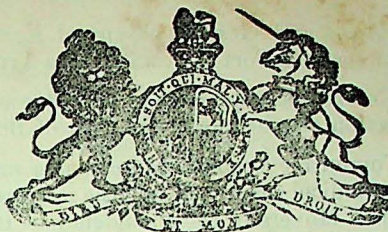


THE



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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 the Secretariat on Saturday the 12th of February 1887.

PRESENT:

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

The Honourable M. MELVILL, C.S.I.

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

The Honourable the Acting ADVOCATE-GENERAL.

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

The Honourable DADABHAI NAVROJI.

The Honourable Ráo Bahádúr MAHADEV WASUDEV BARVE, C.I.E.

Papers presented to the Council.

The following papers were presented to the Council:—

Letter from the Secretary to the Government of India, Legislative Department, No. 2076, dated 22nd October 1886, returning, with the assent of His Excellency the Viceroy and Governor-General signified thereon, the authentic copy of the Bill to amend the Bombay Land Revenue Code, 1879.

Letter from the Officiating Secretary to the Government of India, Legislative Department, No. 129, dated 14th January 1887, returning, with the assent of His Excellency the Viceroy and Governor-General signified thereon, the authentic copy of the Bill to amend Bombay Act III. of 1874.

Letter from the Officiating Secretary to the Government of India, Legislative Department, No. 230, dated 24th January 1887, returning, with the assent of His

Excellency the Viceroy and Governor-General signified thereon, the authentic copy of the Bill to vest the Port of Karáchi in a Trust.

Report of the Select Committee appointed to consider and report on the Bill to provide for the protection of pilgrims at the Port of Bombay.

Report of the Select Committee appointed to consider and report on the Bill to amend the Law for the periodical inspection and the management by competent engineers of Boilers and Prime Movers in the Presidency of Bombay.

The Honourable Mr. MELVILL moved the second reading of Bill No. 2 of 1886, entitled "A Bill to provide for the protection of pilgrims at the Ports of Bombay and Karáchi." He said:—There has been some delay in presenting the report of the Select Committee on this Bill to the Council, because it was thought necessary first to obtain the sanction of the Government of India to certain penal clauses contained in some new sections which have been introduced into the Bill by the Select Committee. As the Council is aware, there is a rule that no Bill containing penal clauses shall be brought before the Council, until those clauses have received the sanction of the Government of India. That rule does not apply in express terms to penal clauses introduced into a Bill by a Select Committee, but it appeared to the Committee that in principle it was the same thing, and that it was as necessary to obtain the sanction of the Government of India to the penal clauses introduced by the Select Committee as to those contained in the original Bill. The sanction of the Government of India has now been obtained, and the Bill is brought before the Council for the second reading. It has been published in due form for some time, and no objections have been received to it from any quarter. I presume, therefore, that there will be no objection to the second reading of the Bill, and I move accordingly that it be read a second time.

Bill read a second time.

The Bill was read a second time.

Bill considered in detail.

On the Bill being considered in detail, "1887" was on the motion of the Hon'ble Mr. Melvill substituted for "1886" in Section 1.

The Honourable Mr. MELVILL said:—There is one other amendment of which notice has been given to the Council, *viz.* that in Section 4 the words "being Mahomedans and not exceeding in number such limit as shall from time to time be prescribed by Government" occurring in lines 3 to 7, be omitted; and in line 1 the words "subject to the orders of the Governor in Council" be inserted before the word "The." The object of this amendment is to remove from the section the prohibition against the licensing of any person who is not a Mahomedan to be a pilgrim-broker. The reason for the amendment is this. A few days ago we received a telegram from the Government of India as follows:—"Section 2, sub-section 2, read in connection with Sections 3 and 4 of Bill to provide for protection of pilgrims at ports of Bombay and Karáchi will, as they stand, exclude Mr. Cook from the business he proposes to carry on for benefit of pilgrims with the countenance of Government of India, because, as he is not a Mahomedan, he will not be capable of being licensed as a pilgrim-broker. This is undesirable, as arrangements with him are far advanced. The Government of India suggest that words 'being Mahomedans' be struck out of Section 4, and powers be taken by Bombay Government to restrict by executive order issue of licences to such classes as it pleases. This could be effected by insertion of some such words as 'subject to the orders of the Governor in Council' at beginning of Section 4. The Governor General in Council will be glad to learn whether His Excellency in Council sees any objection to the alteration proposed." In reply to that we have telegraphed: "This Government has no objection to the proposed amendment, and the Bill will be amended accordingly." The object of the amendment therefore is to enable Government to appoint other persons than Mahomedans to be brokers. The Council will remember that, when I introduced the Bill, I informed them that Messrs. Cook & Son, the well-known firm, had undertaken to make arrangements with the view of improving the present system of conveying pilgrims to and from Jeddha, and the essence of this arrangement was to be that tickets to Jeddha and back were to be issued on behalf of Messrs. Cook & Son by Government officers in the provinces of India from which pilgrims come, and that Messrs. Cook & Son should arrange with the railway companies in India for the conveyance of the pilgrims to Bombay. One of the members of the firm, who has been travelling during this cold

