

**COUNCIL OF THE GOVERNOR GENERAL
OF INDIA**

VOL. 15

JAN. - DEC.

1876

P. L.

ABSTRACT OF THE PROCEEDINGS

1877

OF THE

Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

1876.

WITH INDEX.

VOL. XV.



Published by the Authority of the Governor General.

Gazettes & Debates Section

Parliament Library Building

Room No. FB-025

Block 'G'

CALCUTTA:

OFFICE OF THE SUPERINTENDENT OF GOVERNMENT PRINTING.

1877.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Tuesday, the 11th April 1876.

PRESENT :

His Excellency the Viceroy and Governor General of India, G.M.S.I.,
presiding.

His Honour the Lieutenant-Governor of Bengal.

Major-General the Hon'ble Sir H. W. Norman, K.C.B.

The Hon'ble A. Hobhouse, Q. C.

The Hon'ble E. C. Bayley, C.S.I.

The Hon'ble Sir W. Muir, K.C.S.I.

The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.

Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B.

His Highness the Mahārājā of Vizianagram, K.C.S.I.

The Hon'ble John Inglis, C.S.I.

The Hon'ble T. O. Hope.

His Highness Mahārājā Iswariparshād Nārāyan Singh Bahádur, of
Benares.

The Hon'ble D. Cowie.

The Hon'ble Rājā Nārendra Krishna Bahádur.

The Hon'ble J. R. Bullen Smith.

The Hon'ble F. R. Cockerell.

PRESIDENCY BANKS BILL.

The Hon'ble Sir W. Muir presented the Final Report of the Select Committee on the Bill for constituting and regulating the Banks of Bengal, Madras and Bombay, and moved that it be taken into consideration. He said that since the first Report had been presented certain other suggestions and amendments had been brought under the consideration of the Committee. These had all been carefully disposed of; and it would be seen from the present supplementary Report that a few amendments had been made in consequence. These were all unimportant. There was only one which deserved special mention, and that was the power provided in section 67, for the winding-up of the Banks, under certain conditions, at the instance of the shareholders. This provision had been introduced at the desire of his hon'ble friends

the Mercantile Members of the Committee. Not that any one anticipated such a contingency; but rather for the sake of completeness and because a similar provision was ordinarily made in deeds of the nature of the proposed Act. It might confidently be hoped that there never would be any occasion to exercise the power.

Every point and suggestion in connection with the Bill had received the most careful and patient attention, and he believed had been satisfactorily disposed of; and the measure might now be looked upon as complete. He took the opportunity of again thanking Messrs. Bullen Smith and Cowie for the valuable aid and counsel they had rendered as Members of the Committee.

This would be one of the last legislative measures which, if the Bill were passed to-day, His Excellency would be required to give his assent to; and he (SIR W. MUIR) felt sure that it would be a satisfaction to His Lordship to have seen the Bill passed into law during the period of his Viceroyalty. And although the measure itself would not be launched under the personal direction of His Excellency, still in all points respecting the terms of agreement and other arrangements concluded with the Presidency Banks, the Financial Department had enjoyed the benefit of His Lordship's experience and advice. They had endeavoured to consult the convenience and interests of the Banks in all these arrangements; and he (SIR W. MUIR) trusted that the basis on which these arrangements had been made was such as would secure in the conduct of their business the utmost degree of success compatible with the inevitable dissolution of the connection which had heretofore subsisted between the State and the Banks. His Excellency would, he was sure, watch from home the progress of the Banks under their new charter with interest; and we might trust that under that charter a long and prosperous career lay before them.

The Hon'ble RÁJÁ NÁRENDRA KRISHNA said the Presidency Banks Bill would become the law of the land from this day. It was framed by an efficient officer of Government, and its provisions had been carefully considered by able officials and the influential merchants who were members of this Council. This measure, the result of their joint wisdom, was expected to prove beneficial to the public at large. The view taken by the Rájá when this Bill was introduced into the Council was opposed to their opinion, and if in practice the working of the Banks proceeded in a satisfactory manner under the management of non-official directors, he should then be agreeably surprised, although he did not hesitate to affirm that honourable men like the Mercantile Members of this Council were able to manage the affairs of Banks as successfully and efficiently as any other competent individual.

