Registered No. 42 of 1876.

THE

Bombay Government Gazette.

Published by Authority.

SATURDAY, 15TH APRIL 1876.

☞ *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 Thursday, the 23rd March 1876, at noon.

PRESENT.

His Excellency the Honourable SIR PHILIP EDMOND WODEHOUSE, K.C.B., Governor of Bombay, *Presiding.*
His Excellency the Honourable SIR CHARLES STAVELEY, K.C.B.
The Honourable A. ROGERS.
The Honourable J. GIBBS.
The Honourable the ACTING ADVOCATE GENERAL.
The Honourable MAJOR-GENERAL M. K. KENNEDY.
The Honourable E. W. RAVENSCROFT, C.S.I.
The Honourable RAO SAHEB VISHVANATH NARAYAN MANDLIK.
The Honourable NACODA MAHOMED ALI ROGAY.
The Honourable KHAN BAHADUR PADAMJI PESTONJI.
The Honourable DONALD GRAHAM.
The Honourable RAO BAHADUR BECHERDAS AMBAIDAS., C.S.I.

Affirmation of office, &c., taken by the Acting Advocate General.

The Honourable the Acting Advocate General took the usual affirmation of office and declaration of allegiance to Her Majesty.

The following papers were presented to the COUNCIL:—

Letter from the Secretary to the Government of India, dated 1st March 1876, returning, with the assent of His Excellency the Viceroy and Governor General signified thereon, the authentic copy of the Bill to amend (Bombay) Act VIII. of 1867.

Reports from certain officers regarding the probable effect of the proposed alteration in the Bombay Ferries Act of 1868 on the coasting trade.

Letter from the Bombay Chamber of Commerce regarding the proposed alterations in the Bombay Ferries Act of 1868.

His Excellency the PRESIDENT:—The first business before us is the resumption of consideration in detail of Bill No. 2 of 1875,—"a Bill to amend the law relating to the Land Revenue administration of the City of Bombay." When this Bill was last before the Council, I believe the resolution of the Council was that the Bill should be printed as amended and brought up on some future day for further consideration in detail. Unless further amendment is necessary, it may now be put down for the third reading. I am not aware that any suggestions regarding further amendments have been received.

The Bombay City Land Revenue Bill re-considered.

The Honourable the ACTING ADVOCATE GENERAL:—Perhaps I might offer a suggestion in reference to the 34th section of the Bill. I think there might be some slight verbal alteration made. At present the section runs thus:—"Whenever any dispute or question shall arise with respect to the making or completion of any transfer of title to any land, house, or other immoveable property, subject to the payment of land revenue to Government, the Collector shall summon all the parties interested in such transfer," &c.; and I apprehend the proceedings before the Collector take place only for the purpose of having properly entered in the Collector's books the name of the party who may be liable to pay land revenue to Government. For that purpose, it seems to me that the words "or completion of any transfer of title" might be more than sufficient, and might possibly give ground hereafter to the idea that the Collector has power to adjudicate summarily on a question of title arising between two parties. In order to obviate any difficulty arising under that head, I would suggest that the section be slightly altered by making it run thus:—"Whenever any dispute or question shall arise with respect to the making or completion of any entry or transfer in the Collector's books relating to any land," &c. I think that would still carry out the intention of the section, while leaving the words free from any possible misconstruction hereafter.

The Honourable Mr. GIBBS:—If I remember rightly, this section was considerably altered at the suggestion of Mr. Scoble, made in consequence of an application from the Bombay Law Society.

The Honourable the ACTING ADVOCATE GENERAL:—I have looked at the former proceedings, and I find there was not very much alteration made in this section.

The Honourable Mr. GIBBS:—Of course, any investigation by the Collector is simply held in order to get the names of the proper persons entered in his books, so as to secure to Government the payment of the revenue.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK expressed approval of the alteration suggested by the Advocate General, and said:—The latter part of the section means that the Collector shall give full force to the decree. His own process is simply for the determination of the name of the party who has to pay the Government rate; and if a party who is affected by the summary process can maintain his right and title in the Civil Court, the Collector must then alter his record in accordance with such Court's decree.

