THE

Bombay Government Gazette.

Published by Authority.

SATURDAY, 13TH FEBRUARY 1886.

☞ *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 Bombay on Monday the 8th February 1886, at 4 P.M.

PRESENT:

The Honourable J. B. PEILE, C.S.I. *(Presiding).*
The Honourable M. MELVILL, C.S.I.
The Honourable the ADVOCATE-GENERAL.
The Honourable BUDRUDIN TYABJI.
The Honorable Ráo Bahádur KHUNDERAO VISHVANATH RASTE.
The Honourable KASHINATH TRIMBAK TELANG, C.I.E.
The Honourable F. FORBES ADAM.
The Honourable J. R. NAYLOR.
The Honourable DADABHAI NAOROJI.

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. 1480, dated 29th September 1885, returning, with the assent of His Excellency the Viceroy and Governor General signified thereon, the authentic copy of the "Bill to amend the Bombay Local Boards Act, 1884, and the Bombay District Municipal Act Amendment Act, 1884."

No. 16 of the Rules suspended in order that Bill No. 1 of 1886 be read a first time.

The Honourable Mr. MELVILL said :—Rule No. 16 of the rules for the conduct of business at meetings of this Council is as follows :—"No motion that a Bill be read a first time shall be made until 7 days after a copy of the Bill, with a statement of its objects and reasons, has been furnished to each member."

In the present case I believe that a copy of the Bill was not in the hands of some of the members until last Wednesday, so that only five days have elapsed, but I think the object of the rule has been sufficiently answered and I do not suppose any honourable member will complain that he has not had sufficient time to make himself acquainted with the objects of the Bill. I would therefore ask the President to suspend that rule on account of the urgency of the matter to be brought under consideration.

Rule 16 having been accordingly suspended.

Mr. Melvill moves the first reading of Bill (No. 1 of 1886) to remove certain doubts in the construction of Section 9B of the Bombay Municipal Acts of 1872 and 1878.

The Honourable Mr. MELVILL proceeded to move the first reading of Bill No. 1 of 1886. He said:—I will now ask that the Bill be read a first time. It is a Bill "to remove certain doubts in the construction of Section 9B. of the Bombay Municipal Acts of 1872 and 1878." Section 9B is as follows: "Votes at any Rate-payers' or Justices' election, or at any election by the Corporation as hereinafter provided of one or more members of the Town Council, shall be recorded, and the said elections shall be held and the results thereof shall be declared in accordance with such rules as may, from time to time, be framed by Government in this behalf, the said rules not being inconsistent with this Act." Under this section certain rules were sanctioned and were passed by Government fixing as the date of the next election the 15th of the present month; and the first of these rules is as follows: "For the purpose of the rate-payers' general election of thirty-two members of the Municipal Corporation of the city of Bombay, the said city is divided into the wards hereinafter specified, and each such ward shall be entitled to return the number of members herein assigned to it." Then follows an enumeration and description of the wards and the number of members to be elected by the rate-payers of each ward. Rule 2 says: "Each person qualified to vote, whether as a rate-payer or as a Fellow of the University of Bombay, or in both those capacities, may vote for one member and in one ward only," and so on. When these rules were published, Government had no reason to suppose that their validity was in any way open to question. They were practically the same rules under which every election has been held since the passing of the Municipal Act in 1872. But after they were published, objection was taken by a member of the Corporation, on the ground that Section 9B of the Act does not contemplate the division of the city into wards, or the limitation of the right of voters to that of voting for a single candidate only. The Municipal Commissioner thought it right to refer this objection for the opinion of two eminent counsel. Their opinion is now before me, and I will read such portion of it as will put honourable members in possession of the grounds on which it is based. The opinion states: "We are of opinion that Rule 1 providing for the division of the city into wards, and assigning a certain number of representatives to each ward, is invalid, as being beyond the scope of Section 9B of the Municipal Acts of 1872 and 1878. That section appears to us to authorise Government to provide by rules for the conduct of elections only, and not for such matters as division of the city into wards, and corresponding distribution of members, which seems to us to affect the constitution of the Coporation. Upon this ground we consider Rule 1 to be inconsistent with the Act. As to Rule 2, we strongly incline to the opinion that it also is invalid for the reasons above stated in regard to Rule 1." It cannot be said that the question is entirely free from doubt, because some years ago the same question came up for discussion and the opinion of two other eminent counsel was taken upon the point. Both were of opinion that the Act did empower Government to make rules dividing the city into wards. In this conflict of legal authority Government were obliged to form the best conclusion it could, and the conclusion at which it has arrived is that the Act does not contemplate the division of the city into wards, or the limitation of the right of voters to a vote for a single candidate only, or at all events that the question is open to so much doubt that it is very probable the Chief Presidency Magistrate, who would have to decide the question if it were formally brought before him, would decide it in a sense unfavourable to the validity of the rules. Indeed, I may mention that on a former occasion, when a bye-election was held to fill a vacancy in a particular ward, the question was raised whether every voter in the town was entitled to vote, or only voters who resided in that particular ward. The Chief Presidency Magistrate held that all the voters who were qualified to vote were entitled to vote on that occasion: so that he is in a measure committed to a opinion that under the Act, as it stands, an election