The Hon'ble MR. BULLEN SMITH said that as a Member of the Select Committee, he had an opportunity of expressing to his hon'ble colleagues in Committee his opinion on the Bill, and it was therefore hardly necessary for him to trouble the Council with any remarks; but intimately connected as he was with one of the Banks, it would hardly be right for him to allow it to pass with a silent vote. He desired to bear testimony to the correctness of Sir W. Muir's statement in regard to the questions discussed, and the great care with which everything connected with the Bill had been considered in Committee. Nothing could have exceeded the care which had been bestowed on the Bill. Various inconsistencies and undue restrictions which existed in the old charters had been modified in the Bill as it now stood. He thought the Bill a good one, and that it might be expected to work with advantage to the institutions to which it applied. He had only, in conclusion, to join Sir W. Muir in expressing the satisfaction he felt that a measure which had been a good number of years before the Government and the Council, had a prospect of being passed into law before His Excellency left these shores.

HIS HONOUR THE LIEUTENANT-GOVERNOR said he should like to ask one question which he believed could be satisfactorily answered; but for the satisfaction of certain Bengal officers and the public in general, he should like to ask a question with reference to section 23 of the Bill. That section provided that "the Bank shall not be bound to recognize any legal representative of such proprietor or shareholder other than a person who has taken out from a Court having jurisdiction in this behalf probate of the will or letters of administration to the estate of the deceased." Now, he believed, subject to correction by their hon'ble colleague in charge of legislation, that these words would include the jurisdiction of Civil Courts; that was to say, that Mofussil Courts could grant probate under the wording of this section. He asked the question because, when the Bill was first drafted, it was thought by certain Bengal officers that the wording was so put that no Court except the High Court could grant the probate necessary in affairs relating to the Bank. He thought that would be very objectionable, inasmuch as it would centre business in the High Court and prevent Mofussil Courts from granting probates in this matter. He believed that the wording had been so amended as to admit of probates being granted by Mofussil Courts. He asked the question because, as he understood, there was a doubt in the minds of Bengal officers as to whether probate in the strict sense of the term could be granted by Mofussil Courts. He believed, subject to correction of the hon'ble member, that probate could be so granted. But it was desirable to clear up the point, and he thought that His Lordship would agree that if there was a question of a deceased shareholder

in the Bank, the heirs should be able to take out probate in the Mofussil and not be under the necessity of coming down to Calcutta for the purpose.

The Hon'ble Sir W. MURR observed that the question was answered in the Report of the Select Committee. The second paragraph of the final Report said—

“As regards transmission of shares on the death of the shareholder, we have reconsidered our decision, and now have provided that, when by the death of any proprietor or shareholder his stock or shares shall devolve on his legal representative, the Bank shall not be bound to recognize any legal representative of such proprietor or shareholder other than a person who has taken out from a Court having jurisdiction in this behalf probate of the will or letters of administration to the estate of the deceased.”

A District Court had under the Indian Succession Act (X of 1865) power to grant probate and administration.

His Honour THE LIEUTENANT-GOVERNOR asked why the Bill should exclude certificates under Act XXVII of 1860.

The Hon'ble Mr. COCKERELL observed that certificates under that Act were limited to the collection of debts and the receipt of certain interest and dividends. It did not authorize the grant of probates or letters of administration, and it was never intended to apply to the decision of any claim of right to succeed to the estate of a deceased person or any part of it, such as a share in a Bank.

His Honour THE LIEUTENANT-GOVERNOR said that there was another question which he wished to ask, and it was in reference to section 9 of the Bill. It had been pointed out by several Mofussil authorities that the effect of clause (a) of that section when read with clauses (b) and (c) would be virtually to compel the Banks to make all their contracts, or nearly all their contracts, according to English law, and that under clause (a) they must be under the English law. By that provision, the Council throw upon Mofussil Judges of all grades the duty—to them a difficult duty—of deciding whether a particular contract which came before them ought or ought not to be made according to English law, and it required them to be acquainted with the English law regarding contracts under seal, which perhaps might be a good thing for them to know, but still was difficult. If that was the case, he submitted that it did throw a certain amount of uncertainty on matters regarding which there should be no risk of error. Again, there seemed to be apparently no particular reason why the Bank should be compelled to make most of its contracts according to English law. If a contract was to be executed partly in India and partly in England, or was executed within the local limits of the jurisdiction of the High Court, or if for any other reason it was

