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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 Monday the 10th October, 1887.

PRESENT:

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

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

The Honourable J. R. NAYLOR.

The Honourable the ADVOCATE GENERAL.

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

The Honourable Khán Bahádur KAZI SHAHABUDIN, C.I.E.

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

The Honourable PHEROZESHAH MERVANJI MEHTA.

Speech by His Excellency the President on the deaths of Sir. M. Melvill and Mr. Dayaram Jethmal.

His Excellency the PRESIDENT said :—Since our last meeting this Council has lost two of its members. In the Honourable Sir Maxwell Melvill we had a colleague whose calm and sound judgment inspired the highest confidence. Very few men had a greater knowledge of the various needs of the Presidency, for the prosperity of which he laboured so hard and so faithfully. I doubt if Bombay ever had a Member of Council who was so single-minded in his devotion to its interests. The chief characteristic of the late honourable member's work was its thoroughness and finish. Whether he had to settle important questions of Forest or of Abkári

policy, or to decide upon a comparatively insignificant matter affecting the humblest individual, never did my late friend rest until he had satisfied himself that every point had been considered. As an instance of this I may mention the case of some Mehwási Patels in the Kálol Táluka of the Panch Mahál, on whose behalf the late honourable member took infinite pains as soon as doubts arose about the justice of a former settlement of their rights. The acuteness of certain minds is only too apt to develope into obstinacy or one-sidedness. In my late honourable friend's method of dealing with intricate questions nothing was more remarkable than his extraordinary fairness. No argument that could be urged on either side was suppressed, and his minutes always contained a full record of the *pros* and *cons*. Always conciliatory, always ready to waive minor points, there was only one thing which he could not tolerate—unreality. Too modest himself, self-assertion seemed to him a breach of good taste which his refined nature abhorred. Theories did not attract him, and I can hardly recollect a single minute in which a doctrinaire idea made its appearance. His mind was too versatile to run into any special groove, and his perception was so quick that he invariably detected the practical demerits of a theoretical solution. I have often wondered in reading his minutes what Sir M. Melvill would have done if he had been a Professor. He would probably have adopted the course which Savigny tells us the Roman jurists took, who did not indulge in definitions, but in illustrations (*"verbi causa"*). He was an ideal administrator without other ambition than that of promoting the happiness of the people of India, and his conception of the means by which that object could be accomplished was essentially practical, because founded on the existing state of things. On the dignity of Government, and the loyalty of its servants, he held very strong opinions, which were the natural result of the great pride he felt in belonging to the Bombay Civil Service. In the affairs of the town of Bombay, of which he had so long been a resident, he took a direct and personal interest, and to that city as well as to the Presidency his loss is irreparable. Having paid this tribute to his memory in your name, I can only say for myself that I sincerely mourn the loss of a true friend.

In the Honourable Mr. Dayaram Jethmal we have lost a thoroughly efficient and upright member, who during the short time he was with us had produced a most favourable impression and who filled a most important place on account of his intimate acquaintance with the province of Sind, in which Government and this Council are deeply interested. He was so universally respected in Sind that everything he said on its behalf commanded our attention, and to me personally it was a pleasure to discuss Sind affairs with the late member whose name is associated with many useful institutions in that part of the Presidency, over which I may say we are keeping a most careful watch. We are supplying Sind—whilst fully recognising its special characteristics—with some of our best administrators, in order that it may rapidly attain that development which our late colleague so earnestly endeavoured to secure for it.

The Honourable Mr. TELANG:—On behalf of the Additional Members of the Council I would like to express our concurrence in what has fallen from your Excellency. It is not necessary to add anything to what your Excellency has said, but we desire to express our sympathy with the relatives of the deceased members of Council whose death we lament.

Papers presented to the Council.

The following papers were presented to the Council:—

(1) Report of the Select Committee appointed to consider and report on the Bill to amend Bombay Act No. III of 1866.

(2) Letter from the Secretary to the Hitachintak Sabha, Vengurla, No. 47 dated 2nd August, 1887, offering certain observations on Bill No. 2 of 1887.

(3) Petition from Dádábhoy Hormusji and others (without date) praying that Bill No. 2 of 1887 may not be passed.

Mr. Naylor moves the second reading of Bill No. 2 of 1887.

