

Friday,
12th February, 1886

ABSTRACT OF THE PROCEEDINGS

OF THE

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, 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 12th February, 1886.

P R E S E N T :

The Hon'ble C. P. Ilbert, C.S.I., C.I.E., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.
The Hon'ble Sir S. O. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.
Major-General, the Hon'ble T. E. Hughes, R.A.
The Hon'ble Rao Saheb Vishvanath Narayan Mandlik, C.S.I.
The Hon'ble Peari Mohan Mukerji.
The Hon'ble H. St. A. Goordrich.
The Hon'ble G. H. P. Evans.
The Hon'ble J. W. Quinton.
The Hon'ble R. Steel.
The Hon'ble W. W. Hunter, C.S.I., C.I.E., LL.D.

REGISTRATION OF BIRTHS, DEATHS AND MARRIAGES BILL.

The Hon'ble MR. ILBERT moved that the Report of the Select Committee on the Bill to provide for the voluntary registration of certain births and deaths, for the establishment of General Registry Offices for keeping registers of certain births, deaths and marriages, and for certain other purposes, be taken into consideration. He said :—

“ The main object of this Bill is, as I explained last year, to provide means of obtaining more satisfactory evidence of births, deaths and marriages occurring in certain classes of the community. The Bill is limited in its scope and permissive in its character. It does not seek to establish a general system of registration of births, deaths and marriages for all classes, still less to make that system compulsory. It applies only to a comparatively small class, and only to those members of that class who choose to avail themselves of its provisions. It will not set up any new and expensive machinery, and it is expected that any extra cost which it may involve will be recouped by the fees levied under it.

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“The Bill is intended primarily for the benefit of Christians, whose baptisms and burials are registered by their clergymen, and whose marriages are solemnized in accordance with the Christian Marriage Acts. When the Bill was introduced a suggestion was made that the provisions of the chapter relating to the registration of births and deaths should be extended to Hindus and Muhammadans, and this suggestion was much discussed in the papers which were laid before the Select Committee. On the one hand, it was urged—and it must, I think, be admitted—that Hindus and Muhammadans would often be glad to secure the advantages of registration for evidential purposes; but, on the other hand, it seemed clear that any large and general extension of the scope of the Bill would be inconsistent with its character, would require the establishment of machinery on a scale altogether incommensurate with that which had been contemplated, and might involve indefinite expenditure. Under these circumstances, the Select Committee came to the conclusion that they would not be justified in going further than to insert a provision enabling Local Governments to extend the system of voluntary registration cautiously and experimentally to other classes within limited areas. If the result of any such experiment should show that there is a genuine demand for an extension of the system, a strong case would be made out for legislation to supply the requisite machinery.

“In the meantime we must be content to work with existing machinery. Doubts have been expressed whether in those towns where a system of registration for statistical purposes already exists it will work in harmony with our new system of registration for evidential purposes; but I feel pretty confident that the difficulties which have been suggested may be overcome by suitable administrative arrangements. Throughout the greater part of the country we shall have to rely mainly on the voluntary agency of those ministers of religion who at present keep registers of baptisms and burials. Many of these gentlemen have supplied us with useful suggestions, but I observe that some of them do not fully understand the grounds on which this legislation has been undertaken. Thus a chaplain writing from Delhi remarks that the existing ecclesiastical registers are carefully kept, that the entries are made under the signature of respectable persons, and the particulars given are obtained from the parties concerned. Why, he asks, should they not be admissible in evidence, and why set up what he describes as the ‘cumbrous and expensive machinery excogitated in the Bill.’ I hope that the machinery proposed will prove to be neither cumbrous nor expensive, but perhaps I did not sufficiently explain in introducing the Bill the nature of the objection which has

