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 Poona on Saturday the 2nd July 1892, at 12 noon.

PRESENT.

His Excellency the Right Honourable Lord HARRIS, G.C.I.E., Governor of Bombay, *Presiding.*
His Excellency Lieut.-General the Honourable Sir GEORGE R. GREAVES, K.C.B., K.C.M.G.
The Honourable Sir CHARLES PRITCHARD, K.C.I.E., C.S.I.
The Honourable Mr. H. M. BIRDWOOD, M.A., LL.D.
The Honourable the ADVOCATE GENERAL.
The Honourable Mr. FAZULBHOY VISRAM.
The Honourable Mr. NAVROJI NASARVANJI WADIA, C.I.E.
The Honourable Ráo Bahádur KRISHNAJI LAKSHMAN NULKAR, C.I.E.
The Honourable Ráo Bahádur RUNCHORELAL CHOTALALL, C.I.E.
The Honourable Mr. A. F. BEAUFORT.
The Honourable Surgeon Major-General JOHN PINKERTON, M.D.

The following paper was presented to the Council:—

Paper presented to the Council.

Letter from Mr. Pestonji Byramji Dantra, dated the 29th June, 1892—Submitting his opinion on the Bill No. 1 of 1892 to amend the Bombay Ábkári Act, 1878.

THE MHOWRA BILL.

Consideration of the Bill in detail.

The preamble and title having been postponed, sections 1 and 2 were adopted.

The Honourable Mr. NAVROJI NASARVANJI WADIA had given notice of the following amendment :—In section 2, to add the following clause to sub-section 18A (1) : "Provided also that private owners of mhowra trees growing on occupied or alienated land shall, on application, be furnished with a license, permit, or pass, for the collection, transport, sale, or possession of the produce of those trees."

In moving the adoption of the amendment, he said :—Your Excellency,—When at the second reading I expressed a wish either to modify section 18A, sub-section 1, or to add a new clause so as to make it perfectly clear that applicants are entitled to get permits on application unless good reasons can be shown that the applicant is a person who cannot be relied upon to possess such a permit, Sir Charles Pritchard replied : "I am afraid we cannot make such a wide concession ; if we did so, the object of this Bill would be defeated." Recognising the difficulty pointed out, I promised to lay before this Council an amendment in a definite form when the Bill was to be considered in detail. Accordingly the amendment now before us has been drafted in consultation and with the consent of my honourable colleagues, Messrs. Nulkar, Chotalall and Fazulbhoy, and it will be observed that it does not ask for any wide power, but only carries out the tenor of the views held in Select Committee, *viz.*, that the rights of the owners of trees to gather their produce, such as they have hitherto enjoyed, should be respected. To deprive them of these invested rights would be unjust. We have all agreed to back up the efforts of Government to put down illicit distillation and its consequent evils, but I trust, it will be admitted, that the privileges of the owners of trees to dispose of their produce to the best advantage should be protected. At the last meeting when criticising the statement of the Poona *Sárvajanik Sabha*, on page 71 of their quarterly journal, your Excellency said : "What an unfair way of putting the case ! How does the Bill shut out people from a legitimate use of these flowers ? For two months in the year when the flowers are fresh there is no restriction at all, and for the other ten months when the flowers are dry and fit for distillation they are able to move them under a permit." And we only ask this facility on behalf of the owners of trees. I am aware that Sir Charles Pritchard may refer me to paragraph 10 of the Select Committee's report, and say that I should, as named therein, leave to the Executive Government to make such subsidiary rules or orders as may be necessary for giving effect to the Act ; but I contend that it was not the intention of the Select Committee to leave to the Executive to make the essential rules, and as this provision may be taken as one of the latter category, I think it should form part of the Act. I have every confidence in Government and in their officers that they desire to make such rules as will operate equitably ; but still the tendency with the progress of education and with the experience already gained of enactments, is to have as much as possible defined in the Act itself. The Poona *Sárvajanik Sabha* complains that, at the time of passing the Forest Act, Sir T. Hope promised in the most distinct manner possible that no interference with the private rights and privileges or conveniences of the people was contemplated, and yet, the Sabha says, the pledge has been so completely violated that no one would believe that the promise was ever given. I do not know if what the Sabha says is correct, but feel that this may be possible. At the last meeting I gave my reasons for suggesting this change and pointed out the difficulty the people would have in obtaining passes or permits ; so I will not repeat them here, but quote the following extract from a leading article in the *Bombay Gazette* of the 30th June :—"The permits for the possession of mhowra flowers above the prescribed maximum will, it is true, be given without fee ; but 'free passes' obtained at the cost of a day's journey to the táluka head-quarters or wherever they may be issued are not free. No one who knows anything of the details of village life, of the relations between the poor and the lower ranks in the Executive, whether in the police department, the ábkári, or the salt, needs to be told what new opportunities for petty oppression, and worse, are created whenever any new restraint is placed upon trade." This shows how the permit question is viewed outside the Council, and I hope the honourable mover will concede the moderate change I now ask.