weather in the upper provinces of India, informs me that he has been most favourably received by the Mahomedan communities in the different cities he has visited. His arrangements however are not yet complete. I am not therefore in a position at present to inform the Council whether Messrs. Cook & Son will perform those exact duties which will bring them within the definition of pilgrim-brokers under Section 2. It is however probable that such will be the case. In contemplation of that probability, it is necessary to remove from the Bill any words which would prevent the Government from appointing Messrs. Cook & Son to be pilgrim-brokers, if it is found desirable to do so. That is the only amendment which I have now to propose in the Bill, and, as no objection has been taken to it, I think it may be read a third time, and passed.

The amendments were agreed to.

Bill read a third time and passed.
The Bill was then read a third time and passed as amended.

The Honourable Mr. RICHEY, in moving the first reading of Bill No. 7 of 1886 entitled "a Bill to consolidate and amend the Law relating to Toda Girás Allowances," said:—The sum of about Rs. 1,46,000 is paid every year from the treasuries of Gujarát towards toda girás allowances. The holders of these allowances are persons of the Rajput and Koli class, and their origin I may quote from the earliest record we have on the subject. They were given for the protection or for exemption from disturbance, and the Collector of Ahmedabad, who reported on them on the 19th January 1821, describes them as follows:—"The denomination Girássia is generally applicable only to Rajputs, but in reference to the article under consideration I may observe that in this province of the turbulent every one who possessed the power to annoy has and enjoys his girás either in land or money, and this is proportionate to the awe which he or his ancestors may have been able to inspire or to the injuries which he or they may actually have committed." The origin of Toda Girássias dates from the time of anarchy, when the Mussulman power was weakened in Gujarát, and the petty chieftains and leaders, by making depredations, by incendiarism in the villages, and by terrorising the people, exacted these dues. In other cases they were paid by the villagers to Chiefs a little more considerate to secure them from such depredations. In all cases because they were in the nature of black-mail. If a village was depopulated the toda girás was supposed to cease; therefore it was to the interest of the recipient to maintain the village communities in comparative prosperity. In that way it acted as a purchase of protection as well as purchase of exemption. In succeeding to the Government of Gujarát we undertook a great many obligations to secure the peace of the country, including guaranteeing the Gáikwár tribute from his tributary States, and guaranteeing his Girássias their rights against him. There has been an officer employed for the last nine years in settling claims that are still outstanding and unsettled, a legacy from those times. To protect our own villagers we undertook from our own Treasury to pay the Girássias who had formerly levied their dues direct, and in case of non-payment, harried the villages or burned the crops or carried off hostages. Very soon after we had undertaken to make these payments regularly the creditors of these classes, who are usually improvident, found these allowances to be convenient assets for attachment in execution of decrees in the usual process of the Civil Courts, and as early as 1830 the question arose whether Government should do anything to interfere and protect these allowances from alienation through the decrees of the Court. The case best known in connection with it and the one which has since created a very large record on the subject was the case of the man Sambhulal, who purchased a toda girás right at a sale under the decree of the Surat Court. That case went through the Courts of India and after decisions on both sides the highest Court of the time in India found these allowances were inalienable. Sambhulal then appealed to the Privy Council. The suit was instituted in 1841, and in the course of the proceedings which he had instituted against Government to have his right to the allowances recognised, Government sent instructions, which I will read, to the officers in the defence of the suit. They said:—

"It would be difficult, if not impossible, to define the origin of the Girássia and of his rights and dues. But this is certain, that on our coming into possession of any district where we have found Girássias, we have respected their rights, and have taken great pains to ascertain their dues on villages, and, in order to prevent disputes and violence

