

Thursday, June 5, 1879

**ABSTRACT OF THE PROCEEDINGS**

**COUNCIL OF THE GOVERNOR GENERAL OF INDIA**

**LAWS AND REGULATIONS.**

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ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

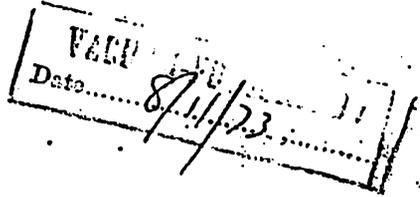
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*Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.*

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The Council met at Government House on Thursday, the 5th June, 1879.

P R E S E N T :

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

His Honour the Lieutenant-Governor of the Panjáb, C.S.I.

His Excellency the Commander-in-Chief, G.C.B.

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., C.I.E.

The Hon'ble Sir J. Strachey, G.C.S.I.

General the Hon'ble Sir E. B. Johnson, R.A., K.C.B.

The Hon'ble Whitley Stokes, C.S.I.

The Hon'ble Rivers Thompson, C.S.I.

The Hon'ble F. R. Cockerell.

The Hon'ble Sayyad Ahmad Khán Bahádur, C.S.I.

The Hon'ble T. C. Hope, C.S.I.

The Hon'ble B. W. Colvin.

PROBATE AND ADMINISTRATION BILL.

The Hon'ble MR. STOKES moved for leave to introduce a Bill to provide for the grant of probates of wills and letters of administration to the estates of certain deceased persons. He said that, as the law of British India at this moment stood, there was, speaking generally, no means of conferring upon any one a complete and conclusive title as representative of the estate of a deceased Hindú, Muhammadan or Buddhist or other person exempt from the operation of the Indian Succession Act.

The Hindú Wills Act was at present limited in its operation to the Presidency-towns and Lower Bengal ; and, even if the proposal to extend it to other parts of British India, now under consideration of the Local Governments, was carried out, it would still only apply to cases of testamentary succession among Hindús ; and outside the Presidency-towns there would be no clear power to grant letters of administration in the case of Hindús, Muhammadans and Buddhists dying intestate.

The grant of a certificate under Act XXVII of 1860 made the person who had obtained it a representative only for certain very limited purposes ;

that was to say, for the recovery of debts, the receipt of interest and dividends on Government securities, bank-shares and shares in Public Companies, and the 'negotiation' of such securities and shares. And, though in the Bombay Presidency a certificate purporting to confer larger powers might be obtained under Regulation VIII of 1827, it was by no means clear what the status of the holder of such a certificate precisely was.

In the Presidency-towns probates of the wills and letters of administration to the estates of deceased Natives could be granted under the Supreme Court Charters in cases to which the Succession Act and the Hindú Wills Act did not apply; but the representative status conferred by such grants fell far short of that conferred by similar grants in the case of deceased European British subjects. Thus, in 1867, in *Sharo Bibi v. Baldeo Dás*, (1 Beng. Law Reports, Or. Jur. 24), the late Mr. Justice Norman held that a Hindú executor took nothing from any grant of the Court. "His title," said that learned Judge, "is founded solely and simply on the will of the testator, considered as an instrument of gift. Except for the purposes of evidence, the will of a Hindú does not require probate. . . . As against those who get the probate or oppose the grant of it, [it] is no doubt binding; as against parties cited it is evidence; but it has no greater effect than the ordinary decree in a Civil Court against persons who have no means of appearing in the suit or right to dispute the grant."

From this state of things much trouble and litigation at times resulted. The heirs might be very numerous; their interests might differ in degree; some of them might be minors or otherwise incapacitated; others might be residing at a distance; the titles of some might be disputed; the settlement of claims against the estate might thus be a matter of endless complication; the making of a satisfactory title to any portion of it which it might be necessary to sell might be impossible. Furthermore, a Native's will, not requiring to be proved, need not be deposited for safe custody. The resulting opportunities for forgery and fraudulent alteration were obvious. Nor could a Native executor be compelled to exhibit an inventory or account of his testator's estate except by the tedious, expensive and hazardous process of a lawsuit. The consequence (as Mr. Montriou had observed in his note to *In the goods of Bibi Muttra*, Morton's Decisions, second edition, p. 262), was that, when the estate was too small to bear the costs of the suit, women, children and absentees had no adequate check on the executor, and at any distance of time it was difficult to fix him with the possession of moveable, and sometimes even of immoveable, property.

