

Wednesday, August 3, 1881

COUNCIL OF 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.

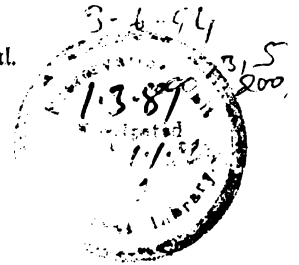
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1882.

*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, Simla, on Wednesday, the 3rd
August, 1881.

P R E S E N T :

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

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

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

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

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

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

Major the Hon'ble E. Baring, R.A., C.S.I., C.I.E.

Major-General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble C. Grant, C.S.I.

COURT FEES BILL.

The Hon'ble MR. STOKES asked leave to postpone the motion for leave to
introduce a Bill to amend the law relating to Court Fees.

Leave was granted.

JHÁNSÍ ENCUMBERED ESTATES RELIEF BILL.

The Hon'ble MR. RIVERS THOMPSON moved that the Bill to provide for
the relief of Encumbered Estates in the Jhán sí Division of the North-Western
Provinces be referred back to the Select Committee. He said that it would be
in the recollection of the Council that this Bill was in the hands of his
hon'ble friend Mr. Bazett Colvin, when he was a Member of the Council, and
had been carried by him to the stage when the Select Committee submitted the
report on the Bill based on the lines which had been accepted by the Executive
Government, and that it was ready to be passed. It was thought necessary,
however, before passing it to consult the Lieutenant-Governor of the North-
Western Provinces regarding it, and communications were made which had
led to a reconsideration of the principle upon which the measure was
founded. The line upon which the Bill had been drawn was that there should

be a State management, and a gradual redemption of debt by such management, for the relief of the proprietors of encumbered estates in Jhānsī. That course had been adopted because, at the time when the Council first considered the proposals that came up with reference to this Bill, the financial condition of the Government of India was not so favourable as it was now for a more liberal treatment of the question. A reconsideration of the position has led the Government to decide that, instead of having a direct management of the numerous petty estates of the three parganas affected,— a procedure which would involve long delays and many difficulties in execution,— the Government should advance the money directly to distressed proprietors to pay off their debts, such money being advanced on the security of the mortgage of the profits of the estates. The suggestion had found acceptance with the Government of the North-Western Provinces, and was on the lines of the original proposals made by his hon'ble friend Mr. Colvin, who was especially experienced in the affairs of the Jhānsī Districts, of which he was once the Commissioner. Accordingly, the Government having directed attention to this new form of relief, it was for the consideration of the new proposals that he now asked leave to retransfer the Bill to the Select Committee.

The Motion was put and agreed to,

COMPANIES BILL.

The Hon'ble MR. STOKES moved for leave to introduce a Bill to amend the law relating to Trading Companies and other Associations. He said that the Bill was occasioned by the discovery, by the Registrar of Joint Stock Companies in Bombay, of a defect in section 49 of the Indian Companies Act (No. X of 1866), which did not provide clearly that the annual balance-sheet to be filed with the Registrar should be the one which had been laid before, and finally adopted and passed by, a General Meeting of the Company concerned, or that it should be filed within a prescribed time as provided by Act No. XIX of 1857.

On consideration, it was determined by the Financial Department that this defect should be removed, and it was then proposed that the opportunity should be taken to make certain other amendments in the Indian Companies Act.

Those amendments fell under two heads, first, the substantial additions suggested by the English legislation regarding Companies, since the year 1866, and, secondly, the verbal alterations suggested by the reported decisions of the English and Indian Courts.

Since 1866, the English Companies Act, from which our Act No. X of 1866 was for the most part copied, had been amended by 30 & 31 Vic., c. 131, 33 & 34 Vic., c. 104, and 40 & 41 Vic., c. 26.

Those Statutes provided—

- (i) that a limited Company might, if it declared its intention to do so, either by the memorandum of association or by special resolution, have directors with unlimited liability, such liability to be enforceable only when the Company was being wound up and the corporate assets (including the contributions of ordinary members) were insufficient to pay its debts or the costs of the winding-up.
- (ii) that a Company might, by leave of the Court, reduce the aggregate amount of its nominal capital, or diminish the amount of the shares, but saving the rights of creditors who were ignorant of the proceedings.
- (iii) that shares might be subdivided, as we found it desirable to do in the case of the Presidency Banks.
- (iv) that a Company might have some shares fully paid up and others not, and that dividends might be paid in proportion to the amount paid up on each share.
- (v) that a transfer of shares should be registered at the request of the transferor, subject to the same conditions as if the request were made by the transferee.
- (vi) that in the case of limited shares fully paid up share-warrants might be issued to bearer, and the shares would thereupon be transferred by delivery of the warrant. Coupons might be annexed entitling the bearer to receive dividends.
- (vii) that every prospectus of a Company and every notice inviting persons to subscribe for shares in a joint stock company should specify the dates of and parties to any contract which had been previously made by the company or its promoters or directors, and might reasonably influence a person in determining him to take or not to take shares in the Company (*Sullivan v. Mitcalfe*, 49 L.J. Q. B. 815).
- (viii) that a general meeting must be held within four months after registration.

- (ix) that a contributory should not be qualified to present a winding-up petition unless the members were reduced to less than seven, or unless he had held his shares for at least six of the previous eighteen months, or unless the shares had devolved on him through the death of a former holder. This would prevent the practice of speculators buying shares in failing companies with a view to wind them up and share in the plunder.
- (x) that when the High Court had made an order for winding-up a Company, it might refer all subsequent proceedings to a District Court (to use the Indian term corresponding to the English 'County Court') and transfer a winding-up from one District Court to another.
- (xi) that when a compromise was proposed between a company that was being wound up and its creditors, the Court might order a meeting of such creditors; and that if a majority representing three-fourths in value agreed to the compromise, it should, when sanctioned by the Court, be binding.

He had not mentioned the amendment made by 30 & 31 Vic., c. 131, section 37 (as to the manner in which contracts might be made on behalf of companies), because the Indian legislature had anticipated it in section 42 of Act No. X of 1866.

It seemed to the Government of India that the amendments which he had specified should be made for two reasons, first, because they were good in themselves, and, secondly, because it was desirable that the laws relating to such a subject as mercantile companies should be as nearly as possible the same in India as in England. Any differences in such laws led to mistakes in the Indian Courts, and must, to some extent, discourage English investors from putting their money into Indian companies. The provisions as to the unlimited liability of directors had been stigmatised in England as certain to drive from the direction men of wealth and position and to substitute in their places needy adventurers. But he need hardly say that the experience of fourteen years had belied this prophecy. He might add that, under the provisions in question, a director would not be liable *as such* for more than a year after he had ceased to hold office, and that he would not be liable *as such* in respect of any debt of the company contracted after he had ceased to be a director.

The reported decisions of the Indian Courts regarding the law applicable to trading companies were, so far as he knew, only thirty-two in number, and of those only two or three turned upon the wording of Act No. X of 1866. But

there was a large number of English decisions bearing on the wording of the corresponding sections of the English Statute of 1862, and the Bill which he now asked leave to introduce would embody the result of an examination of those decisions.

The Motion was put and agreed to.

JHANSI ENCUMBERED ESTATES RELIEF BILL.

The Hon'ble MR. RIVERS THOMPSON moved that Major the Hon'ble E. Laring be added to the Select Committee on the Bill to provide for the relief of Encumbered Estates in the Jhansi Division of the North-Western Provinces.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 17th August, 1881.

R. J. CROSTHWAITE,

SIMLA ;
The 3rd August, 1881. }

*Officiating Secretary to the Govt. of India,
Legislative Department.*