The Honourable the ADVOCATE GENERAL :—I think the honourable member's amendment ought not to be accepted, as its effect would be this. If it becomes part of the Bill, it would mean that private owners of mhowra trees would have a statutory right to a

license under all circumstances; that is to say, any owner who may have been convicted of illicit distillation of mhowra from the produce of these very trees, or of any other offence against the ábkári laws, or a breach of any permit, would still be entitled to a permit. I submit that that state of things ought not to exist. If a person, who is the owner of mhowra trees, does use the produce of those trees for illicit distillation, I think it only right that Government should have the right of revoking his license. The effect of this amendment, if it forms part of the Bill, will be to give him a statutory right to demand a license whatever offence he may have committed. There also may be other circumstances which may make it extremely undesirable that a license should be given to a person, and it is impossible to include in the Bill all the circumstances or the many different contingencies which may arise. Another objection to the amendment is that when you give a right to a person by Act, you can only take away that right by another Act. *Primâ facie* the owner of mhowra trees should have a right to a license for the collection, transport, sale, or possession of the produce of his own trees; no one could say that such a person ought not to have a license, but I think the object which is in the mind of the honourable gentleman who has moved this amendment can be obtained in another way, namely, by the rules which the Government have power to make under section 30 of the Ábkári Act, which this Bill is to amend. It appears to me that a rule could be made under which the owners of mhowra trees would under ordinary circumstances have a right to have a permit granted to them which could not be revoked or refused except for good reason. I have no doubt Government will be willing to undertake that such a rule will be made. The amendment would render this Act to a great extent inoperative if every owner, whatever his conduct may be, or whatever use he may put the produce of his trees to, should have a statutory right to demand from Government a permit which is only intended to be granted for mhowra to be used for licit purposes. On these grounds I submit that this amendment should not be accepted.

The Honourable Ráo Bahádur NULKAR:—Your Excellency, I consider two very good reasons could be advanced in favour of the amendment: the first is that the law without the proposed amendment will interfere with the rights of private property. Every thing which grows on a man's land is his private property under the Survey Act, and I don't think it would be right for this Council to empower Collectors to refuse licenses to owners of mhowra trees and thereby in effect confiscate the products of those trees. As the Bill now stands, if a Collector refuses a permit or license, the owners of the trees could not touch the flowers, but must allow them to lie on the ground and rot. As regards the effect of the amendment that an owner of trees would be entitled to a license, notwithstanding the fact that he had been convicted of an offence against the ábkári laws, I have no objection to accept a limitation to the effect that the owners of private trees forfeit their right on conviction of such an offence. The persons concerned belong to a respectable class of the community, being landholders paying taxes to Government. They have more to lose than to gain by offending against the laws of the land.

The Honourable Ráo Bahádur RUNCHORELAL CHOTALALL:—Your Excellency, I find we have given tálukas two months to collect their flowers, but the privilege is confined to certain tálukas, and there are other tálukas where there are mhowra trees, and the privilege is not to be given. What is to become of the flowers of these trees? Must they lie under the trees and be eaten by the birds or cattle? If they cannot collect it under this Act, it will be extremely hard. There is no provision as to what is to become of the property of these people unless we give them some option to move the flowers.