must be general and every voter is entitled to vote for the whole number of candidates. Under these circumstances it appeared to Government that there were three courses open to them. They might have cancelled the rules, and allowed the elections to be general, every voter voting for the whole thirty-two candidates. Now, whether such a cumbrous procedure as that would under any circumstances be desirable or practicable, it is not now necessary to discuss. I think it is sufficient to say, and honourable members will, I believe, agree with me, that to introduce such a radical change of system at a very short notice would upset the whole organization of the electioneering campaign. It would be impossible for the candidates in the few days left to them to canvass all the 8,000 rate-payers who are entitled to vote in Bombay; and it would be equally impossible for the voters in so short a time to make themselves acquainted with the merits of 32 candidates. The second course open to us was to do nothing: to let the elections take place under the rules as they stand, and to run the chance that, after the elections were over, no objection would be taken, or, if it were taken, that it would be overruled by the Chief Presidency Magistrate. But in the first place it occurred to us to be hardly in accordance with principle to allow the elections to take place under rules which we ourselves believe to be invalid. In the next place the great notoriety given by the public press to the fact that the objection has been taken rendered it almost certain that the objection would be formally taken after the elections were over, and, for reasons which I have already stated, it was almost equally certain that the Chief Presidency Magistrate would decide that the objection was well founded. Moreover, I may say that it is not only the validity of the present rules which are at stake, but also the validity of similar rules, under which previous elections have taken place, and the existing Corporation has been constituted. So it appeared to us that it would be open to any discontented tax-payer to go to the High Court, and ask for an injunction restraining the present Corporation from levying taxes or spending money. The third course open was that which we thought best to adopt, to bring in a short Bill validating the rules under which the elections were about to be held, and also similar rules under which elections have been held. That is the Bill which I now ask permission to bring in and have read a first time. It is a very short Bill, as it stands, and consists of two sections only. The first of these provides that no rule which has been framed by Government shall be held invalid by reason that it divides the city into wards and distributes the 32 members of the Corporation to be elected at a rate-payers' election among the wards and requires that the number of the members so allotted to each ward shall be returned for the prescribed ward only. The second section is a saving clause which may savour of unnecessary caution, and which perhaps requires some explanation. The reason for it is this. Section 9 of the Act says: "No vote shall be received at any election of members of the Corporation for any person whose name is not entered in the list then last published under Section 9 D as qualified to be elected or appointed a member, and who has not been nominated by one person entitled to vote at the said election." It appeared to our legal advisers that some question might possibly be raised as to the meaning of the word "election." It might mean there the whole election of the rate-payers, the general election, or it might mean a particular election for a particular ward. If it were construed in the last and narrower sense, then the nomination by a person who is not resident in that ward would not be a legal nomination. But it has been the practice to accept nominations for candidates in a particular ward from persons living outside that ward, and in case any objection on that point should be taken, which is not perhaps likely, it was thought better to introduce a clause declaring no election void in consequence of that informality. I move that the Bill be read a first time.

Bill read a first time.

The Bill was read a first time.

Standing orders suspended and Mr. Melvill moves the second reading of the Bill.

The Honourable Mr. MELVILL:—On account of the emergency of the matter I now ask that the orders be suspended and the Bill be read a second time.

The Honourable the Advocate-General thought it a matter of no doubt that the Bill before the Council was required. It was impossible to know what weight was to be attached to the earlier opinion given on the subject until they had seen the case on which that opinion was based. It might however be said that three leaders of the present bar were practically unanimous in the opinion read by the Honourable Mr. Melvill, for he was gratified to hear that since that was given another eminent counsel had come independently to the same conclusion.