been taken to the evidence obtainable under the existing system. It is a purely technical objection, and implies no disparagement of the care with which ecclesiastical registers are kept. There is a section in the Evidence Act which gives relevance to entries in public records made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which the record is kept, and it has been questioned by high legal authority whether entries in ordinary ecclesiastical registers fell within the category to which this section refers. This is the doubt which we desire to remove with the least possible disturbance of existing arrangements. If those clergymen who, we hope, will act as voluntary Registrars will compare the revised Bill with the Bill as originally introduced, they will see that the Select Committee have endeavoured to meet their wishes in every way, and to avoid imposing on them duties which would be inconsistent with the discharge of their ecclesiastical functions. For instance, the original scheme was to establish registers for specified local areas. But it was reprinted that, whilst a minister might be willing to act as Registrar for his own congregation, he might be disinclined to undertake the duty for the benefit of members of other congregations. The objection seemed reasonable, and accordingly it will be found that, under the revised Bill, Registrars may be appointed not merely for specified areas but also for specified classes. Again, we have modified, in accordance with wishes which have been expressed, the section of the Bill which directs certain clergymen to send entries to the central office through their ecclesiastical superiors. This particular section has had to encounter another objection which I have been unable to remove by amendment, but which I can satisfactorily explain away. It refers to 'the Churches of England, Rome and Scotland' in that order, and I am told, in one of the papers from Bombay, that to place the words 'Church of Rome' before the words 'Church of Scotland' is an error which will give grave offence. Now the truth is that the draughtsman was wholly guiltless of any sinister desire to depreciate the status of the Church of Scotland, and had merely adopted an alphabetical arrangement as being the least invidious. If the church of Rome appears to take precedence of the Church of Scotland in the section, it is merely because in the English alphabet, as in alphabets which existed long before any of the Christian churches were dreamt of, the letter R takes precedence of the letter S. As a matter of fact, lower down in the same section, the Church of Scotland is, for reasons not unconnected with draughtsmanship, mentioned before the Church of Rome.

"I need not explain in detail the other alterations which have been made in the Bill. The chapter relating to registration of marriages has, on the

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advice of a leading member of the Parsi community at Bombay, been extended to certain Parsi marriages which are at present registered much in the same way as marriages under the Christian Marriage Acts.

“The alterations in the chapter relating to the registration of births and deaths have been suggested by the criticisms which we have received, and by a further comparison with the English registration law. In considering the applicability of the latter law the Committee have borne in mind the essential difference between a system of registration which is universal and compulsory and a system which is partial and permissive. Thus the English law imposes on certain persons the obligation of giving notice of a birth or death. The Indian Bill merely requires the Registrar to make an entry on the receipt of notice from any one of certain persons authorized to give the notice, and we have found it possible to extend this latter class so as to make it include all persons who are likely to be in a position to give satisfactory evidence of the event. But we have not seen our way to a provision authorizing notices of births and deaths to be sent by post. The whole value of the measure depends on the register book being kept, and the entries in it being authenticated, in such a manner as to minimize the risk of fraud or error, and it is obvious that a book made up of loose fly-leaves would be open to serious objection on that score. If this were a compulsory measure, arguments based on the difficulty and inconvenience of personal attendance would be entitled to great weight. But it is only a permissive measure, and those who wish to take advantage of its provisions must be prepared in some cases to face a certain amount of trouble and expense.

“On the whole, I can confidently commend the Bill to the Council as one which, though modest in its scope, will, I believe, prove a very useful addition to our Statute-book.”

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

INDIAN REGISTRATION ACT, 1877, AMENDMENT BILL.

The Hon'ble MR. ILBERT also moved that the Report of the Select Committee on the Bill to amend the Indian Registration Act, 1877, be taken into consideration. He said:—

“The principal object of this Bill was to facilitate the issue of mortgage-

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debentures by companies by exempting them from registration under the Indian Registration Act when the mortgage-deed to which they refer is so registered.

“All the proposals of the Bill as introduced have met with general approval, but the Select Committee have received various suggestions for amending the Registration Act in other respects. Only one of the amendments suggested appeared to be of sufficient urgency to justify its being dealt with in the present Bill. There is a recent decision of the Allahabad High Court to the effect that receipts for payment of mortgage money are compulsorily registrable. Almost all the authorities whom we have consulted are agreed that, whether this interpretation of the Act is right or wrong, it cannot be enforced without causing great practical inconvenience. Accordingly, a clause has been added to the Bill in Select Committee expressly exempting from compulsory registration any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, whether the endorsement does or does not purport to extinguish the mortgage, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage. In so framing the clause we have, as regards endorsements, followed the course recommended by the High Court at Bombay, and, as regards other receipts, the general tenor of the opinions expressed by the authorities whom the Government of India has consulted.”

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

BENGAL TENANCY ACT, 1885, AMENDMENT BILL.