The Honourable Mr. FAZULBHOY VISRAM:—Your Excellency, it is quite true that I was a party to the drafting of this amendment and I fully intended to have supported it, but I see the difficulties pointed out by the Honourable the Advocate General, and was going to suggest some such limitation of it as is proposed by Mr. Nulkar which I hope may be agreed to.

The Honourable the ADVOCATE GENERAL:—Your Excellency, I consider it is very difficult indeed to frame a clause which will meet every possible contingency. The case of a man being convicted for having used mhowra flowers for illicit purposes is not the only case which may arise. There may be cases in which owners of trees ought not for good reasons to have the liberty given to them to remove flowers, and it would be extremely difficult indeed to frame an amendment to meet every case. I would again

suggest that it be left to the rules which Government have power to frame under section 30 in order to meet the case. *Primâ facie* of course the owners have a right to permits, but it ought to be left to the discretion of Government.

His Excellency the PRESIDENT :—Apparently since the Select Committee presented their report, some suspicions have arisen as to the intentions of the Executive Government. It has not been our object to interfere with the licit trade in mhowra flower. I fancy that the question between us is simply this, what is the best way of securing to the owners of mhowra trees reasonable facilities to collect, sell, &c., flowers? And the Honourable Mr. Wadia thinks the best way to do it is by putting in the Bill a section making it a statutory right. The Honourable the Advocate General advises that it would be an unsafe thing to do, and I suggest that the Honourable Mr. Wadia will accept that opinion if we undertake to give the owners of mhowra flowers all reasonable facilities. We shall undertake under the rules to give every reasonable facility, and we think that a better plan than to provide for it in the Act.

The Honourable Ráo Bahádur NULKAR :—Your Excellency, I fail to see any other circumstances under which licenses could be refused than where a conviction takes place. Of course, there are departmental circumstances: for instance an Ábkári Inspector may make complaints against certain owners, and allege that he has reasonable suspicion that the flower is used for illicit purposes. There is another thing, the expression "flowering season" is vague; some of us in the Select Committee wished to extend the time beyond what was ultimately accepted. It is still an open question what is exactly the flowering season.

The Honourable Sir CHARLES PRITCHARD :—So far as I can see, the object of the honourable mover, and those who support him, will be sufficiently secured under this undertaking. A general rule made under the Act is as binding on the executive officers as the Act itself. It has all the force of law.

The Honourable Mr. WADIA :—We had no suspicion as to the intention of the Government.

His Excellency the PRESIDENT :—The Select Committee reported that this matter should be left to the Executive.

The Honourable Mr. WADIA :—We had, as I said in my opening speech, the utmost confidence in the executive officers, but we must look forward to what may take place in the future. Such a provision as that provided by the amendment may not be thought advisable under other Councils, and then would come a difficulty, because no change could be made without again coming to the Council. I admit that there should be a clause disqualifying a tree-owner, who may have been guilty of transgressions against the ábkári rules, from holding "Permits." I think an important principle is involved at the bottom of the question, and it is this—If a man owns a certain land, and pays his taxes regularly, he is entitled to the produce of that land.

His Excellency the PRESIDENT :—This principle we recognize, and a more definite undertaking that it will be respected than is given in the Bill, is unnecessary. With regard to the suggestion of Mr. Nulkar as to the limitation of the flowering season, we are quite willing to leave the words simply "flowering season." I do submit, however, to the Honourable Mr. Wadia that it is almost impossible to give the statutory right he asks for. In order to meet your case we will undertake to give the facility I have described. If you wish to go to a division we must, but I must say we have done our best to meet you, and our only objection to accepting the amendment is on legal grounds.

The Honourable Ráo Bahádur NULKAR :—Your Excellency, the rules are liable to be changed.

His Excellency the PRESIDENT :—The undertaking by the executive part of this Government is as binding as anything short of law.

The Honourable Ráo Bahádur NULKAR :—Only a moral binding.

His Excellency the PRESIDENT :—The objection we have is a legal objection and upon that ground we cannot accept the amendment, but we will endeavour to meet it to the fullest extent of our power.

The Honourable Ráo Bahádur RUNCHORELAL CHOTALALL :—Can it not be specified under what circumstances permits will be granted ?