The Honourable Mr. GIBBS:—Will not the 35th section want altering also? We have the word "title" there.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK:—If I recollect aright, that was put in because it was stated that certain persons had pleaded that the Collector having transferred certain lands to their names he could not afterwards raise any obstacle as to the rights of Government. A memorandum is now added to every entry of transfer stating that it is not to militate against the rights of Government if any dispute arise. It was to avoid repeating that with the entry of each name in the Collector's books that this section was inserted in the Bill.

The Honourable Mr. GIBBS:—The 35th section may stand as it is, because it does not affect the other section. It is merely when the Collector hears a dispute between *A* and *B* and enters either of their names, to prevent them turning round afterwards and saying—"You are a Government officer, and if Government had any right to the property, you ought to have entered it then." That, I understand, is now put at the bottom of every transfer, and this clause is simply to render that unnecessary.

The section was finally amended as follows:—

"Whenever any dispute or question shall arise with respect to the making or completion of any entry or transfer in the records of the Collector of or relating to any land, house, or other immoveable property, subject to the payment of land revenue to Government, the Collector shall summon all the parties interested in such entry or transfer, and shall call for such evidence, and examine such witnesses, as he shall consider necessary, and shall thereupon decide summarily what entry shall be made in his records in respect of such land, house, or other immoveable property. If at any time a certified copy shall be produced to the Collector of an order of a competent court determining the title to any such land, house or other immoveable property, the Collector shall amend his records in conformity with such order."

The Honourable Khan Bahadur PADAMJI PESTONJI observed that under the present law, namely, Section 6, Clause 1 of Regulation XVII. of 1827, made applicable to Bombay by Regulation XIX., the owner of property can, if he choose, throw up his ownership, and refuse to pay the assessment; and from this Bill that section is omitted.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK:—It has practically remained a dead letter for the last 50 years. Surely no one would be so mad as to throw up land in Bombay.

After some further conversation it was agreed that the clause need not be inserted.

His Excellency the PRESIDENT:— I propose that "the Bill to amend the law relating to the Land Revenue administration of the City of Bombay" be read a third time.

Bill read a third time and passed.

The Bill was then read a third time and passed.

The Mamlatdars' Courts Bill reconsidered.

The Council next proceeded to resume consideration in detail of "Bill No. 5 of 1875, a Bill to consolidate and amend the law relating to the powers and procedure of Mámlatdárs' Courts."

The Honourable Mr. ROGERS:—This Bill has already been considered in full Council, and it has been before a Select Committee, and before the public also for the last two months and a half, and no objections have been made to it except one which I will now put before the Council. This objection comes from Mr. Robertson, the Collector of Dharwar, who objects to the use of the words "roads to fields" in Section 4, and wishes the words "right of way to fields" to be restored. He says that in many places there are no roads at all, and ryots have by prescription the right to pass through fields or among the crops.

The Honourable Mr. GIBBS:—"Right of way" is rather a different thing to the "use of a road." We particularly put in the word "use" because we wanted to get rid of the legal term "right of way." We might say "the use of ways to fields," either "ways" or "roads." It was not intended, of course, that there should be regular macadamised roads, with ditches at the sides or anything of that kind; but the term was used because there is a perfectly well known custom in villages, that a man whose field is in the middle of a lot of other fields has the use of some way by which he gets to his own field. To define this, instead of using "right of way," which is a legal term, and might be capable of misconstruction, we used the words "the use of roads to fields" in lieu of it.

The Honourable Mr. ROGERS suggested "the use of 'passages' to fields."

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK:—The words "roads to fields" were taken from the old Regulation XVII of 1827 (Section 31, Clause 4) and the term has always been understood to mean the very kind of road to which Mr. Robertson alludes. It may be that our ideas have changed, but in 1827 "roads to fields" was a very well understood expression; and I think it has been ruled in the High Court that there may be a road at certain seasons only through fields, and that is what is meant by Mr. Robertson evidently. There may be roads for the use of cultivators only at certain seasons. If the word "roads" is objectionable we might substitute "ways" for it.

His Excellency the PRESIDENT :—We might say "the customary ways to fields."

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK :—Yes, that would be still better. Supposing there was a crop of sugar-cane in a field, the road to another field might be by one way, and when there was a crop of rice, by another.

The Honourable Mr. ROGERS proposed "the use of roads or customary ways to fields."

This amendment was adopted.