The necessity of devising some means of removing these difficulties was brought to the notice of the Government of India some time ago by Mr. Broughton, then Administrator General of Bengal, and now a Judge of the

Calcutta High Court ; and a Bill drafted by him was circulated for the opinions of local authorities. That Bill, while guarding against any interference with the succession laws of the Hindús, Muhammadans and Buddhists, went in effect to apply to them the provisions of the Indian Succession Act relating to probate and administration, and, amongst others, those provisions which make the grant of probate or letters of administration a condition precedent to the establishment of any right derived by succession from a deceased person.

The reports of the local authorities had now been received, and their purport might be briefly described by saying that, while there was a considerable body of opinion in favour of providing the means of obtaining probate of the will or letters of administration to the estate of any deceased person when those interested desired to do so, the proposal to insist on probate or letters of administration as essential in all cases had been generally condemned, as tending to impose upon a multitude of poor and ignorant people in cases where there was no difficulty or dispute an unnecessary amount of trouble and expense.

The Bill had been drawn on the lines thus indicated. It applied to the estates of all persons not at present governed by the Indian Succession Act the portions of that Act relating to the grant of probate and administration and the powers, duties and procedure of executors and administrators, omitting, however, those sections (187 and 190) which made it compulsory to obtain probate or administration. He (MR. STOKES) believed that as soon as the Bill was understood by the people, its necessary effect in quieting titles and obviating litigation as to the ownership of property would induce them to avail themselves largely of its provisions. One result of this would be that they would voluntarily tax themselves to the same extent that all persons whose property was dealt with under the Succession Act or Hindú Wills Act were now taxed ; that was to say, property covered by the grant and exceeding 1,000 rupees in amount or value would pay a Court-fee of two per cent., but property not exceeding that sum in amount or value would be exempt. People would thus voluntarily and usefully pay to the public treasury a part of the money which they now voluntarily and often uselessly spent in litigation, and the problem of levying a tax on successions to wealthy Natives' estates would thus, to some extent, be solved without hardship to the tax-payer or trouble to the Government.

The Motion was put and agreed to.

#### DISTRICT DELEGATES BILL.

The Hon'ble MR. STOKES moved for leave to introduce a Bill to make further provision for the grant of probates of wills and letters of administration in non-contentious cases.

He said this was a sister measure to that which the Council had just given him leave to introduce. The Indian Succession Act as originally framed by the Law Commissioners empowered the District Judge to appoint judicial officers to act for him as delegates to grant probates and letters of administration in non-contentious cases, much in the same way as the District Registrars appointed under the Court of Probate Act, 1857, did in England; but the provisions relating to this matter were struck out of the Bill by the Select Committee, partly because they were thought unnecessary, and partly because it was feared that the power which was to be conferred on District Judges would give rise to abuse.

If, however, the Bill to provide for granting probate of the wills and administration to the estates of persons now exempted from the operation of the Indian Succession Act should become law, it was probable that the business of granting probate and administration would increase to such an extent that the District Judges would be unable to dispose of it without assistance.

The present Bill had accordingly been framed with a view to replacing in the Succession Act, with some slight modifications in point of form, the sections removed from it by the Select Committee; but, in order to avoid as far as possible the danger of abuse apprehended by the Select Committee, the power of appointing the delegates had been vested not in the District Judges, but in the High Courts, and its exercise had in the case of High Courts not established by Royal Charter been made subject to the previous sanction of the Local Government.

The Motion was put and agreed to.