The Honourable the ADVOCATE GENERAL :—This amendment does not allow any condition whatever to be put in a permit to be granted to private owners of mhowra trees, and it must be granted even if there has been a conviction.

The Honourable Ráo Bahádur RUNCHORELAL CHOTALALL :—There might be terms and conditions made.

The Honourable Mr. WADIA :—The amendment may have added to it as follows :—" Owners of trees who are found guilty of transgressions against the ábkári law shall not be entitled to receive permits."

The Honourable the ADVOCATE GENERAL :—If a conviction were the only reason for revoking or refusing a license, then it would be easy to frame an amendment to meet that, but there are many other circumstances which might not be contemplated when an amendment was being drawn up.

The Honourable Mr. WADIA :—The difficulty is for the future, not the present.

His Excellency the PRESIDENT :—The point between us is, are we going to accept the Advocate-General's opinion or are we not ? So far as the executive part of the Government is concerned, we are bound to take that opinion. The undertaking of Government will be as follows :—" Government will undertake to give to owners of mhowra trees growing outside of the tálukas specified in sub-section 3, clause 18A, section 2, all reasonable facilities under permit for the collection and disposal of the produce of their trees for licit purposes."

The Honourable Ráo Bahádur NULKAR :—Cannot you insert the word " always " ?

His Excellency the PRESIDENT :—The honourable member evidently desires to higgle. I cannot bind any future Government. It is impossible to endeavour to put into the Bill anything to limit the power of a future Government to amend the Act : neither can I consent to insert a word which would be construed as intending to bind future Governments. It is no use asking me to give an undertaking of that kind. I have given my word as far as I can, and I cannot do more.

The Honourable Mr. WADIA :—Since we have been so unanimous in passing a Bill of such a useful character as this, I have no desire to now have a division, and I ask to be allowed to withdraw my amendment.

The amendment was accordingly withdrawn.

The Honourable Mr. WADIA then moved " That in the same section, sub-section 18 A (3), line 58, between the words ' of ' and ' the ' to insert the words ' any of '." He said :—My object in putting these words before the words named is that it will make it perfectly clear as to the transport of the flowers from one táluka to another.

The Honourable the ADVOCATE GENERAL :—I don't think there can be any doubt about the words in the Act as they stand. I don't think there is any necessity for the amendment, although it will do no harm.

The Honourable Mr. WADIA :—I think it will make it clear.

On the suggestion of the Honourable the Advocate General the wording was altered to " said tálukas, or of any or of either of them."

The remaining clauses, preamble and title were then adopted.

The Honourable Sir CHARLES PRITCHARD :—Your Excellency—There are one or two points on which I desire to offer a few brief remarks before the discussion of this Bill is closed. I would point out in the first place that the opposition in this Council to the Mhowra Bill of 1881 was based in great part on the supposition that mhowra flowers are used in the Konkan as food for man and beast. That illusion has been dispelled by the reports of the Mhowra Committees which were not drawn up until 1883, after the rejection of the Bill of 1881, and by other more recent inquiries the results of which were laid before this Council at its last sitting. Next, I would explain there is no separate ábkári establishment in this Presidency. There is a separate Ábkári Commissioner who directs the whole executive, but the work of the department is entrusted everywhere to the Collectors, and is performed under their orders by their ordinary táluka and village establishments, aided by a few additional Inspectors and policemen. I do not share the apprehension expressed in some quarters that additional excise estab-