The Honourable Mr. NAYLOR in moving the second reading of Bill No. 2 of 1887, a Bill to amend Bombay Act No. III of 1866, said:—Your Excellency, I have to move the second reading of the Bill to amend Bombay Act No. III of 1866, the object of which was stated when introduced by the late Sir Maxwell Melvill to be "the removal of the limitations imposed by what he might call the Mofussil Gambling Act, Bombay Act III of 1866, in consequence of which gambling cannot be put down in towns

which are more than three miles distant from a railway station, unless they contain five thousand inhabitants and a resident Magistrate. The result is that a great amount of gambling goes on within a few miles of Bombay, which the authorities are powerless to check." The law as to gambling, as it at present stands, is different for Bombay from what it is for the Mofussil. The provisions for Bombay are contained in two old Acts of the Indian Legislature, *viz.*, Act No. XIII of 1856 and Act No. XLVIII of 1860; the provisions for the Mofussil in Bombay Act No. III of 1866. But although the Acts for Bombay and the Mofussil are separate, they are in substance very much the same. In fact, for the greater part they are word for word the same. In the opinion of the Select Committee, it is desirable that the opportunity should be taken to consolidate all these provisions regarding gambling, and the Bill prepared by them effects this purpose. This amended Bill, which is now before the Council, will extend to Bombay and the island of Sálsette and to all places within three miles from any railway-station-house. So far as it affects the city of Bombay and railway-station-houses and places within three miles of any railway-station the law will remain as at present. With regard to the island of Sálsette, I must explain that the late Sir Maxwell Melvill pointed out in his speech on the introduction of the Bill that it had been suggested that the limit of three miles from any railway-station was insufficient and should be extended to ten miles. This matter has been considered by the Select Committee, and it was decided by them not to accept the suggestion to extend the limit of three miles. The consequence of such an extension would be that it would still be possible for people to evade the Act by taking short journeys beyond the ten miles' limit, and, on the other hand, the extended radius would include a large number of villages in which there was no necessity for the Act to have operation. The Committee therefore came to the conclusion that it would be better to retain the three miles' limit, and leave it to Government to extend the Act to places beyond that limit as it became necessary to do so. But as Sálsette is so easily approachable from Bombay by either of the two railways which intersect that island, it was considered necessary to include the whole island in the area to which the provisions of the Act will apply without express extension by Government. The object with which the Bill was originally introduced has also been kept in sight by the Select Committee. So long as Government was restricted as to the sort of place to which the operation of the Act might be extended, effect could not be given to that object. All that it was necessary for people to do was to find some place without a resident magistrate and whose inhabitants numbered less than 5,000. In such a place they might have carried on their gambling operations quite beyond the reach of the law. I am also informed that there are many such places in this presidency where fairs are occasionally held at which gambling goes on, which it is thought desirable that Government should have power to suppress. The present Bill, as drawn by the Select Committee, makes the Act applicable to the entire presidency, and as it thus enables Government to prevent evasion of its provisions by extending it from time to time to any place in the presidency, I trust it will meet with the approval of the Council.

Three memorials regarding the Bill have been presented, two in favour of and one against it. The first memorial is that of Mr. Desái of Thána, dated 29th January, 1887, who approves the proposal that the limit of three miles be extended. He says :—" It is, I believe, a well known fact that the provisions of the law (sections 56 and 66 of Act XIII of 1856), which prevent gambling in the city of Bombay, are frequently evaded by persons living in that city by resorting, for the purpose of gambling, to places like Chembur in the Sálsette and Nirmal in the Bassein tálukas of the Thána collectorate. These two places are, I am told, a little more than seven miles distant from the railway-stations. To prevent gambling in these and other villages, not very far from railway-stations, it is, I think, necessary to extend the provisions of the Act (No. III of 1866) to all places surrounding railway-station-houses and being not more than eight miles from any part of such station-houses. I would, therefore, respectfully propose to substitute the words 'eight miles,' for the words 'three miles' in section 1 of the Bill." If that suggestion were acted upon, people would repair to places just over the eight miles and the same evasion of the Act would continue. It has therefore been considered best to leave Government power to determine to what places the Act shall at any time be extended. The second part of the memorial contains a suggestion with regard to the power of the police to search houses in order to ascertain whether they are common gaming-houses within the meaning of the Act. It is suggested that to section 5 of the existing Mofussil Act there be added the

