



Bombay Government Gazette.

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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 Bombay on Tuesday the 1st April 1879, at 3-30 P.M.

P R E S E N T :

His Excellency the Honourable Sir RICHARD TEMPLE, Bart., G.C.S.I., C.I.E., Governor of Bombay, *presiding*.

The Honourable J. GIBBS, C.S.I.

The Honourable L. R. ASHBURNER, C.S.I.

The Honourable the ADVOCATE-GENERAL.

The Honourable E. W. RAVENSCROFT, C.S.I.

The Honourable Colonel W. C. ANDERSON.

The Honourable DOSABHOY FRAMJI, C.S.I.

The Honourable SYUD HUSSAN EL EDROOS, C.S.I.

The Honourable M. BALFOUR.

The Honourable Colonel C. J. MERRIMAN, C.S.I., R.E.

The Honourable Mr. GIBBS :—May it please your Excellency, I have the honour to move the third reading of Bill No. 12 of 1878, shortly called the Port Trust Bill. I have had two communications, or rather Government has had one communication and I have had another, with regard to the Bill. I have received myself from Colonel Baker, Chairman of the Port Trust, a letter informing me that he has this day paid into the account of the Government of India Rs. 8,55,821, the full interest due to them, and that he has besides a balance of Rs. 54,580 in hand. The consequence is, in spite of the bad trade of the past year, the Port Trust has not only paid all its working expenses and its full interest, but has a balance in hand of over half a lakh of rupees. I may state, what I understand to be the fact, that it is owing to their having this very large landed estate that they are enabled to make such a very good show this year, and if the land estate had been cut off and nothing but the dock estate left, the chances are they would

not have had so good a financial balance sheet at the end of the year. The other communication, which is addressed to Government and dated this day, is from the Chamber of Commerce. It says that the Committee of the Chamber of Commerce regret to observe that no provision has yet been made in the Bill for making over to the new Port Trust the land at Wari Bandar and for transferring to the new Trust in perpetuity the Mody Bay Estate which reverts to Government in 1883. They say they understand that a Committee has been appointed in the one case, but that the explanation given in the Legislative Council—I presume that is the explanation which I gave at the last meeting—has not been received with satisfaction by the mercantile community, who consider it to be of great importance to the trade that the Bill should not be passed until provision has been made in it for transferring these properties to the new Trust, and they ask your Excellency to defer the third reading until these points are finally settled. I must say I was much astonished to receive this letter from the Chamber of Commerce. I cannot understand on what principle they can wish to have the passing of the Bill delayed. They must be aware that this Bill will go to the Government of India, and authorises the Secretary of State to enter into negotiations with the owners of the foreshore and to complete the purchase of those properties. It is not likely that those arrangements can be settled in one day, or in two days; but if I understand rightly, the Chamber of Commerce wish the Government to have no power at all to enter even into the preliminary arrangements for the purchase of the foreshore until the Wari Bandar is given over to the Port Trust, and until the Mody Bay Estate is also given over. I am afraid I could not have been very clear in the explanation I gave at the last meeting of the Council, but I will try to explain the matter again, and having done that, I will ask the Council whether they think, under the circumstances, this Government could do anything else than what it has done. With regard to Wari Bandar, if I understand rightly,—and Colonel Merriman will correct me if I am not stating exactly what are the facts—there is certain land at Wari Bandar which, strictly speaking, belongs to the Government of India. Some of it the Government of India have allowed the G. I. P. and the B. B. and C. I. Railway Companies to make use of under certain terms. It was always understood that the permission given to these Railway Companies should be temporary and for certain temporary purposes, and it has been once or twice mooted as to whether the time has not come for reconsidering the matter and making a new arrangement with regard to this land. The Council must remember that it will be first necessary to settle the matter as between the Government of India and the Railway Company, and then it will be for the Government of India to settle with the Port Trust as to whether they would give over their right or not. The matter is complicated, and has become very much more so owing to the construction of the Prince's Dock; and after considering the whole question very carefully, the only way in which Government saw they were likely to get the matter settled, was by the appointment of a Commission on which the Consulting Engineer for Railways should represent this Government, in which the Government of India and the Port Trust would also be represented, and of which the Commissioner of Customs, as a sort of neutral person, should be appointed President. That Commission is now considering the best way of meeting all these difficulties. I do not know why the Chamber of Commerce have got into such a state of mind about this matter. The business is going on, but it is very complicated and cannot be settled all at once. I believe it has been delayed to some extent owing to the illness of Mr. Pritchard, who is President, and than whom nobody could be a better President and better able to guide the considerations of the Commission. It has also, perhaps, been a little interfered with owing to the absence of Colonel Hancock, our Consulting Engineer for Railways. He will be back again in about ten days' time, and I have no doubt proceedings will then be resumed towards settling that matter. And as when it is settled it will require nothing more than a Resolution of the Government of India to transfer the land to the Port Trust, I cannot see any reason why in the meantime the Government should be debarred from taking any steps towards the purchase of these other foreshore properties. We have urged, and the Chamber of Commerce have hitherto been fully with us in urging the speedy purchase, and now they ask us to adjourn the third reading of this Bill, and in consequence the arrangements for the purchase of the properties, until in the first place this very complicated matter of the Wari Bandar is settled, and in the second place until the Government of India are pleased to make a permanent arrangement regarding a portion of the Mody Bay Estate, which is under the present arrangement in the hands of the Port Trust till 1883. I should think the Government of India would pause before they would at this moment determine what is to be done four years hence with regard to that property; but however that may be,