The Honourable the ACTING ADVOCATE GENERAL :—It seems to me that the 4th section hardly carries out the intention of the illustrations attached to it. The illustration appears to me to intend that the Mámlatdár should be able to give decisions in certain cases of the tenancy being held over, but the words of the section are that the Mámlatdár shall give immediate possession of all lands, &c., "to any party who is dispossessed of the same otherwise than by due course of law." I think that means in the case of a person being put out of possession illegally, and has no reference to the case of the person who is entitled to possession in the event of a tenancy being held over. I would suggest that some words to this effect should be introduced, viz., "to any party entitled to such possession by reason of the termination of any tenancy," &c.

The section was then amended so as to read as follows :—"It shall be lawful for Mámlatdárs' Courts within the territories in their revenue charge to give immediate possession of all lands, premises, trees, crops, fisheries, as well as of the use of water from wells, tanks, canals, or water-courses, or of the profits thereof to any party entitled to such possession by reason of the determination of any tenancy, or who shall have been dispossessed of the same otherwise than by due course of law, and also in cases in which a disturbance of the possession of any lands, premises, trees, crops, or fisheries, or of the use of water from any well, tank, canal, or water-course, or of the use of roads or customary ways to fields is attempted by any party, to issue an injunction to such party to refrain from such disturbance : Provided that application be made to them by the party aggrieved within six months from the date of the determination of such tenancy, or of such dispossession, or of such attempted disturbance."

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK :—I wish to call the attention of the Council to clause 2 of Section 3. The words as they stand at present are :—"The words 'plaintiff' and 'defendant' shall include the recognised agents of a plaintiff or defendant, as defined in section 17 of the Code of Civil Procedure (Act VIII. of 1859)." Since this Bill was last before the Council, a case has been before the High Court, from the published proceedings regarding which it appears that the provisions of this section (which, I believe, appeared in a similar form in the old Act,) are not properly understood, or, if they are understood, are not, at any rate, properly carried out. There is a class of practitioners who practise in some of the Criminal Courts, and who also try to practise in the Mámlatdárs' Courts, and who are known by the name of Mukhtyars. These are a class of men who were at one time called Revenue agents. The Revenue agents ceased to exist after the repeal of certain provisions of Act XVI of 1838, in 1866, by this Council, but the Mukhtyars still exist in some parts of the Presidency ; and I believe the provisions of this clause are intended to prevent that class of persons practising in the Mámlatdárs' Courts. They are a class of men who are subject to no professional restrictions. In any case there is no guarantee either of professional qualifications, of social position, or of general character. In the particular case I refer to, a Mukhtyar attempted to bring a suit in a Mámlatdár's Court, and made away with two rupees that were entrusted to him for that purpose ; a criminal prosecution arose out of those two rupees, and the Mámlatdár was eventually sued by the Mukhtyar for damages at the sum of Rs. 2,000. The case was tried by the District Judge of Tanna, and subsequently came up in appeal before the High Court, where the Mámlatdár succeeded in defending himself against the attack of the Mukhtyar. I noticed this case, and seeing that the Mukhtyar was not a person entitled to practise in these courts, and considering that the provisions of the section are likely to be defeated in the future as they have been in the past, I was of opinion that perhaps we might make the intention of the clause more specific, which can be done either by adding an illustration, or by making the wording of the section clearer than it is at present. If it be the desire of this Council that the provisions of section 17 of the

Code of Civil Procedure should be rigorously followed, we should say so in so many words, and prohibit this anomalous class of persons from appearing before the Mámlatdárs. Under Section 17 of the Code of Civil Procedure only general attorneys can appear for parties who are not within the jurisdiction of any Court, and under this Bill all who are within the jurisdiction must appear before the Mámlatdár in person. At present the intention of the Bill is evidently not understood by all the Mámlatdárs, because, as is shown by the case I have referred to and by other cases that have come before the superior Courts, these Mukhtyars are still allowed to practise in the Mámlatdárs' Courts. I appeal to the members of the Council who have had a good deal of Mofussil experience to say whether these men should be still permitted to practise in those Courts.