provision of the Code of Criminal Procedure that such searches shall be made in the presence of two or more respectable persons. This suggestion was considered by the Select Committee, but after discussion it was decided not to adopt it. If the proposal were a dopted, the Committee felt it would be very difficult, if not almost impossible, for the police to pounce upon gamblers, as is generally necessary, and to seize them and their instruments of gaming in the very act. Those instruments are so very easy to conceal and carry away that unless the police can act promptly and catch the offenders whilst they are actually engaged in gambling, a successful prosecution is nearly impossible. For this reason, it appeared to the Committee that any such restriction as was imposed by other laws with regard to the search of houses could not safely be imposed here. The Committee were also not aware that any complaint of unfair or improper proceedings in the search of houses supposed to be common gaming-houses had been made since the law against gambling had been in force in this presidency.

The second memorial was from the Sabha of Vengurla in the Ratnágiri District They say:—"Now that a Bill to extend the sphere of Act No. III of 1866 for ten miles from the station has been introduced by the Honourable Mr. Justice Melvill, I am directed by the Sabha to bring to the notice of the honourable members of the Council that the working of the present law is not as satisfactory as it ought to be to suppress the evils caused by gambling. This city of Vengurla being greatly oppressed by the prevalence of gambling the Sabha exerted their labours with the Government, and Government were pleased to extend the Act to this station by Resolution No. 7289, dated 30th October, 1884. But the law having its force for only three miles round this station, the Act had no sooner come into force here than gambling broke out at Araoli and Shiroda, two very rising villages, not more than five or six miles from this station. The Sabha, therefore, think that the extent limit of ten miles proposed by the Honourable Justice Melvill is quite expedient and trust that the Bill introduced by him be passed into law." These memorialists have somewhat misconceived Sir Maxwell Melvill's intentions, but their object would be sufficiently achieved by the Bill as now drawn. Their representation furnishes, however, an illustration of the necessity for empowering Government to extend the provisions of the Act, whenever from time to time they may find it necessary, to places where there are no resident magistrates and in which the inhabitants number less than five thousand; as both Araoli and Shiroda are places within that category.

The third memorial was from Dadabhai Hormusji, Bhaoo Khumaji Patel, and other persons who are owners or are interested in the gaming-houses in the island of Sálsette which were described by the late Sir Maxwell Melvill, and which were the cause of the introduction of the Bill. These memorialists say:—"Your humble petitioners beg to submit that there does not seem any necessity for amending Act III of 1866, which for the last nearly twenty-one years seems to have worked fairly and to have attained the object for which it was passed. The object of those who framed Act III of 1866 was, as your petitioners believe, not to put a stop to gambling altogether, but to prevent the vice spreading in large and populous cities, or rather in cities and towns which contained five thousand or more than five thousand inhabitants. This restriction had the desired effect, and for the last twenty or twenty-one years none of the inhabitants of the aforesaid town or place where people assemble for the purpose of having a game at cards or dice, and at which some money is put at stake, have ever complained to Government or any other authority either against those who so assemble or against those who keep houses for such people to assemble." Further on they say:—"Your petitioners beg to state that, as far as they are aware, no offence of a serious nature has ever been committed within the aforesaid villages ever since the passing of the said Act, nor have any of the villagers from the aforesaid places suffered any injury to their person or property from the presence of those who have frequented places for gambling. On the contrary, your petitioners beg to state that owing to the fact of persons coming in large numbers, shop-keepers and others have derived much benefit, and which fact also has benefited the villagers as they find commodities for their daily use within their easy reach for which the villagers had formerly to go a long distance to procure the same." In another paragraph they observe: "Your petitioners are informed that the Bill to amend Act III of 1866 having been introduced in your Excellency's Council by the honourable mover was referred to the Select Committee for report, which has been already published and from a perusal thereof it is evident that the Committee have gone much further than even the honourable proposer, for while the latter proposed to

extend the radius from three to ten miles, the Select Committee propose to include the whole of Sálsette within the prohibited districts and thus put a stop to gambling altogether." In short, these memorialists complain that the Bill, as it is now before the Council, will leave them no loophole whatever for evading its provisions. That is obviously the principal object of our legislation. And, as regards gambling, although we do not seek to attempt what would be impossible, *viz.*, to put a stop to it altogether, we do seek to prevent the existence of organised gambling establishments, and we do this not only because their existence is a cause of annoyance to the respectable residents of the neighbourhood, but also because anything which facilitates the assembling together of persons for the purpose of gambling, tends to public demoralisation. With these remarks, Your Excellency, I beg to propose the second reading of the Bill.