have paid these dues direct from our treasuries. These dues have always been considered hereditary, but it may be doubted whether there is any real authority for considering these Girássias as hereditary officers, or their dues as emoluments of office. [Government had to rule on that because some of the Government officers dwelt strongly on the point that some Girássias were called upon for service, and that these *toda girás* allowances were in the nature of payment for services.] Their position varied according to the Girássia's power. In some cases he was a chief, holding lands and rights in various villages; in others he was little better than a recognized freebooter, but with established dues on his particular village. In all cases where the dues were unpaid, we know that under the native rule the Girássia resorted to violence against the recusant village. These dues may, in our language, be considered black-mail or the price of forbearance. But, however considered, they were a property recognized by us without considering their origin, but merely the person or property to whom the dues belong, and are to be paid. It is believed that Girássia dues paid from the treasury have been frequently paid to their creditors, and that there have been instances of their sale and mortgage, chiefly in the Surat District. Our policy, however, should be to prevent these transfers, and to make this Girássia property inalienable, as the holding of a particular class, which we have recognised as an exclusive property for the maintenance of these persons for the great end of preserving the peace of the country. The defence, therefore, should be that the Girássia dues paid from the treasury are fixed in the person of the Girássias; that they were so in their origin, and have since continued so; and that the whole nature of the tenure and the circumstances of the country require that the Government should maintain them to be inalienable."

These were the opinions of the Government of Bombay in January 1844; and after obtaining the decision which confirmed their views, the matter rested until 1860, when the Privy Council found that *toda girás* allowances must be considered an ordinary recognised class of property liable to the processes of the Court. The Court announced that they constituted "a recognised species of property capable of alienation and seizure and sale under an execution." That was the decision in 1860, in view of which the Government took under consideration what course they were to adopt in order to secure their object, which was that the recipients of these allowances should be continued in receipt of their allowance, in order to assist in their maintenance and to act as security for their good conduct. In 1862 the Government resolved that they would continue to pay these allowances from the treasury; perhaps I had better read the passage:—"Faith should now be kept with their descendants, although they are no longer dangerous to the State. This the Governor in Council is prepared in the strictest sense to do, but he cannot allow that a tax at first so irregularly imposed on the community should now be extorted from the public purse by others than those in whose favour the original arrangements were made, or that Government should be compelled to continue its good offices between the Girássias and the village communities in a manner to which it never pledged itself. It should therefore be publicly declared in every *táluka*, as the Revenue Survey settlement is introduced, that the new rates of assessment do not include any such collection, and that Government will in future not aid or take part in the collection of *girás*." The last portion of that decision refers to the alternative course open to Government. At any moment they might have refused to pay these allowances any longer and allowed the Girássias to assert their rights if they were prepared to do so by legal process against the village community who had been originally liable to them. But Government go on to say:—

"In thus placing the Girássias in the same position with respect to the village communities which they originally held, the Governor in Council cannot allow them to resort to other than legal means to enforce their claims, and if any village communities decline to accede to the Girássias' demands, the latter must resort to the Civil Courts. At the same time the Governor in Council is not unwilling to make some sacrifice of revenue in order to relieve the Girássias from the necessity of resorting to law, and he is prepared, whenever the Girássia may be willing to receive from Government his present income, instead of collecting it direct from the villagers, to continue that income to him under such reasonable rules and restrictions as it may seem fit to Government to impose." So that by the departure made in 1862 a contract was to be made with the Girássias in order that they might not be forced back by the refusal of their dues by

the treasury to their previous lawlessness in demanding their dues on the village ; and in consideration of this undertaking of Government to continue their dues, they were put under restrictions, and in 1863 a form of agreement with the Girássias, who were willing to accept these terms, was issued. Very large numbers—about twelve hundred I believe, or at any rate more than a thousand—signed this agreement. Among the conditions in these agreements are the clauses :—“ We will not alienate our girás out of our families by sale, mortgage” &c., and “ we will, whenever called for, perform police or any other service which it may have been or may be customary to exact from Girássias, in return for the payment of girás. ” So that in 1862 Government supposed that the Girássias who signed these agreements and accepted sanads for their allowances were precluded from alienating them or pledging their allowances to their creditors. But fresh cases arose in which the Courts gave execution against girás allowances, and Government were advised in 1875 that this agreement was not such a legal instrument as would enable Government to make use of it to protect girás allowances from alienation. In the meantime the Pensions’ Act had been passed, and it was thought that under the provisions of that Act—XXIII. of 1871—these allowances would not be saleable. But the question was raised in one of the subordinate Courts and referred to the High Court, who found that the girás was liable to attachment for sale by the Court. Although under the Pensions’ Act, the Privy Council had found that no suit could lie against the Government, still, as regards the holder, he was, according to the decision of the Court here, amenable to have his girás allowance subjected to attachment and sale. Government were accordingly brought to the position they had been in on the decision of the Privy Council in 1860 that toda girás allowances were open to the process of the Civil Court. They have since had other advice on the subject of legislation, and after considerable reference on the question to the Government of India we have now come to the conclusion that this short Bill, which is before the Council, will provide all that is necessary to meet the original objects. These objects are to define the extent to which the toda girás allowances are heritable, and to prevent future alienation. Now the limitation of succession to the lineal male heirs is no new provision. It has been a recognised condition of these allowances for many years, and all the Girássias accept it. We have had no objections or remonstrances made against the Bill, and it is in fact really giving legal standing to the actual state of the case ; with regard to the succession to these allowances, we have further provided discretion to allow continuance of the toda girás in the line of a brother. The other object is to prevent alienation. There is a very simple provision made that no mortgage, charge or alienation shall be valid except those which have already taken place. The intention from the first has been that the allowances should be continued to those persons who belonged to the turbulent classes in order that the peace of the country may be maintained, and that they may not, owing to their losing these allowances, be provoked again to have recourse to breaches of the peace. A few allowances are paid directly by Inámdárs, and we treat them in the same way, as it is a matter of public policy for protection of the subjects that there should be no exception made. I move the first reading of the Bill.