The Honourable DADABHAI NAOROJI said:—Sir,—I think there is some misunderstanding among a portion of the public with regard to the necessity and scope of this Bill, and it is necessary that some explanation should be given. It is supposed that this Bill deprives the rate-payer of a right which he possessed by the existing Bill,—the right to vote for all the thirty-two members instead of only one in some one ward. Now I do not presume to give any opinion upon the opinions of the eminent counsels with regard to the validity or otherwise of the existing rules. There has been difference of opinion. The matter as it appears to me is this. In section 4 it is said "of the said 64 members, 32 shall be elected as hereinafter provided at a rate-payers' election." Now the provision intended to be made "hereinafter," can either be the words of Section 9 B—"and the said elections shall be held, &c., in accordance with such rules, &c., &c.," or that an oversight has taken place to provide the provision that was intended. On the one hand if the Act does not lay down that the voters shall vote for one candidate and in one ward only, on the other hand nor does it say that every voter shall vote for all 32 candidates and in block. At the worst the Act has only committed an omission, in not specifying where and how the rate-payer was to vote. It has not given any right clearly to the rate-payer of voting for 32 votes or any particular number of votes. The Municipal Corporation Act of England distinctly provides "where the borough has no wards there shall be one election of councillors for the whole borough;" "where the borough has wards, there shall be a separate election of councillors for each ward" and "no person shall subscribe a nomination paper in or for more than one ward, or vote in more than one ward." The fault of our existing Act is that it either imperfectly gave the power to Government to make the rule for the purpose, or made an oversight, which has now to be supplied. It is not likely that the Act meant the right of voting thirty-two members, for there is hardly any important town in England voting for a large number of voters which it does not do by wards and by limited number of seats for each ward. Our Municipal goal is the English Municipality. In London itself the proposed Bill of 1880 provided for 40 districts each with 6 seats. Certainly such a radical measure as that of allowing thirty-two votes to each voter could never have been thought of when there was a keen contest in 1872 to give any representation at all. The Bill as at first framed had provided for only eight members of the Corporation to be elected for all the rate-payers of Bombay. After a hard struggle both in and out of the Council the number was increased to 32, and surely under such circumstances it could hardly be contemplated that 32 votes were to be given to each voter. At first the provision being for eight members only, no section was perhaps put in for division into wards, and though the number of members was increased, the necessary alteration for a suitable arrangement was very likely missed by oversight in the heat and excitement of the hard contest. It lasted for a long time, but throughout the whole proceedings of the Council during nearly the whole season not a word is said or discussed on this point. Moreover, Mr. Forbes, Mr. Bythell, Sir Mungaldas and Mr. Narayen fought a hard fight throughout; and had such an important right as that of voting for 32 members been at all contemplated by the Council, these gentlemen would never have allowed the rule of one vote only to go unchallenged. If I remember right this rule was at the time much commented upon, but it was then I think not at all thought that it was contrary to the Act. However now as matters stand, the position is, that an omission has been made by the Legislative Council of 1872, and it is for the present Legislative Council, now that the matter is brought to notice, to supply it, and the suitable course that appears to be open to the Council is to bring in such a Bill as the one now before it, that is, to allow the practice of the past 14 years to continue temporarily without disturbing all arrangements, till the new Municipal Bill is passed. Had the question been now to settle definitively the rights of the voter, the case would have been quite different. But this Bill is very limited and temporary in its operation. The Municipal Bill is being now discussed by the Corporation. The Corporation itself has been swaying from one side to the other, in its selection of the three methods whether to give to the rate-payers only one vote restricted to each ward or as many votes as the number of seats in each ward or a cumulative vote, and during the two or three years of discussion that is going on, no one from any quarter has proposed that all 32 votes should be allowed to each voter till the present difficulty about the imperfection or omission in the Act was seen. That is also a further presumption that to give 32 votes could never have been contemplated. The omission being now considered to have taken place, it is for this Council to supply it temporarily with the least inconvenience to all parties, and the present Bill is the result. I had talked over this matter with the Municipal Commissioner, and

we thought about such a Bill, so, if there be any fault attaching to this Bill I share it. But I hope it will be seen that there is no intention in this Bill to deprive the rate-payers of any right, but simply to meet temporarily a legal difficulty in the only way it should be done at present in conformity with the action of the past 14 years. The new Bill will definitely settle all rights and matters after I hope a very careful consideration. I therefore intend to vote for the Bill.

The Honourable J. R. NAYLOR :—I should like, Mr. President, to correct an erroneous impression which might arise from one remark made by the honourable member in moving the first reading of the Bill. That remark was based on information which I supplied some time ago to Mr. Melvill, but which I have since found not to be correct. It was that the Chief Presidency Magistrate had held that every voter was entitled to vote at a bye-election to fill a vacancy for a particular ward. I find that was not the actual point before the Magistrate and that the point which came before him was whether every voter in the whole city was entitled to *nominate* for an election in a particular ward. What the Magistrate held was that the bye-election which had then been held was not invalid because the gentleman whose name was returned at the top of the poll had been nominated and seconded by voters not assigned to that particular ward. The point whether at a bye-election all voters are entitled to vote has not, so far as I am aware, been decided by the Chief Presidency Magistrate.