this Council, as I have explained, have not power to force the Government of India either in the one case or the other, nor have they power to legislate regarding one property or the other. What I would suggest to the Chamber of Commerce is to put their views in the shape of a memorial to the Government of India, and request that every possible expedition may be used towards carrying out these arrangements. With regard to the Wari Bandar, I should think in all probability that matter may be settled about the same time that Government will be able to come to terms with the owners of the foreshore properties which this Bill will enable them to purchase. I cannot see why the commencement of the purchase under this Bill of the foreshore properties should be postponed to an indefinite period while this other matter is going on. At the same time, having had more to do with it than any other member of the Council, I may say I have very little doubt but that a satisfactory arrangement will be come to with regard to the Wari Bandar, and I should say also with regard to the Mody Bay Estate, but as to that I cannot speak with certainty. With these remarks I beg formally to move the third reading of the Bill. I have omitted to state that the Honourable Morarjee Goculdass requested me to mention that he trusted his absence from the Council on account of a Hindoo religious celebration would be excused, and that he is in favour of the third reading of the Bill.

Bill read a third time and passed.

The Bill was then read a third time and passed.

The Honourable Mr. ASHBURNER asked that No. 16 of the Standing Rules should be suspended to enable him to move the first reading of the

Mr. Ashburner moves the first reading of the Land Revenue Code Bill.

Revenue Code Bill (No. 1 of 1879). The honourable member explained that the Bill had been only five days in the hands of the members of Council, whereas Rule 16 required

that a Bill should be seven days in the hands of honourable members before the first reading.

His Excellency the PRESIDENT said that as the provisions of the Bill were already familiar to the Council, the Standing Rules might be suspended, and the first reading of the Bill proceeded with.

The Honourable Mr. ASHBURNER:—The Standing Rules having been suspended, I have now to move the first reading of Bill No. 1 of 1879, (The Bombay Land Revenue Code Bill). Your Excellency and the Council are aware that the Bombay Revenue Code, after having been subjected to very severe drastic and surgical operations during an enquiry which extended over some years, was finally passed in January of last year, and submitted for the approval of the Viceroy and Governor General. His Excellency has withheld his assent from the Bill as passed, and made certain suggestions for its amendment, some of which suggestions we thankfully accept, and others are still under discussion. The Bill which is now laid before the Council embodies such of those suggestions as have been accepted, and those which have not been accepted are redrafted in the original form until the matter is finally settled. I will now briefly notice the points in which the Bill now before the Council differs from that submitted to the Viceroy. The first point refers to sections 26 and 29 of the Code. These sections are mere re-enactments of the Hereditary Officers Act (No. 3 of 1874): they provide a special procedure for setting aside attachments on Watan property by Civil Courts. They are objected to on the ground that they conflict with the Code of Civil Procedure. This is true; but so much the worse for the Code of Procedure, for these sections are part of the substantive law of this Presidency and we cannot afford to forego them. Rather than do that, we think it is better to expunge Chapter III, which relates to Hereditary Officers, from the Code, and let the consideration of this point be postponed for the present. And this will also be convenient in another respect, inasmuch as the Hereditary District Officers Act contains several provisions which are found to work with great hardship and severity in Gujarat. A Bill for the amendment of this Act will be submitted to the Council at a very early date. The next point is regarding section 250, where the use of the words "with costs" is in conflict with the 220th section of the Code of Civil Procedure, which leaves the question of costs to the discretion of the Court. The words "with costs" are therefore omitted. The third point has reference to section 74 of the Indian Contract Act, which specifies that when a security is forfeited the whole of the penalty specified in the security bond shall be liable for forfeiture, while we in this Code have provided that only so much of the penalty shall be enforced as is sufficient to cover the loss. We have reconciled the discrepancy by a slight alteration of Schedule D., which contains the form of security bond. Section 141 is the next which demands attention. It has been amended in such a way as to avoid all conflict

