.

It appears therefore to us sufficient to substitute for Section 60 of the Act the following section in place of that printed as Section 9 of the Bill :—

New section substituted
for Section 60.

“60. When any representative watan-dár, or any deputy or substitute appointed by him is convicted by a criminal court not inferior to a court of session of any offence in the discharge of his official duties, or of any of the offences specified in the second schedule, or of the abetment of any such offence, and such conviction is not subsequently reversed or quashed, the Governor in Council may direct the forfeiture of the whole or of any part of the watan.

Government may direct the forfeiture of a watan.

“9. For Section 60 of the said Act the following section shall be substituted (namely) :—

“60. When any representative watan-dár, or any deputy or substitute appointed by him is convicted by a criminal court not inferior to a court of session of any offence in the discharge of his official duties, or of any of the offences specified in the second schedule, or of the abetment of any such offence, and such conviction is not subsequently reversed or quashed, the Governor in Council may direct the forfeiture of the whole or of any part of the watan.

“Such forfeiture may be either absolute or for such period as the Governor in Council thinks fit.”

And we recommend that the following new section be added at the end of the Bill :—

Addition of a new schedule.

“11. The following schedule shall be added to the said Act, namely :—

"SECOND SCHEDULE.
Offences referred to in Section 60.

Description of Offence.	Sections of the Penal Code under which punishable.
"(1) Every offence described in Chapter VI. of the Indian Penal Code ...	121, 121A., 122-124, 124A, 125-130.
"(2) Causing disappearance of evidence of any offence committed, or giving false information touching it, to screen the offender, when the offence committed is a capital offence, or punishable with transportation for life or imprisonment for ten years ...	201
"(3) Harbours an offender, if such offender's offence be capital, or punishable with transportation or imprisonment for ten years ...	212
"(4) Taking gift, &c., to screen an offender from punishment, if such offender's offence be capital, or punishable with transportation for life, or with imprisonment for ten years...	213
"(5) Harbours an offender who has escaped from custody, or whose apprehension has been ordered, if such offender's offence be capital or punishable with transportation for life, or with imprisonment for ten years ...	216"

(Signed) J. B. PEILE.
(") M. MELVILL.
(") J. R. NAYLOR.

Subject to the modifications suggested in the appended dissent we have signed the report.

(Signed) M. G. RANADE.
(") JASVATSING.

12th August 1885.

Dissent appended to the Committee's Report.

While generally agreeing with the majority of the Select Committee in the report adopted by them, we think that certain amendments proposed in the report go far beyond the main object of this legislation, and the recommendations of the officers consulted. The points of dissent are briefly as follows:—

1. The amended Section 5, while striking out the word 'lease' in clause (a) retains the words "or for the benefit of." It appears to us that it will not be easy always to ascertain whether an alienation made to a person was, or was not, for the benefit of a watandár. We propose that these words should be removed.

Moreover, we think that only those watandárs who have to render service as patels or kulkarnis should be included in this section. The wataus of hereditary district officers have been for the most part settled in pursuance of Acts III and VII of 1863, and the services they rendered have been commuted, and the watan property made private and alienable. No reason therefore exists for placing any restriction on their power of alienation.

2. Section 5 A, as adopted by the Committee, is an improvement upon the first draft, but it still goes far beyond the necessities of the occasion which has suggested the amendment. We are of opinion that the total exclusion of daughters, sisters, &c., from inheriting wataus, by reason of their marrying out of the watandár's family, is an interference with the general law of succession, not warranted by the scope of this measure. The watandárs in the Southern Marátha Country, at whose instance this exclusion has been proposed, only contemplated that daughters, sisters, and their sons, should not succeed in preference to collateral male heirs of the watandár family. Their total exclusion, even in cases where no male heirs existed, is not desired by these watandárs, and as such exclusion would increase the chances of the wataus lapsing to Government, it is not just in principle. None of the officers consulted recommend such an extreme measure. Watan property is specially prized by the people of this country because it is most secured against all chances of resumption or lapse. Further, daughters and their sons have, especially in Gujarát, been always eligible as heirs, and their exclusion, as now