The Honourable Mr. Gibbs :—I believe that the class of men now called Mukhtyars is entirely distinct from the old class of Mukhtyars who existed many years ago as Revenue agents under the old law, when there were Revenue Courts under the Collector in existence. After those Courts were abolished, I believe on some recommendation of the Sudder Court it was suggested that these men, their occupation being gone, should be looked upon with an eye of favour and allowed to appear in the Magistrates' Courts and in the Session Courts to defend prisoners. A prisoner under the Criminal Procedure Code could employ anybody he liked to defend him. It was found after the old class of original revenue Mukhtyars had died out, that a lot of very questionable men under the title of Mukhtyars used to appear in the Session Courts and in the Magistrates' Courts to defend prisoners; and they were very often men who had experience of gaol to add to their other experiences, and were looked upon as a very low and undesirable class of persons to be in any way connected with the Courts, or with the proceedings of any trial. In consequence of this there was a very strong representation made to the Government of India, in the Legislative Department, when the New Criminal Procedure Code was under consideration, and (I speak under correction, but) I think the new Criminal Procedure Code provides that a prisoner may be defended by a friend, or an agent only if the Judge or the Magistrate consents thereto. It therefore gives the Magistrate or the Session Judge the power of refusing to allow a prisoner to be represented by an agent if he thinks from the agent's character he is not a proper person. I consider myself it is very necessary that the rights of the poor cultivators should be protected in the same manner; and I quite agree that common Mukhtyars should not be allowed to appear in Mámlatdárs' Courts, and in cases of this nature more especially, as the object of the Act is that the man interested should, wherever he can, attend himself. It is often the case in these Courts, when the parties appear before the Mámlatdár, the proceedings are conducted in a sort of conversational manner between the three, and the Mámlatdár gives his decision on the spot. I think that is the best way of working the Act, and that Mukhtyars should not be allowed to appear. It is easy to make the clause run thus :—"Shall include the recognised agent of the plaintiff or defendant, as defined in Section 17 of the Code of Civil Procedure, and no one else, viz.," and then set out the Section. If Mámlatdárs are not supposed to carry a Civil Procedure Code about with them, and I suppose they are not, it would be advisable to append the 17th section in full.

The Honourable Mr. Rogers :— I think it might interfere with the working of the section, and might inconvenience the parties themselves. A person, instead of employing a professional man, might give a power of attorney to his own brother. As the matter is provided for by law, it is a mere question of departmental management to see that the law is carried out.

The Honourable Mr. Gibbs :—But he could not do that under the Bill as it at present stands unless he was living beyond the jurisdiction of the Mámlatdár's court.

His Excellency the President :—If the Bill refers the Mámlatdárs to the positive law to decide who are to be recognised agents, then it lies with the High Court, or some other authority, to see that the law is properly administered.

The Honourable Mr. Gibbs :—The Mámlatdárs' Courts are not under the High Court. The only supervision over them is in the hands of the Collector, if he chooses to examine them.

The Honourable Rao Saheb Vishvanath Narayan Mandlik :—It is only in the exercise of its extraordinary jurisdiction that a matter of the kind I referred to can come before the High Court; and it involves a very cumbrous mode of procedure.

The Honourable Mr. ROGERS:—My personal experience is that these Mukhtyars are the greatest nuisances possible, and very often prove what they do not want to prove; and I think we may safely leave the Mámlatdárs to see that they do not appear in their Courts.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK:—But the case I have cited is only one of a very large number, and it only shows that they really are allowed to appear. That particular case occurred within ten miles of Tanna, and the matter was decided only a few months ago in the High Court. The recognised agents under the Code of Civil Procedure are specified in Section 17 of the Code, and they do not include the brother or other relative of the party, as the Honourable Mr. Rogers suggests.

His Excellency the PRESIDENT:—What does the honourable member propose to do with this section, to get over the difficulty?

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK:—There are four classes of agents recognised under the Code, as entitled to appear for parties not residing within the jurisdiction of a court, viz., persons holding powers of attorney; persons carrying on a trade, or business, for and in the name of the parties; persons being *ex officio* authorised to act for Government in any suit; and persons specially appointed by order of Government, at the request of any sovereign prince, and so on. A party may be represented by either of these, or by a pleader duly appointed to act on his side. It will be necessary to quote Section 16 of the Civil Procedure Code also.