Bill read a first time.

The Bill was read a first time.

His Excellency the PRESIDENT :—Do you wish to refer the Bill to a Select Committee ?

The Honourable MR. RICHEY :—No, Your Excellency. I think that the principle of the Bill having been accepted, a review on the second reading will be sufficient. There have been no objections or petitions on the subject.

The Honourable MR. MELVILL, in moving the first reading of Bill No. I. of 1887 entitled “ A Bill to further amend Bombay Act II. of 1874,” said :—
 Mr. Melvill moves the first reading of Bill No. I. of 1887. This Bill calls for very few remarks. Bombay Act II. of 1874 is an Act for the Regulation of Jails in the City and Presidency of Bombay and the enforcement of discipline therein. Section 17 of the Act divides criminal jails into three kinds—first, subordinate ; second, district ; and third, central. Section 19 of the Act is as follows :—“ District jails shall be established at the seats of the Courts of Sessions Judges.” Thus the section makes it obligatory to establish district jails in every place where there is a Sessions Court. Section 22 says—“ All convicts sentenced by the Courts of Session shall be imprisoned in the district jail.” Now that small stations like Sátára have been brought by rail within easy communication with Poona, where there is a central jail, it is more convenient to do away with the district jails

and their extensive establishments at these small stations, and to transfer all convicts as soon as they are sentenced by the Sessions Court to the central jail at Poona. The present Bill, therefore, proposes to amend Section 19 of the Act by making it optional, and not compulsory, to establish district jails at the stations at which criminal sessions are ordinarily held by Sessions Judges. We have introduced a new Section 22a to make provision for dealing with convicts in a district in which there is no district jail, there being of course no provision for such a contingency in Act II. of 1874, which provides that there shall be district jails in every district. Lastly, the opportunity has been taken to amend Section 41 of the Act so as to bring it into harmony with Section 400 of the Criminal Procedure Code. The section of the Code requires that, when a sentence has been fully executed, the warrant shall be returned to the Court from which it issued, while Section 41 of Bombay Act II. of 1874 requires the warrant to be sent to the officer from whom it was received. Now the officer from whom it was received may not always be the Court by which it was issued. For example, if a prisoner is sentenced by the Sessions Court at Thána, and sent to the jail there, and afterwards forwarded to the Central jail at Poona, then, when his sentence has expired, the warrant according to the Criminal Procedure Code should be returned to the Sessions Court, while according to the Bombay Act it would be returned to the Superintendent of the jail at Thána. The matter is not one of much importance, but there is a conflict to this extent between the two Acts. It is of course necessary that the Act of the Imperial Legislature, which is the later Act, should govern the procedure. Section 41 of Act II. 1874 has been altered accordingly by striking out the last paragraph. I move that the Bill be read a first time.

Bill read a first time.

The Bill was read a first time.

The Honourable MR. MELVILL:—The Bill has been duly published. No objections have been made to it; in fact it is a Bill to which no objections can be made. As we are anxious to carry out our economical measures as quickly as possible, I propose that the standing orders be suspended, and that the Bill be read a second and third time at once.

The standing orders were accordingly suspended, and the Bill was read a second and a third time and passed.

The Honourable MR. MELVILL:—I must ask, my Lord, for an extension by one month of the time granted for the presentation of the report by the Select Committee on the Aden Port Trust Bill. Two months were originally allowed for the report; but there has been some delay in consequence of the necessity of obtaining the opinion of the authorities at Aden. The report is now being drafted, and will very soon be presented.

The extension was granted.

His Excellency the President then adjourned the Council.

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

A. SHEWAN,

Acting Secretary to the Council of the Governor
of Bombay for making Laws and Regulations.

Bombay, 12th February 1887.