proposed, cannot but work injustice in those parts of the country. Thirdly, watandárs are not always Hindus, there are many Mahomedans, Pársis, and Native Christians among them. To compel the daughters and sisters in such non-Hindu families to marry within the limits of the watandár family, under penalty of being excluded from their share in the watan, does not seem expedient in the general interests. Under these circumstances, we are of opinion that daughters, sisters, &c., and their sons, should be recognized as eligible heirs, only their claims to succeed to the inheritance should, in the Central and Southern Divisions, be postponed in favour of the more preferable claims of male collateral heirs, in the case of watans governed by the Hindu law of inheritance. In other parts of the country, and in the case of watans not governed by the Hindu law, the rights of female heirs should not be interfered with.

3. The amendment of Sections 10 and 11 of the Act in the way proposed by the Committee meets with our approval.

4. The amended Section 6, as drafted, invests the Collector with a discretionary power to extend the period of a patel's term of office from 10 to 15 years and of a kulkarni's from 5 to 10 years. We are of opinion that the periods sanctioned by Act III of 1874 are already long enough, and this discretionary power will only lead to the lengthening of these periods to the maximum number of years, thereby curtailing unnecessarily the chances of holding office, to the prejudice of the rights of the watandárs. It is in the true interests of Government that, where rotation of service obtains, there should be a large number of the members of watandár families who have had the experience of official work and responsibility. In Gujarát, under the Matádár's Bill, the periods will not be so long, and there is no reason why they should be increased in the rest of the Presidency.

5. The amended Section 7 clause (a) introduces the words "general bad character" in place of "known" bad character, as a disqualification for office. We think this change is not desirable, as it is necessary that the person disqualified should have been convicted of disorderly conduct, or of any serious offence, and this object will be better secured by retaining "known" in place of "general" bad character in clause (a).

In clause (b) we would add the word "total" before deafness and blindness.

In regard to the additional clauses (d), (e), (f), and (g), we would fix 21 instead of 18 as the period of majority in clause (d) qualifying for office.

Clause (e), if at all enforced in the case of patels, would work injustice. We propose that, for the present, the educational test should be confined to kulkarnis only, for most of the patels are unlettered, and will remain so for a long time to come.

In clause (f) 55 years appears to us to be too low a limit, and it should be raised to 70. This limit moreover is inconsistent with the nomination for life allowed by the law. We would therefore much prefer that this disqualification should be wholly removed.

6. In regard to the amended Sections 60, 60A, 60B, 60C, we think that they are a considerable improvement upon the first draft. But they are still too harsh and severe provisions in regard to watan property, which is chiefly valued because it is most protected from forfeiture for the faults of any individual watandár. We think that for offences against the State, and for other kindred offences, the forfeiture may, at the pleasure of Government, extend to the whole of the officiator's, or representative watandár's, interest. For less heinous offences, the forfeiture should be limited to the life interest of the offender. For misconduct or negligence, the punishment should always be by fine, more or less heavy.

As regards the responsibility of the principal for the acts of his deputy, we think it should never extend to forfeiture of the life or whole interest of the principal. The deputy can only be appointed with the approval of the Collector. The choice is moreover confined to the members of the watandár's family. If a deputy commits any offence, he should be punished, if necessary, with a forfeiture of his own private interest. His principal should not be made to suffer so heavily for him.

6. We think that advantage should be taken of the present opportunity to provide in Part XIII (Act III. of 1874, Sections 72-73) that in all investigations under this Act the inquiring authorities shall be bound to follow the rules of the law of evidence and of civil procedure, as far as may be possible, and that the appeals from their decisions should lie to the District Judge under Section 77, and not to the revenue authorities.

7. The Select Committee's draft will, we think, be translated into the vernacular languages, and published in the *Government Gazette* before the Bill comes on for the

second reading. We recommend that the opinions of leading watandárs and of the public generally should be expressly invited before the Bill is brought before the Council for second reading.