#### BOMBAY INDEBTED AGRICULTURISTS RELIEF BILL.

The Hon'ble Mr. HOPE moved for leave to introduce a Bill for the relief of indebted agriculturists in certain parts of the Presidency of Bombay. He said:—"The Council are already aware that during the monsoon of 1875 agrarian outrages of a serious nature took place in certain districts of the Dekkhan forming a part of the Bombay Presidency; that a Commission, appointed by Government, reported very fully upon the causes of these outrages, and the remedial measures they thought desirable; that the Government of Bombay in April, 1877, before Sir Philip Wodehouse's departure, submitted their general views upon the question to the Government of India; and finally, that Sir Richard Temple's Government sent up in January 1878 the first definite proposals for meeting the case by legislation. The origin, nature and causes of the difficulty, and the various proposals for its removal, were explained so fully and clearly by my hon'ble friend Mr. Cockerell in his speech of the 20th June last, that it is not necessary for me to go over any part of the ground again, at least on the present occasion.

“The course of procedure at that time considered desirable was that some of the Bombay Government’s proposals should be dealt with in this Council and others in that of Bombay. Leave to introduce Bills was accordingly granted by this Council to Mr. Cockerell on the date already mentioned, and by the Bombay Legislative Council to Mr. Ashburner on September 13th, 1878. It happened, however, that, during the discussion of the details of the measures thus decided on, a telegram from the Secretary of State was received on December 3rd, requesting that further definite action might be postponed pending the arrival of a despatch he was about to send. The despatch arrived towards the end of January last, and showed that the Secretary of State, while approving of the proposals of the Bombay Government, considered that they should be supplemented by further provisions for increasing the efficiency of the Courts of justice, and also that the subject could be better dealt with by one ‘comprehensive measure’ than by two passed in different legislatures.

“The Government of India, concurring in these views, and finding that, owing to various Acts passed in the Governor General’s Council being affected, that Council alone was competent to enact one measure disposing of the whole subject, entrusted to me the duty of conferring with the Government of Bombay as to the provisions which such a measure should embrace, and of introducing into this Council the Bill as finally determined upon. I accordingly visited Bombay in April last, and the result was that a Bill was framed in full consultation with me, and proposed by the Government of Bombay to the Government of India for adoption. The Government of India have, I am glad to say, entirely accepted, in their executive capacity, the main principles and policy of this Bill, which are also, I believe, in conformity with the views of the Secretary of State. The two Bills for which leave has been already granted need not now, therefore, be proceeded with; and it remains for me to ask of this Council leave to introduce the new Bill, reserving all detailed explanations for the occasion of its introduction.”

The Motion was put and agreed to.

#### BENARES FAMILY DOMAINS BILL.

The Hon’ble MR. COLVIN moved for leave to introduce a Bill to amend Bengal Regulation VII of 1828. He said that the object of the Bill which he desired to introduce could be explained in a few words. A short time after the transfer of the sovereignty of Benares from the Nawáb of Oudh to the East India Company, an agreement was made with the Rájá of that time for the purpose of introducing into the Province of Benares the same system of judicial and revenue administration as had been established in 1793 in the Provinces of Bengal, Bihár and Orissa. By that agreement the entire administration of

the Province of Benares was transferred, upon certain conditions, to the British Government, with the exception of a reservation which was made in favour of the Rájá in respect of one portion of it. The portion so excepted comprised the territories which were generally known as the Benares Family Domains. These Family Domains, which were the Mahárájá's private and personal property, consisted of three parganas—that of Kaswár Rájá in the District of Benares, held at ordinary or full zamíndárá rates, and of two parganas, Bhadohi and Khera Mangror, in the District of Mirzapur, the first of which was held at half-revenue rates, and the second free of all revenue. Their total area was, in round figures, 1,000 square miles; the population about 400,000, and the revenue paid for them nearly three lákhs of rupees. When the administration of the rest of the Province was transferred, the decision of causes relating to the revenue and of certain other claims arising out of land in these parganas was reserved to the Rájá, subject to the supervision and control of the Collector. The special stipulation contained in the agreement on this subject ran as follows:—