desirable to have a contract made according to English law, that would be right and proper. But if a contract related solely to property in India, and to parties in India, there seemed to be no reasonable ground why they should not make their contracts according to the Indian Contract Law, according to the law which regulated all other contracts and did not require instruments to be under seal. Why should the Bank be compelled to observe formalities for its contracts to which other parties resident in India were not subject? That was the legal point. But he understood, subject to correction of the hon'ble member opposite (Mr. Hobhouse), that some of the other incorporated Companies were subject to the same obligation. First of all, he would ask whether or not this section had the meaning, or was intended to have the meaning, which he was advised to put upon it. He should have thought that, according to the section as worded, the Bank might do one of three things. It might either make its contract according to English law if it saw fit: if it did see fit, it might fulfil all the formalities prescribed by the English law; or, secondly, it might make a contract according to the Indian Contract Act. If that was so, the Bank might exercise its own discretion whether it would make a contract according to English law or according to Indian law. Or, thirdly, it might make a contract verbally. But he now understood that the intention of the section was different; that the real effect of the section would be to compel the Bank to make almost all its contracts according to English law. If that were so, he would ask whether it was necessary to subject the Bank to all the formalities required by the English law of contract under seal. He submitted that it was not necessary to do so; that the Bank should have the option which every other party in the country had of making its contracts according to the Indian Contract law. If the Council were advised by the hon'ble member that other incorporated bodies were subject to the same restrictions, that was an argument for subjecting the Bank to those restrictions as to its contracts. Still His Honour could not help thinking that those restrictions were an inconvenience to the business of the Bank, and also inconvenient by compelling parties in the mofussil, who had dealings with the Bank, to make their contracts in Calcutta. He was advised that if the words "if made according to English law" were cut out in clause (a) of section 9, perhaps the difficulty would be obviated.

The Hon'ble Mr. Hobhouse said that in answer to his hon'ble friend the Lieutenant-Governor, he would first point out that His Honour appeared to have been advised that the provision as to contracts had a much greater extent than it actually had, both in respect of the number of contracts affected by the sub-section that referred to English law, and also in respect of the legal operation of the section. The only object of section 9 was to provide clearly what should be the formalities

under which contracts should be entered into so as to be binding on the Bank. With the substance of contracts it did not deal at all. Everybody must be aware that there was a great difference between corporate bodies entering into contracts and private individuals doing so, and that it was utterly impossible to give to a public body the same freedom of entering into contracts which the law gave to private individuals; for you could not possibly give to a number of aggregate wills the same freedom as to a single will. It was found necessary in all countries, certainly in England, to lay down rules by which it should be known whether a corporate body had entered into a contract or had deputed authority to those who had entered into a contract to bind it by that contract. The rules of English law had sprung up partly through decisions of the Courts and partly from provisions that had found their way into Partnership Deeds. Those rules again had been adopted by Parliament and passed into Acts of Parliament for the general regulation of Companies. Now, the contracts which were dealt with by this Bill were of three kinds. He would take them in the inverse order in which they came in the Bill. Under head (c) came all those little contracts which people were in the habit of making by mere words. For instance, a contract to hire a sweeper might be made by mere words; it might be made by any person who was authorized either impliedly or expressly to make it by words. If a contract was required to be made in writing, which some few classes of contracts were, then it should be made in writing by the person authorized by the Bank. And if a contract was required to be made under seal, as most solemn classes of contracts were required, then it should be made under the corporate seal of the Bank. In these cases the substance of the contract was not interfered with, but the Bill described the formalities by which it should be known whether the contract was binding or not. If this was altogether a new matter in India, there would be something to say for omitting all reference to English law. It was not, however, quite so simple a thing to alter the section as his hon'ble friend proposed, because if they were to strike out the words "if made according to English law to be under seal," they would immediately alter the classification of contracts, and they would have to make a new classification which might be a better one or might be a worse, but would at all events be something different from the existing classification. Now, this provision was imported into the Indian law in 1866, and all contracts made under the Indian Companies Act of 1866 were subject to this provision. The law therefore had been in force for ten years, or nearly so, and they had never heard of any practical difficulty arising from it. Now he submitted that there was no reason why those Banks should not be on the same footing, in this respect, with every other Company in the country which was subject to the Act of 1866. If the law was bad let us alter

it for all, but do not alter it until there was some proof that it was bad. The law was on our Statute-book in respect to other Companies, and it was the plainest and simplest course to apply it to these Banks. That was the simple reason why section 9 had taken this form. It must be proved that there was some practical inconvenience attending this law of contract before we set ourselves to alter it.