8. We further recommend that early steps should be taken to obtain correct information upon the following points before the second reading of the Bill:—

- (1) A return of cases in which watandárs and officiators have been convicted of criminal offences, especially of cases in which forfeiture of the whole or part of the watan has been ordered.
- (2) A return of cases in which daughters, sisters, &c., and their issue, have been registered as holders of watans in succession to deceased watandárs.
- (3) A return showing the numbers and particulars of non-Hindu watandárs in the different parts of the Presidency.
- (4) The numbers of certificates granted under Section 10, and the nature of the watans so protected, as also of watan alienations set aside by the revenue authorities under Sections 8 and 9.

Without this information, it will be difficult for the Council correctly to appreciate the bearings and the probable results of the proposed legislation.

9. With these modifications and suggestions, we approve of the report adopted by the majority of the Select Committee.

(Signed) M. G. RANADE.
(„) JASVATSING.

Bill No. 2 of 1885.

A Bill to amend Bombay Act III. of 1874.

WHEREAS it is expedient to amend the Bombay Hereditary Offices Act, 1874, in manner hereinafter appearing; It is enacted as follows:

1. For section 5 of the said Act the following section shall be substituted (namely):—

Amendment of section 5.

“5. Without the sanction of Government it shall not be competent:—
Prohibition of alienation of watan and watan rights.

“(a) to a watandár to mortgage, charge, or alienate any watan, or any part thereof, or any interest therein to or for the benefit of any person who is not a watandár of the same watan;

“(b) to a representative watandár, to mortgage, charge, lease or alienate any right with which he is invested, as such, under this Act.”

2. After section 5 of the said Act, the following section shall be added (namely):

New section to be added after section 5.

“5A. No female, and no husband, child or other descendant of any female in whom but for this Act any watan or

Limitation of right of inheritance of watans by or through females.

part thereof or interest therein, would vest by inheritance shall acquire such watan, or part thereof or interest therein by inheritance, if such female has married with any person who is not a member of the watandár family to which she belongs.

“And if any female in whom any watan, or part thereof or interest therein has vested by inheritance or otherwise marries with any person not a member of the watandár family to which she belongs, the said watan, or part thereof or interest therein shall thereupon vest in such person as would be entitled to the same if the said female had then died.”

3. In section 10 of the said Act the words “or may pass” shall be inserted after the words “or have so passed.”

Amendment of section 10.

3A. The last portion of section 11 of the said Act commencing with the words “and shall either” is repealed.

Repeal of portion of section 11.

3B. After section 11 of the said Act the following section shall be inserted, namely:—

New section added after section 11.

“11A. The Collector shall either summarily resume possession of all property to which an order made under section 10 or 11 applies. The order of a court passed on receipt of his certificate under

section 10, or his own declaration under section 11, relates, or assess it at the rate prescribed in clause 2 of section 9, as he may think fit, and the said property shall thenceforward revert to the watan."

4. In section 30 of the said Act the word "officiators" shall be substituted for the word "sharers."

5. In section 35 of the said Act the words "notice or" shall be inserted after the word "which."

6. For section 38 of the said Act the following section shall be substituted (namely):—

"38. Representative watan-dárs shall be entitled to office for the following periods, respectively (namely):

(a) in cases falling under section 28 or section 29, clause 2, or section 30 or section 31, in which the representative watan-dárs are entitled to office contemporaneously, and in cases falling under section 27 or section 29, clause 1,

} for life;

} for such period as the Collector shall in each case determine, the same being not less than ten nor more than fifteen years for a patel, and not less than five nor more than ten years for a kul-karni.

7. For section 45 of the said Act the following section shall be substituted (namely):

"45. The Collector shall refuse to accept the service of any representative watan-dár or of any person nominated by a representative wa-

Amendment of section 45. Collector when to refuse service of representative watan-dár or of deputy nominated by him.

tandár to be his deputy, if such representative watan-dár or person :

"(a) is under eighteen years of age ; New.

"(b) has not passed such educational test, if any, as Government think fit from time to time to prescribe in this behalf ; New.