“In case of complaints relative to revenue causes or charity ground, &c., being preferred to the Huzoor (*i. e.*, the English Government) by any parties residing within the jagheer and altumgah, &c., the personal or private lands of Rajah Muheep Narain Singh, the inquiry thereinto shall be made in like manner as such cases were amicably conducted between Mr. Duncan and the Rajah; that is, that since the gentleman holding the station of Collector will have more concern with such matters than the other gentlemen, the rule shall be that, with the privity and ascertainment of the said Collector (who is to have regard to the honour and dignity of the said Rajah), such causes are to be settled through the channel of the said Rajah, or of the officers of the said Rajah's catcherry; it being at the same time understood and provided that, as it is a duty incumbent on the Hon'ble Company's Government to distribute and ensure the attainment of justice to all the inhabitants of Benares, should it so happen that, after referring such complaints to the Rajah or to his officers in the catcherry, the contentment of the parties complaining and aggrieved shall not be obtained, the Rajah shall relative to the adjustment of such causes listen to and approve of the suggestions and advice of the Collector, in like manner as hath been practised in the time of Mr. Duncan. And it is also incumbent on the said Collector, in all proper and just cases, to show the utmost attention possible to the Rajah's accommodation, and to hold in view the maintenance of his honour and dignity, such being entirely consistent with the wishes of Government; and if (which God forbid!) any such subject should arise as cannot be settled between the said Collector and the Rajah aforesaid, the decision in such case shall depend on the Governor General in Council.”

It was evident that the success of such an agreement as this depended largely upon the mutual good-will and forbearance of the parties who carried it out. It was possible—in the commencement of our rule, and with Agents like Mr. Duncan, who possessed great influence and popularity—that such a plan may for a time have worked successfully; but it was easy to predict that powers and duties which were so vaguely defined must either soon fall into disuse and be neglected, or, if the attempt to maintain them in force were

prolonged, that the first serious difference of opinion would bring their working to a dead lock. It appears, from the history of the experiment, that it was the first of these two probable causes of failure which was fatal to it. It was found, after a very short experience, that the conditions of the agreement were quite insufficient to protect the subjects of the Rájá from oppression. Some time elapsed before any effective measures were taken for their protection; but the complaints of this oppression became at last so loud and numerous, that in 1826 the Governor General appointed Mr. Wilberforce Bird as a Special Commissioner to enquire into the causes of the great and general dissatisfaction. The result of that enquiry was to show that many gross acts of injustice had been committed, that the supposed Courts of justice were mere engines of extortion and oppression, and that the power of appeal to the Collector and the Governor General had been of no effect whatever in checking these evils.

In order to remedy the state of affairs thus disclosed, a law was passed. That law was Regulation VII of 1828, which it was now proposed to amend. The Regulation did not differ in substance from the agreement made in 1794; but it laid down more precise and definite rules for giving effect to that agreement. It directed a settlement and record of rights to be made in the Benares Family Domains. Further, within those territories, it conferred on the Rájá the powers of a Collector in respect of certain revenue matters; it provided for the appointment of Native Commissioners to determine suits relating to land or the proceeds of land; and it placed both these Commissioners and the Rájá in the exercise of his powers as Collector under the control of an officer styled the Superintendent, who was himself made directly subordinate to the Governor General in Council.

The Regulation of which he had just given an outline was still in force, and during the last fifty years no change had been made in it. During that time, however, great changes had taken place in the general administration of the country. The law had become more full and exact, and its operation more certain; procedure had been far more minutely and carefully regulated, and superior authorities had been multiplied. The attention of these higher authorities had also, of necessity, been more and more withdrawn from matters of detail and directed to matters of greater importance. In order to adapt the revenue system of the Family Domains to the changes which were thus going on in other branches of the administration, various alterations had from time to time been made in the manner of complying with the provisions of Regulation VII of 1828. In all such alterations the intentions of the Regulation and the terms of the agreement of 1794 had been scrupulously respected. On this point he believed there had never been any just ground of complaint. It might be, however, that the precise letter of the law had not always been strictly

observed. It was necessary now to bring the law and the existing practice into accordance. But, as any such deviations from the letter of the law (if they had occurred) had been compelled by circumstances, it had been thought better to alter the law so as to adapt it to existing requirements than to attempt to make the facts comply with the obsolete provisions of the law.