In respect to the other point about probates, the very object of the alteration introduced into the existing law was to give a wider range to legal personal representatives seeking to recover the shares of their testators or intestates. According to the present law, in Calcutta at least—he rather thought it was different in the other Presidencies,—a representative seeking to recover Bank shares must either put in a probate or letters of administration granted by a High Court or a certificate under Act XXVII of 1860 which would enable him to collect the debts of the deceased. The question might be very fairly raised whether the Bank should not stand on the same footing as everybody else who possessed assets of deceased persons. But the Bank had been placed in that exceptional position, and when they were so there was no Court which could grant probate except the High Court, and that was the reason why a grant by the High Court was required. But since that time the Succession Act was passed, and it enabled District Courts to grant probates and letters of administration which should constitute the persons named therein for all general purposes the legal representatives of the deceased; it was therefore right to make them the legal representatives of the deceased for the purpose of recovering shares in the Bank. A certificate, as rightly said by his hon'ble friend Mr. Cockerell, did not create the holder of the certificate the legal representative of the deceased; it only authorized him to perform one particular function, which was the collection of debts; and though under such circumstances the holder of the certificate might recover dividends that were actually due before the testator's death, he had not acquired any title to the share itself. Therefore it was a mistake to put the certificate on a level with probate, and this Bill had now put Bank shares on the same footing as other property when probate was granted.

His Honour THE LIEUTENANT-GOVERNOR would like to ask why a holder of a certificate under Act XXVII of 1860 should not be competent to collect dividends at the Bank as much as any other debt of the deceased. Why should the assets of the deceased man, when they happened to be in the shape of a dividend of the Bank, be placed on a different footing from any other asset? A certificate-holder in the mofussil might collect every other kind of debt, but he

could not collect a dividend of the Bank. Why had this sort of distinction been introduced in reference to the Bank ?

The Hon'ble Mr. COCKERELL observed that the law laid down by section 8 of Act XXVII of 1860, as to the right of a certificate-holder to receive dividends, was wholly untouched by the present Bill.

His Honour THE LIEUTENANT-GOVERNOR would ask one other question, subject to His Excellency's permission, whether by the existing law the Banks were bound to seal their contracts according to the English law.

The Hon'ble Mr. BULLEN SMITH said there were certain instruments which, according to the existing practice, did not require a seal, but to all the more important instruments the seal of the Bank was attached in the presence of certain officials.

His Excellency THE PRESIDENT observed that the discussion was becoming irregular. Questions should be put through the President and members should not be cross-examined as in Select Committee with the view of obtaining categorical answers. It struck him that the answer given by the Hon'ble Mr. Hobhouse, as explained by the Hon'ble Mr. Bullen Smith, was that the requirements of the Bill as to the execution of contracts were very much the same, if not entirely the same, as the existing practice. He believed that the question was thoroughly discussed by the directors of the Bank, and it was a question rather for consideration in the Select Committee than for discussion in Council.

The Hon'ble Mr. BULLEN SMITH said that the directors of the Bank of Bengal had felt no difficulty under the existing practice, and had therefore asked for no different procedure.

The Motion was put and agreed to.

The Hon'ble SIR W. MUIR then moved that the Bill as amended be passed.

The Motion was put and agreed to.

OBSOLETE ENACTMENTS BILL.

The Hon'ble Mr. HOBHOUSE moved that the Report of the Select Committee on the Bill for the repeal of certain obsolete enactments be taken into consideration. He said that this Bill was brought before the Council originally at Simla in the month of October last, and he then explained to the Council that it was one of those measures which were brought in for the purpose of enabling us to publish a revised edition of the Acts and Regulations now in force in India. He then mentioned that they hoped to have the General

Acts—by which he meant Acts which either extended to all British India, or which were extendible to all British India, or which affected the three Presidency Towns—published in the early part of this year. But the work was one of considerable magnitude, and, as usual in such cases, its completion took longer than was expected. They had got out two volumes, bringing the new edition down to the end of 1871, and they hoped in the course of three or four months to publish the third volume, which would complete the edition of the General Acts. They would then proceed immediately to publish an edition of the Madras Regulations and of the Acts, whether passed by the Governor General in Council or the local legislature, which related solely to the Madras Presidency. In the course of preparing these laws for publication many things were found which were mere dead matter on the face of the Regulations and Acts, and which would only disfigure a new edition. Therefore they put this *Obsolete Enactments Bill* on the stocks and took the opportunity of sweeping away some other matter from the General Acts and the Bengal and Bombay Regulations. Though there had been a great deal of that operation going on lately, still it was periodically found that either by the progress of time or the change of circumstances, or from oversight, there was dead matter in the Statute-book which might be removed.

