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**COUNCIL OF THE GOVERNOR GENERAL
OF INDIA**

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ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

1880.

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1881.



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 Friday, the 24th September, 1880.

PRESENT :

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

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

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

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

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

The Hon'ble J. Gibbs, C.S.I. C.I.E.

The Hon'ble C. U. Aitchison, LL.D., C.S.I.

Lieutenant-General the Hon'ble Sir D. M. Stewart, K.C.B.

The Hon'ble B. W. Colvin.

The Hon'ble C. Grant.

MADRAS IRRIGATION AND CANAL COMPANY'S CANAL BILL.

The Hon'ble Mr. GIBBS moved for leave to introduce a Bill to regulate the traffic on the Madras Irrigation and Canal Company's Canal. He said that this company was established under the 21 & 22 Vic., c. 8, that it entered into a contract with the Secretary of State on the 3rd of June 1863, for the carrying out of certain works some of which had been completed. Under the twenty-seventh section of that agreement it was provided that the Company should be authorized and empowered to charge such fares and rates for the conveyance of passengers, animals and goods as should not exceed the fares and rates which should be defined and sanctioned by an Act of the Indian Legislature. Doubts had arisen in Madras as to whether the term "Indian Legislature" included the Council of the Governor of Madras for making Laws and Regulations, and in order to prevent any difficulty arising on this point it had been deemed advisable to introduce the proposed Bill in this Council.

The Motion was put and agreed to.

INDIAN GOVERNMENT SECURITIES BILL.

The Hon'ble Mr. STOKES moved for leave to introduce a Bill to provide for certain matters relating to securities of the Government of India. He said that in the case of the $4\frac{1}{2}$ per cent. loan of 1880, the Government of India had

determined to issue, in lieu of promissory notes, loan-certificates payable to bearer, with coupons attached, and it was not improbable that it would desire to issue similar certificates in the case of other loans. As the English law relating to such certificates and coupons was at present in process of development, and as it was, accordingly, by no means certain what legal incidents a Court would attach to these documents, it had been deemed advisable to provide by legislation for two points on which it was essential that the law should be definitely fixed. These were first, that our loan-certificates and coupons should be transferable by delivery; and, secondly, that payment to the bearer of the amount expressed in them, at or after due date, should be a full discharge to the Government, just as if they were promissory notes payable to bearer.

In enacting these provisions the Bill would follow the precedent of the Acts of Parliament relating to English stock-certificates (33 & 34 Vic., c. 71, s. 32, paragraph 1, and s. 35, paragraph 2) and India stock-certificates (26 & 27 Vic., c. 73, s. 5, paragraphs 4 and 7). The former provision was also in accordance with the decision of the Exchequer Chamber in *Goodwin v. Roberts*, L. R. 10 Ex. 337, as to certain foreign scrip, which entitled the holder, on payment of the instalments due from him to delivery of definitive bonds, and the subsequent case of *Rumball v. The Metropolitan Bank*, L. R. 2 Q. B. Div. 194, as to scrip-certificates entitling the bearer to shares in a banking company. But it would dispense with the necessity of relying on a mercantile usage, treating certificates as negotiable, on the existence of which those decisions mainly rested. The latter provision followed the ordinary rule that the maker of a promissory note was discharged by payment in due course, that is, payment by him, or on his behalf, at or after maturity, to the holder or his agent.

The opportunity would also be taken to provide for certain other matters relating to all Government securities and in regard to which the need for legislation had been brought before us.

It was, for instance, desirable that the Government should be empowered by law to decline to notice endorsements of Government securities involving a trust, such as 'Pay to A. B. in trust for C. D.' This was in practice done at present; but as there were doubts as to how far the Courts might uphold such practice, the Bill would provide specifically that no notice of any trust in respect of any security of the Government of India should be receivable by the Government. In this case also we had a precedent in the Acts of Parliament above-mentioned, see section 5, paragraph 6, of the former, and section 30 of the latter, Act.

Another section of the Bill would provide that no one endorsing a Government security should incur any liability thereby. This was intended to

remove a doubt which had been felt in some quarters as to the legal effects of such endorsement. In Financial despatch dated the 25th March, 1880, No. 101, the late Secretary of State for India had referred to this matter. Another difficulty, he said, had been brought to his notice as having a certain tendency to hinder investment in our Indian loans. The inquiry had been made on more than one occasion at the India Office, and more particularly in the interest of the foreign holder of rupee-paper, whether an endorsement on one of the existing notes carried with it a liability to repay the principal amount in the somewhat improbable event of the Government of India being unprovided with funds for its discharge. Lord Cranbrook was advised that such an endorsement had the effect only of recording title or proprietorship, and that it did not involve the responsibilities entailed by an endorsement on a promissory note of a commercial character. On the other hand, he said, it would be perceived from a legal opinion forwarded to the India Office that the above view was not uncontested, and, at all events, the fact that such an objection had been taken showed that it had a certain importance, especially in the eyes of operators in foreign markets, who might not be well informed as to the constitution of the Government of India or its relations to the Home Government.

The opinion above referred to ran as follows:—

“ The rupee-paper issued by the Government of India is in its legal effect a promissory note payable *to order*, and it is upon the face of it expressly stated to be a promissory note. We have not the means of referring to the Acts of the Legislative Council under which these notes are issued, but in the absence of any special provision upon the subject, we apprehend that the notes have all the attributes of a promissory note. The notes being made payable *to order* are transferable only by endorsement of the payee, and so on from time to time, as long as the endorsement is a ‘ special ’ endorsement, that is, to the order of another person ; but we apprehend that as soon as it bears a blank endorsement it would be transferable by delivery and become payable to bearer.

“ By the law of England a person who endorses a promissory note becomes liable to all subsequent indorsers in the event of the note not being duly paid by the maker, and it appears to us that an indorser of one of the notes in question renders himself liable for the due payment of the note, unless, to protect himself from that liability, he makes his endorsement ‘ without recourse.’ ”

Lastly, the Bill would provide that the signatures to Government securities might be printed, engraved, lithographed or impressed by other mechanical process. Gentlemen who, like the learned authors of the opinion just quoted, were inclined to regard our rupee-paper as ordinary commercial promissory notes, subject to all the rules in Byes on Bills applicable to such instruments, might be expected to argue (notwithstanding the remarks of Sir W. Page Wood, L. J., in *Ex p. Birmingham Banking Co.*, L. R. 3 Ch. 653, 654), that, in the absence of legislation, the signatures to that paper must be written by hand.

The convenience of the proposed arrangement in the interest of the public service was obvious. Here again we had a precedent, for the Statute 16 & 17 Vic., c. 2, allowed the signature to the Bank of England notes to be impressed by machinery.

The Motion was put and agreed to.

The Council adjourned to Friday, the 1st October, 1880.

SIMLA;
The 24th September, 1880. }

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