Besides this, there was another reason for the proposed legislation regarding the Benares Family Domains to which it was necessary to advert. About five years ago the two Acts known as the Scheduled Districts Act and the Laws Local Extent Act were passed. Their object, as the Council were aware, was to define precisely and declare the laws which applied to certain parts of British India which were known as Non-Regulation Districts. Now, the Benares Family Domains had come under the operation of those Acts on account of the special nature of their revenue administration, which excluded from them a great deal of the Revenue law that was generally applicable to the North-Western Provinces, and caused a distinction between them and the districts by which they were surrounded. His Highness the present Mahārājā, however, was very anxious that his Family Domains should be withdrawn from their operation. He was apprehensive apparently that some day, under the powers conferred by those Acts, the Revenue law which was generally in force in the North-Western Provinces might be extended to his estate. Nothing of the sort had been done, and he felt sure that nothing of the sort had ever been intended. But the possibility of such a thing was a cause of uneasiness to His Highness; and it had been suggested that any such apprehensions might be removed, without sacrificing the objects which the two Acts that he had mentioned were intended to accomplish, if opportunity were taken, when amending Regulation VII of 1828, to declare in the amending Act what laws were applicable to the Benares Family Domains.

These, then, were the two main objects of the Bill. First, to alter the provisions of Regulation VII of 1828 so as to adapt it to the present state of affairs without making any important change in the practice of the last fifty years. Secondly, to ascertain and declare the laws which were applicable to the Mahārājā's private estate.

MR. COLVIN hoped that this explanation would be sufficient to show the general grounds upon which further legislation in respect to Regulation VII of 1828 was required. If the leave to introduce a Bill which he was then asking for were given by the Council, he would, on a future occasion, notice more particularly the points on which it was proposed to amend the present law.

The Motion was put and agreed to.

## RELIGIOUS CONGREGATIONS BILL.

The Hon'ble Mr. STOKES moved for leave to introduce a Bill to provide for the holding of property by certain Religious Congregations. He said that Mr. Chapman and other members of the Simla Union Church, so far back as the year 1873, drew the attention of Government to the hardship under which they laboured in being unable, without constantly recurring trouble and expense, to keep up a permanent and effective body of trustees to whom to commit the property of the Church. The Secretary to the Calcutta Missionary Conference about the same time made a similar representation to Government; and there were probably other bodies associated for religious purposes in India who experienced like difficulties.

The present Bill was drawn on the lines of 13 & 14 Vic., c. 28 (commonly known as Peto's Act), which was passed to meet a similar difficulty felt by Religious Societies in England. It differed from that Statute, however, first in applying only to Religious Congregations and not to Societies formed for purposes of education (which seemed sufficiently provided for by our Act XXI of 1860); and secondly, in providing for the case of moveable as well as immoveable property.

The Bill simply declared that, if property of certain specified descriptions was conveyed to trustees in trust for any Religious Congregation, and no special provision was made for the appointment of new trustees, new trustees might be appointed in such manner as that Congregation might determine; and further, that on the appointment of new trustees, whether in exercise of the powers thus conferred or otherwise, the property should vest in them without any further conveyance.

Hindús, Muhammadans and Buddhists were excepted from the provisions of the Bill, as it was thought undesirable to interfere with the laws regulating their religious endowments.

The Motion was put and agreed to.

## LEGAL PRACTITIONERS BILL.

The Hon'ble Mr. STOKES moved that the Hon'ble Sir Alexander Arbuthnot be added to the Select Committee on the Bill to consolidate and amend the law relating to legal practitioners.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 26th June, 1879.

SIMLA;  
The 5th June, 1879. }

D. FITZPATRICK,  
Secretary to the Government of India,  
Legislative Department.