lishments will be required to work this Bill and that its working will result in any increased annoyance by excisemen to the rural population. Its tendency will be in the opposite direction, as after it has passed but small quantities of mhowra flowers will remain in the villages after the flowering season is over. With reference to the disapproval of the ábkári policy of the Government expressed by the Honourable Mr. Nulkar, in his speech on the second reading, I notice that he favours the adoption of direct repressive measures for checking consumption as soon as illicit distillation has been stopped, and that he suggests as a means to that end that the quantities of liquor issued for sale at the sanctioned shops should be gradually reduced, and that the ábkári farm should be sold by public competition to those who agree to work with a steadily reduced number of shops. I gladly assure my honourable friend that if he will draw up a detailed working scheme to give effect to his views, it shall receive the most careful and favourable attention; but I confess that the task seems to me to present very great difficulties. I don't quite see how the issues of liquor for sale at each shop are to be limited without undue interference with the liberty of the subject, or without incitement to unlawful practices. With supplies insufficient to meet the full demand, some customers must be left unsupplied, and I should expect under such circumstances that pressure would be brought to bear on the shopkeepers to exceed the limits prescribed for each month's, or each week's, or each day's, sale, as the case might be, and that the shopkeepers would be surely tempted to sell illicit liquor that could only be procured by means of illicit distillation. That consideration seems to me fatal to the scheme, which starts from the premiss that illicit manufacture must be kept in check. All experience that I have gained goes to show that illicit manufacture cannot be stopped unless licit liquor is placed within the reasonable reach of those who want strong drink. Neither can I hold with my honourable friend that the liquor traffic is not a legitimate source of revenue. In all civilised countries in which the consumption of liquor is permitted, revenue is raised from its taxation, and I think that in such matters there can be no safer guide than a concurrence of universal experience. Lastly, as to the letter bearing Mr. Dantra's signature that has been read to us to-day—I will leave the argument, which has already been answered, and will deal only with the remedy proposed in it. That remedy is to prohibit the importation of mhowra flowers into the districts of Thána and Kolába, to cut down all Government mhowra trees growing in those districts, and to leave the produce of private trees unrestricted. My answer is, first, that it would in practice be useless to prohibit importation unless at the same time control were given over the produce grown in the districts—as in that case it would be impossible to stop importation without laying a strong cordon of preventive posts round the boundaries of the districts and examining every package of goods that passes those posts; and, secondly, that there is a large number of private trees in the Thána district the produce of which will inevitably continue to be used for illict distillation unless it is brought under control soon after it has been gathered. The subject of gradually reducing the number of mhowra trees growing in the Government forests has been for some time under the consideration of the district authorities, but the trees are so numerous that some years must elapse before any great diminution can be effected, and the employment of the jungle tribes who make money by the mhowra harvest has to be borne in mind.

At the close of the debate His Excellency the PRESIDENT said :—I must take this, the only opportunity I shall have of correcting a false impression which my remarks last Saturday on Press opposition appear to have led to. It has been inferred from them that I was advocating for India a system under which Government would be consistently supported by a section of the Press. I do not think my remarks warrant any such construction. I was drawing a comparison between the effect of unanimous Press opposition in this Presidency on the legislative proposals of this Council with what might be expected from unanimous Press opposition in some country where a section of the Press supports Government measures. I offered no opinion as to the respective merits or demerits of the two systems except on one point. The establishment of a Government Press in a country which is already racked with the sectional and sub-sectional divisions of race and of creed, and which is more party-bound than any other portion of Her Majesty's Dominions, might appear to some as not unlikely to worse confound the confusion; but whilst an interesting academical question it is not within the domain of practical politics, and I did not discuss the point, or express a preference for a system under which there would be a Government Press, except on one point, and that was that I think the public are better informed of the merits or demerits of Government proposals where the Press is not all of one

mind. Certainly, we consider rightly or wrongly that the arguments in favour of this legislation and against the *laisser faire* proposals of our critics would have been more fully and more clearly laid before the public if there had been something approaching an equilibrium instead of unanimity of Press opinion. I fancy, too, that I have detected a note of surprise that I should have raised the point at all; but it seemed to me that I was in duty bound to take notice, in defending our position, of a notorious fact; to have omitted to do so would have been to display a disrespect for the Press, and a contemptuous indifference to its criticism,—feelings which I do not entertain. For that reason I raised the point, and gave my reason for declining to yield to an opposition, which would, probably, under such other circumstances as I selected for the purpose of comparison, have enforced acquiescence.

Bill read a third time and passed.

The Bill was then read a third time and passed.

THE SALT BILL.

Bill read a third time and passed.

The Bill to amend the Bombay Salt Act, 1890, was read a third time and passed without observation.

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

C. H. A. HILL,
Secretary to the Council to His Excellency the Governor of Bombay for making Laws and Regulations.

Poona, 2nd July 1892.

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INDEX TO

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PART V.

PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

BILLS.

REPORT OF SELECT COMMITTEE.