"(c) has attained fifty-five years of age, except when such person's appointment or continuance in office is specially permitted by the Collector ; New.

"(d) is disabled by lunacy or imbecility of mind, or by deafness, blindness, or other permanent infirmity of body ; New.

"(e) has been adjudged by the Collector after a summary inquiry held in accordance with the provisions relating to summary inquiries contained in the Bombay Land Revenue Code, 1879, to be of general bad character ; Old (a.)

"(f) has been sentenced by a criminal court to imprisonment 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 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 ; New.

"(g) declines to forsake, whilst officiating, some other employment which is in the opinion of the Collector incompatible with the due discharge of the duties of the office." Old (c.)

7A. For section 46 of the said Act the following shall be substituted (namely):

"46. If a representative watan-dár whose duty it is to officiate, is, or at any time becomes, unfit to officiate for any of the reasons set forth in the last preceding section, the Collector shall call upon him to appoint a deputy, or if he is disabled by lunacy or imbecility of mind, the Collector shall himself appoint a deputy.

"If a deputy so appointed becomes unfit to officiate for any of the reasons aforesaid, the Collector shall call upon the representative watan-dár to appoint another, or himself appoint another, as the case may be.

"A deputy appointed by a representative watan-dár may at any time be removed from office by the Collector at the request of the representative watan-dár, if, in the opinion of the Collector, there are good grounds for such request."

8. For section 53 of the said Act the following section shall be substituted (namely):

Now section substituted for section 53.
 "53. Except as is otherwise provided in the last preceding section and in section 56, and except as the Governor in Council shall by a general or special order from time to time otherwise direct, every deputy appointed under this Act shall be a member of the same family to which the representative watandár whose duty it is to officiate, belongs, if there be a member of such family fit and willing to officiate.

Deputy must ordinarily be a member of the same family as the representative watandár whose duty it is to officiate.
 "If a representative watandár declines to appoint as his deputy any such person as aforesaid, the appointment shall be made by the Collector."

9. For section 60 of the same Act the following section shall be substituted (namely):

New section substituted for section 60.
 "60. When any representative watandár or any deputy or substitute appointed by him is convicted by a criminal court not inferior to a court of session of any

offence in the discharge of his official duties, or of any of the offences specified in the second schedule or of the abetment of any such offence and such conviction is not subsequently reversed or quashed, the Governor in Council may direct the forfeiture of the whole or of any part of the watan. Such forfeiture may be either absolute or for such period as the Governor in Council thinks fit.

10. For section 70 of the said Act the following section shall be substituted (namely):

New section substituted for section 70.
 "70. All records which have been or may be prepared by any watandár or by any officiator in an hereditary office in pursuance of the duties of the office, or by order of a superior officer or of the present or former Government, are hereby declared to be the property of Government, and the Collector may enforce their production or the production of any State records in the possession of a watandár or of an officiator, in accordance with the provisions of sections 25 and 26 of the Bombay Land Revenue Code, 1879."

11. The following schedule shall be added to the said Act (namely):

Bo. V. of 1879.

"SECOND SCHEDULE.
 Offences referred to in Section 60.

Description of Offence.	Sections of the Penal Code under which punishable.
"(1) Every offence described in Chapter VI. of the Indian Penal Code...	121, 121A, 122-124, 124A, 125, 130.
"(2) Causing disappearance of evidence of any offence committed or giving false information touching it to screen the offender, when the offence committed is a capital offence or punishable with transportation for life or imprisonment for ten years ...	201.
"(3) Harboursing an offender, if such offender's offence be capital, or punishable with transportation or imprisonment for ten years..	212.
"(4) Taking gift, &c., to screen an offender from punishment if such offender's offence be capital, or punishable with transportation for life, or with imprisonment for ten years ...	213.
"(5) Harboursing an offender who has escaped from custody, or whose apprehension has been ordered, if such offender's offence be capital, or punishable with transportation for life, or with imprisonment for ten years ...	216."

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

C. G. W. MACPHERSON,

Under Secretary to Government.

Poona, 14th August 1885.