with the Indian Succession Act and Parsee Intestacy Succession Act of 1865. In section 104 clause 7 we proposed to enact that disputes with reference to alluvion and diluvion, when not otherwise specially provided for, should be settled under such rules as the Governor in Council may from time to time issue, but this was found to affect the jurisdiction of the High Court, which claims to decide these matters. The Government of India have now under consideration a Bill for the disposal of all questions regarding alluvion or diluvion, and we have therefore expunged section 104 from the Code; and we have also slightly altered sections 115, 132, and 133 in order to conform with that omission. Section 187, which related to disputes between Foreign States, has been omitted, inasmuch as it is *ultra vires* for this Council to prescribe any rules with regard to disputes in Foreign States. His Excellency the Viceroy objects to section 105. This enables us to deal summarily with encroachments on public roads, which we think absolutely necessary in the disposal of such encroachments, especially in large cities like Ahmedabad and Surat; and also to protect the rights of Government to waste lands in towns and villages. The objection of the Government of India is that the section indirectly conflicts with the Code of Criminal Procedure. That question is still under discussion with the Government of India, and at present we retain the section as originally drafted. There are other trifling amendments in sections 103, 163, 254, and 287, which do not seem to demand any special notice. On the whole, I think we may congratulate ourselves that the principle of our Bill has been confirmed and approved by the Government of India, and that it has passed through the ordeal of the Supreme Council with so little objection and so little difference of opinion on matters of real importance. With these remarks, I beg to move the first reading of Bill No. 1 of 1879 ("A Bill to consolidate and amend the law relating to Revenue Officers and the Land Revenue in the Presidency of Bombay").

Bill read a first time.

The Bill was then read a first time.

The Honourable Mr. ASHBURNER:—The Bill will now remain until the reference made to the Government of India on section 104 has been replied to. I do not think it will be necessary to refer it again to a Special Committee. It has passed all those stages: we have given way to the Government of India on all points except that one, and that we think so essential that we have made a reference to the Government of India, and until a reply comes I do not think we can carry the Bill further.

His Excellency the PRESIDENT said there would be no objection to advancing the Bill another stage and reading it a second time, and the third reading could be postponed till the receipt of a reply from the Government of India.

Bill read a second time and considered in detail.

Accordingly the standing orders were suspended, and on the motion of the Honourable Mr. Ashburner, the Bill was read a second time and considered in detail.

The Honourable the ADVOCATE-GENERAL:—I have this morning gone carefully through the sections of the Bill and compared them with the Statement of Objects and Reasons, and as far as I can see the different alterations proposed to be made in the old Bill are very immaterial, and have reference to merely minor details not in any way affecting the principle of the Bill.

His Excellency the PRESIDENT:—Then we must now await the reply of the Government of India. If we get a favourable reply, the sections will stand; if the Governor General insists upon these sections being expunged, then, of course, I suppose we must expunge them.

The Honourable Mr. ASHBURNER:—Yes, there is nothing more to be done at present.

His Excellency the PRESIDENT:—As this is the last occasion on which our honourable friend and colleague the Honourable Mr. Gibbs will sit on this Council, I am sure I am only giving expression to the views of every honourable member present, when I convey to him our sense of the great value of his advice and his local experience, and, I may add, his general and his legal knowledge, on all occasions. There have been a great many difficult, elaborate Bills before this Council during the many years of the honourable member's incumbency of the high office which he is now about to vacate, and in every one of those measures we have derived benefit from his assistance. And I can assure him that at our future meetings which will be held in this room, we shall long remember the cordial and hearty co-operation which we have always received from him.

Retirement of Mr. Gibbs.

The Honourable Mr. GIBBS :—Your Excellency and Gentlemen of the Council, I beg to thank you very warmly for this mark of your kindness towards me, and the complimentary manner in which Your Excellency has been pleased to express that feeling. I have, it is true, taken part in the passing of a great many Bills since I have been a member of this Government. I have read a great deal in the press and elsewhere about the over-legislation which is going on in this country. To some extent those views are concurred in by myself. But I may say this much, that ever since I have had the honour to sit in this Legislative Council, my object has been to do my best in furthering measures which the Executive Government have thought fit to bring before the Council, and to assist in carrying out those measures in as intelligible a manner as possible. Having satisfied myself as a member of the Executive Government that measures were necessary and for the good of the people, my duty as a Legislative member was to assist in putting them in as simple a form as possible. If I have succeeded in doing this I am amply rewarded for my services of the last six years.

His Excellency the President then adjourned the Council *sine die*.

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

J. NUGENT,

Under Secretary to Government.

Bombay Castle, 1st April 1879.