Bill read a second time. The Bill was then read a second time.

Bill considered in detail. The Council then proceeded to consider the Bill in detail.

The Honourable the ADVOCATE GENERAL :—I beg to move to insert as clause (*b*) to section 1, the words "Should it contemplate the Municipal Commissioner's entering the names of persons qualified to vote at rate-payers' election in one or more of such wards" in the list to be prepared by him under Section 9 of the Bombay Municipal Acts, 1872 and 1878. This alteration is I think required for this reason : that the whole pivot on which these rules were framed is the Municipal Commissioner's entering the names of the persons entitled to vote under the heading of the different wards in the list which he has to prepare for each year under Section 9D. If the section is looked at it will be seen that the Commissioner in entering as he does now the names of persons qualified to vote under particular wards, is really doing a thing for which he has no warrant in the Act and yet unless he do so it would be perfectly impossible to work these rules. I think it would be dangerous to let that pass.

The amendment was carried.

On the motion of the Honourable the Advocate General sub-clause (*c*) was verbally amended as follows : for the word "or" the word "and" was substituted.

The Honourable the ADVOCATE GENERAL :—I would now move to omit Section 2. It has always been the practice to allow the nomination and seconding of candidates for a particular ward by rate-payers who need not necessarily be resident in that ward. A saving clause whereby there is clearly nothing to save is a mistake. It will be better to avoid suggesting to some disappointed man that there has been a flaw in a future election in respect of the nomination of some candidate, and therefore it will be safer to omit it. I propose to leave out the section on the ground that it is unnecessary, and affords a prospect, although it may be a remote one, of mischief.

The Honourable DADABHAI NAOROJI :—It has been decided by the Chief Presidency Magistrate that a man can nominate a canditate for either of the wards.

The Honourable MR. MELVILL :—As we are informed that the Chief Presidency Magistrate has decided it in that way, that the nomination is valid although not made by a resident in the ward, the necessity for that clause is even less strong than it was, and it was not very strong before.

The Honourable K. T. TELANG :—I believe some distinction was made at the time between a bye-election and a general election. Still the Advocate General has considered the matter recently and thinks there is no necessity for the clause.

The Honourable J. R. NAYLOR :—The insertion of this section was suggested because when Section I. of the Bill becomes law the result will be that the rules providing for elections will have the force of law, and it was thought that when those rules were read along with the section of the Municipal Acts which provides for nominations, their joint effect might be held to be to require nominations in each ward to be made only by voters

of that particular ward. In order to prevent any such difficulty arising with regard to the forthcoming elections, this section was inserted.

The Honourable the ADVOCATE GENERAL :—This saving clause would in no way help such elections because it only affects elections before it came into force.

The Honourable Mr. MELVILL :—But the Act does not come into force until after the approaching elections. It has to receive the assent of the Viceroy, who is now in Burmah. We have sent a copy of the Bill to the Government of India saying that as the matter was very emergent we hoped the assent of the Viceroy might be obtained notwithstanding His Excellency's absence on the understanding that it would be passed substantially in its present form. We have had no answer to that as yet.

Section 2 of the Bill was then struck out.

The preamble was verbally amended by changing "or" for "and" on the motion of the Honourable the Advocate General.

The Honourable Mr. MELVILL :—I now move that the amendment proposed by the Honourable the Advocate General and just carried, *viz.* the insertion of a new clause (*b*) to Section I. may be altered so as to read as follows :—"That it contemplates the entry by the Municipal Commissioner of the names of persons qualified to vote at rate-payers' elections in the list to be prepared by him under Section 9D of the said Acts in one or more wards; or".

The amendment was carried.

The Honourable K. T. TELANG :—Sir,—There is just one remark I wish to make. The difficulty met by this Bill illustrates the soundness of the views put forward in this Council some years ago by the Honourable the Advocate General, to the effect that it is desirable to have some means by which rules made by the Executive Government under statutory powers should be brought before the Council in some form before obtaining the force of law. When Mr. Latham mentioned this some six years ago, one of the then members of the Government said it was an attempt to curtail one of the prerogatives of the Executive Government. I would venture to say with great respect that it is an entire misapprehension of the true functions of the executive Government in this matter to speak of them as part of its prerogative. If the rules now under consideration had been placed before the Council at the time the Act was brought in, it is not unlikely that the present difficulties would have been avoided. I hope some remedy will be devised by which these rules made by Government from time to time under various Acts may be brought before the Council.

Bill read a third time and passed.

The standing orders were suspended and the Bill as amended was read a third time and passed.

The President then adjourned the Council.

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

H. BATTY,
Under Secretary to Government.

Bombay Castle, 8th February 1886.

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.