He had more than once before now explained to the Council the principle upon which these enactments were framed, and this Bill followed the same principle as its predecessors.

The only objection he knew of to the passing of the Bill was that the Madras Government had intimated to them that they had it in mind to re-enact the Madras Regulations in a more modern shape; and they suggested that the revised edition should not be proceeded with until these Regulations had been put into the shape proposed. The answer Mr. HOBHOUSE would make to that was that such a work was of considerable magnitude and importance, and would occupy a long period of time. He had no doubt that the Madras Regulations could not be recast without very minute communication with the local officers and people acquainted with the working of the Regulations,—probably a great many debates in Council, and long and laborious work in Committee. All that work would not be interfered with by this new edition of the Madras Regulations and Acts, but, on the contrary, would be much facilitated, because the draftsman would have under his eye, in one single volume, the whole of the living Madras Regulations and the whole of the living Madras Acts. Therefore the Committee felt that they were not standing in the way of the Madras Government, but were assisting it to do its work. Then the only question was whether it was worth while to pass this Bill and

publish the new edition. He thought it was worth while to complete a useful work of which a great deal had been done : because they were always liable to lose the man who was charged with its execution, and then his labour was wasted. That remark was applicable anywhere, but peculiarly so to India ; and it applied to both sides of the business. In Madras they might be delayed by such an accident, and so their work might be prolonged beyond their expectation. Speaking for the Legislative Department, Mr. Stokes had got the new edition well in hand, and if any accident should call him away, the labour which he had bestowed on it would be lost. For these reasons Mr. HOBHOUSE would urge the Council not to delay the passing of the Bill, but to pass it in the form in which it was presented by the Committee, to enable the Legislative Department to publish a more correct edition of the Madras Regulations and Acts than they could otherwise publish.

The Motion was put and agreed to.

The Hon'ble Mr. HOBHOUSE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

MERCHANT SEAMEN'S BILL.

The Hon'ble Mr. HOBHOUSE asked for leave to postpone the presentation of the Report of the Select Committee on the Bill to amend the law relating to Merchant Seamen.

Leave was granted.

The Hon'ble Mr. HOBHOUSE moved that the Hon'ble Mr. Cowie and the Hon'ble Mr. Bullen Smith be added to the Select Committee on the Bill to amend the law relating to Merchant Seamen.

The Motion was put and agreed to.

PRESIDENCY MAGISTRATES BILL.

The Hon'ble Mr. HOPE asked for leave to postpone the presentation of the further Report of the Select Committee on the Bill to regulate the procedure and increase the jurisdiction of the Courts of Magistrates in the Presidency Towns.

Leave was granted.

LORD NORTHBROOK'S DEPARTURE.

Major-General the Hon'ble SIR HENRY NORMAN, addressing His Excellency the President said :—" I trust I may be permitted on this the last

occasion on which we shall have the advantage of Your Lordship's presence here, to express the regret entertained by the whole Council at Your Lordship's departure, and our earnest hope that in England, with renewed health and vigour, Your Lordship will be able, as we know you will be willing, to render important services to the interests of this country."

HIS EXCELLENCY THE PRESIDENT replied:—"General Norman, I believe that the observations which you have made are in accordance with the practice on former occasions, otherwise, in my position of President, I should have felt it my duty to call you to order, as there is no motion before the Council. However, in the conduct of legislative assemblies much weight is always attached to precedent, and therefore I did not think it my duty to interpose.

"I am very grateful for the expression of your good wishes on behalf of yourself and of the Members of Council. It has been a great pleasure to me to perform the duty which devolves upon the President of this Council. The laws brought before us for consideration have been most carefully prepared previous to their introduction. Their consideration by Select Committees of the Council has been most attentive. Members of Council, whether official or non-official, have devoted great time and labour to this important duty. Both in Select Committees and in the discussions which have taken place in Council, I do not think that any legislative assembly could have shown a greater desire to arrive at correct conclusions upon all questions brought before them, and to give due weight to all the opinions which have been expressed, although those opinions might not have been represented by a majority.

"I can call to mind no instance in which the view held by a minority has not been most fully and carefully considered before the Council have arrived at a conclusion.

"I beg to tender my most cordial thanks to all the Members of Council for the support which I have received from them upon all occasions in the conduct of the business that has come before this Council."

The Council then adjourned *sine die*.

CALCUTTA,
The 11th April 1876. }

WHITLEY STOKES,
Secretary to the Govt. of India,
Legislative Department.