The Honourable Mr. TELANG :—I am informed that people of the same class as those who were described by the mover of this Bill have been exercising their wits to find out how to frustrate the working of the Act when passed, and one of the ways which seems to have suggested itself to their ingenuity is that they might go into Bombay harbour and play in boats. I do not know whether this Bill would cover gambling in such places. But I presume that inside the limit of three miles from the coast they would come under the Act. If not, the Council should expressly legislate for such offences. If these were included in the Bill, it would prevent this particular mode of running a coach and four through the Act when passed.

The Honourable Mr. NAYLOR :—The Act will apply to the city of Bombay, which is defined in the Bombay General Clauses Act to include the area within the ordinary original civil jurisdiction of the High Court. I speak subject to correction by the Honourable Advocate General, but I believe I am right in saying that that definition includes the harbour.

The Honourable Advocate General replied in the affirmative and added that Mr. Telang's objection was thus met.

Bill read a second time, considered in detail, and read a third time and passed.

The Bill having been then read a second time was considered in detail, after which it was read a third time and passed.

Mr. Naylor moves the second reading of Bill No. 3 of 1887.

The Honourable Mr. NAYLOR in moving the second reading of Bill No. 3 of 1887, a Bill to amend Bombay Act No. VI of 1863, said :—Your Excellency, this Bill was not referred to a Select Committee and no memorials concerning it have been received. Its object was very fully explained when the Bill was introduced by Sir Maxwell Melvill, and I have only now to ask that it be read a second time. I have, however, a slight amendment to propose when the Bill is considered in detail.

Bill read a second time and considered in detail.

The motion was agreed to and the Council proceeded to consider the Bill in detail.

The Honourable Mr. NAYLOR :—Bombay Act VI of 1863 was framed originally for the city and port of Bombay only ; but it was thought that it might be convenient to extend its provisions to other towns and places in this presidency and a section was therefore inserted at the end of the Act (section 34), enabling Government, by notification in the official Gazette, to extend its provisions to any such town or place. Considerable use has been made of that section and the Act is now in force in several towns in the mofussil of this presidency. Amongst other localities to which it has been thought desirable to extend the Act are certain roads connecting railway-stations with adjacent towns. Thus, it has been extended to the road, six miles in length, between the Násik station on the G. I. P. Railway and the town of Násik, as well as to that town itself. It was obviously very important to regulate the conveyances employed on that road, more important, in fact, than to do so in the town, where conveyances are little used. Similarly the Act has been extended to the road between Ahmednagar and its railway-station and to the road between the Dhárwár town and cantonment and the Dhárwár railway-station. It has also been extended to the road between Bhiwndi in the Thána district and certain other places in the táluka of the same name. At present it is in contemplation to extend it to the road from the new Wathár station on the S. M. Railway to Wái.

But section 34 of the Act authorizes the Governor in Council to extend it only to "towns or places," and as it is, perhaps, rather a straining of language to call a road such as I have described a "place," doubt has been entertained whether the extension of the Act to these roads is quite legal. It is thought desirable that this opportunity should be

taken both of preventing any such doubt arising in the future and also of legalising what has been done in the past. I, therefore, move the following amendments, *viz.*, in section 1, line 1, for "paragraph" substitute "paragraphs" and at the end of the section add the following :—

"In this section the word 'place' shall be deemed to include and to have always included a road between two towns or places."

These amendments were agreed to.

Mr. Naylor moves the third reading of the Bill.

The Honourable Mr. NAYLOR :—As the amendment which has been made in the Bill is, perhaps, rather more than a mere verbal amendment, I will now ask Your Excellency to suspend the operation of Rule 30 in order that the Bill be read a third time, without further delay.

Standing orders suspended and Bill read a third time and passed.

The said Rule was accordingly suspended by His Excellency the President and the Bill as amended was read a third time and passed.

His Excellency the President then adjourned the Council.

A. SHEWAN,

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

Poona, 10th October, 1887.

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