The Honourable Mr. GIBBS:—Yes, because the Wakil comes under Section 16, and Section 17 is an exemplification of Section 16. Suppose we alter the section so that it will read: "The words 'plaintiff' and 'defendant' shall include a pleader duly appointed to act on their behalf, and the recognised agents of a plaintiff or defendant, as defined in Section 17 of the Civil Procedure Code."

Bill read a third time and passed.

This suggestion was agreed to, and the clause was altered accordingly. No other amendment being suggested the Bill was read a third time and passed.

Mr. Gibbs moves that the Ferries' Act Amendment Bill be referred to a Select Committe.

The Council next proceeded to the consideration of "Bill No. 6 of 1875, a Bill to amend (Bombay) Act II. of 1868 (The Ferries Act)" which was put down for second reading. The Honourable Mr. GIBBS said:—With regard to this, Sir, there have been reports received from the Collectors of several districts—Ahmedabad, Ratnagiri, Colába; from the Commissioner of Customs and the Revenue Commissioner of the Northern Division; from the Collector of Surat, the Collector of Salt Revenue, the Collector of Broach, and from Mr. Nairne, the First Assistant Collector in charge at Tanna. The opinions vary considerably, and Mr. Nairne's especially is very distinctly against the Bill. The questions which have arisen are of very considerable importance, and we are still without some of the information which the Honourable Rao Saheb asked for, viz., with regard to the traffic that is carried between certain places which under the proposed Bill would become regular ferries; and I think that under the circumstances, instead of moving the second reading, I would prefer, with your Excellency's permission, referring the Bill which has been read a first time to a Select Committee. I think the objections which have been raised to the Bill are of very considerable importance, and can be very much better discussed by a Select Committee than by a Committee of whole Council. If your Excellency and the Council will agree to the Bill being so referred I will nominate the Committee.

His Excellency the PRESIDENT:—There is also the letter, received to-day, from the Chamber of Commerce.

The Honourable Mr. GIBBS:—Yes. I have not seen that yet.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK:—When this Bill was before the Council on the last occasion, I said that I had some doubts as to the propriety of certain portions of it, and having since, with your Excellency's permission, seen a good deal of the correspondence on the subject which has led to the drafting of this Act, I must confess that my doubts have been considerably strengthened. I think, Sir, that this Bill will require a great deal of mature consideration, and seeing not only the diversity of the views

of those officers who have reported upon it, but seeing also the actual working of the ferries for the last twenty years, I must confess that I look upon some of the provisions of this Bill with great misgivings. I think, Sir, that this Council will agree with me that we should be the last, as far as possible, to interfere with a trade which is only now growing into popular favour, viz., the coasting trade, of which we had very little a short time ago, and which is now rising into some importance. I trust that in the interests of the public we may see some way for protecting those interests, and for not allowing any monopoly whatever to damage those interests. If the Bill is referred to a Select Committee, I shall then move for certain information besides those returns to which I alluded on the last occasion, and which I think will be very necessary before we can model these provisions so that all legitimate protection will be given to the coasting trade, which is a rising branch of the public commerce.

Bill referred to a Select Committee.

It was then agreed that the Bill should be referred to a Select Committee composed of the Honourable Mr. Rogers, the Honourable Major-General Kennedy, the Honourable Rao Saheb Vishvanath Narayan Mandlik, the Honourable Mahomed Ali Rogay, and the mover.

His Excellency the PRESIDENT :—When do you propose to receive the Committee's Report?

The HonourableMr. GIBBS :—I know the details of the trade have not yet been received and it will take some little time to get them. We shall not be able to bring up the Report until the Council meets in the monsoon, at Poona. I should think we can get through with it by the 1st of July, and I suppose the Report should be published and circulated before it is taken before the Council. That is the usual course.

His Excellency the PRESIDENT :—Then certainly the 1st of July is not too soon.

The 1st July was then agreed to.

It was agreed that the report of the Select Committee need not be translated.

The Hon'ble the Acting Advocate General placed on the Select Committee on the Bombay Revenue Officers and Land Revenue Code Bill.

The Honourable the Acting Advocate General was placed on the Select Committee on the Bombay Revenue Officers and Land Revenue Code Bill in place of the Advocate General, Mr. Scoble.

His Excellency the President then adjourned the Council.

By order of His Excellency the Governor in Council,

G. C. WHITWORTH,

Acting Under Secretary to Government.

Bombay, 23*rd March* 1876.

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.