The Hon'ble MR. EVANS moved for leave to introduce a Bill to amend sections 12 and 13 of the Bengal Tenancy Act, 1885. He said :—

“The object of this Bill is stated in the Statement of Objects and Reasons as follows: It ‘is to limit the registration of mortgages in landlords’ records to those mortgages which are accompanied by possession and usufruct, and thereby to give effect to what was in fact the intention of the Legislature when the Bengal Tenancy Act was passed.’ The necessity for this very small measure arises in this way. The object of these two sections, 12 and 13, of the Bengal Tenancy Act is to substitute an official record in the first instance, and an official machinery for recording the

transfer of permanent tenures, providing that the fee which the landlords are entitled to receive upon such transfers should be sent to the Collectors, who should themselves notify the transfers to the zamíndárs, who are to be able to make the necessary entries in their *sheristas* for their own guidance in dealing with the tenures. Formerly the state of the law was that it was necessary, when any transfer by gift, sale or otherwise took place of a permanent tenure, that this transfer should be registered in the zamíndári *sherista*, and on that registration the zamíndárs were in the habit of getting a small fee. It was found inconvenient for many reasons which I need not dilate upon, and it was proposed in the new law that the Registrar should take the fee and register, and that no such transfer should take place without registry and the payment of a fee and a notification through the Collector to the zamíndár. This was the machinery which was substituted for the former one and considered more effective. It will be noted from what I have said that the old words were a 'transfer by gift, sale or otherwise,' and it had not, as a matter of fact, been held that a mortgage came within this definition at all, nor was it the practice that zamíndárs should demand that mortgages should be registered in their *sheristas*, and the reason, of course, is not far to seek. It was because, while the mortgages were simply intended to raise money on lands, without any transfer or the creation of new tenants by such mortgage, it did not, as a matter of fact, concern them at all. When the new Act was being made, and when provisions were being introduced for the transferability of *raiyati*-holdings, it was feared by the zamíndárs that, under the guise of mortgages by which a mortgagee was to be put in possession, a transfer would, in point of fact, be effected of these occupancy-holdings, so as to defeat their right of pre-emption. A good deal of discussion took place in regard to that matter, but, although some proposals were made for limiting the operation of this word 'mortgage' to a mortgage involving immediate possession, the matter was dropped out of sight owing to the abandonment by the Government of the provisions with regard to the transferability of occupancy-holdings; and so it came to pass that, when there existed the corresponding words in the provisions with regard to the registration and transfer of permanent tenures, the matter was also more or less lost sight of. The result is that, as the words stand at present, in certain classes of mortgages, particularly in mortgages after the English form, which are declared by the Transfer of Property Act to be transfers of property with right of reconveyance, the result is that, whereas an English mortgage is really only a method of raising money which allows the tenureholder to remain in possession, the transaction being one with which the landlord has

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nothing to do, yet this transaction may not take place without all those formalities, the description of tenure, the payment of a fee and notices to the landlord, and all the rest of it; and although it is probable that the simple mortgage-bonds which do not carry possession with them can be made without this difficulty, still it is very certain that mortgages in the English form may not be made without this result. The result of the law has been very serious inconveniences. Although the number of mortgages registered in Calcutta since the passing of the Act is very small, yet a very considerable number of mortgages are kept back owing to this difficulty. I am informed that the Chamber of Commerce is about to make a representation on the subject. Under these circumstances, seeing that it was never the intention of the Legislature to do anything more than to subject a transfer by mortgage with possession to the same rule as sales, it appears to me that it is highly desirable that the inconveniences that have arisen from inadvertence should be removed. Under these circumstances I have brought forward this Bill, and beg leave to introduce it. The effect of it will be, so far as I understand, merely to do that which we arranged with the zamindárs to do, avoid doing that which we never intended to do, which they never asked us to do, to which they had no reason for asking us to do, and which they do not at present desire us to do."

The Hon'ble PĀRÍ MOHAN MUKERJI said :—" I wish to observe that, in the Select Committee on the Bengal Tenancy Bill, not only I but the Hon'ble Member who represented the views of the Bengal Government moved to limit the definition of 'transfer' among other transactions to mortgages with possession. That amendment was accepted by the Committee when there was in the Bill a section providing for the transfer of occupancy-holdings, and the definition of 'transfer' was intended to apply both to tenures and to occupancy-holdings. When the section about the transfer of occupancy-holdings was abandoned, the definition of 'transfer' was also struck out of the Bill, and it was simply a matter of oversight, as has been observed by the hon'ble mover of this Bill, that the word 'transfer,' with reference to the tenure sections of the Bill, was not qualified in the way in which the Select Committee intended it to be qualified. I think therefore that the Bill which the Hon'ble Member intends to introduce will simply give effect to what was the intention of the Legislature. But I should mention that in Behar generally and in parts of Bengal this amendment will perceptibly curtail the gains of landholders."

The Hon'ble M^r. ILBERT said :—" The question raised by this Bill appears to be one purely between tenureholders and zamindars. The amendment is

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moved on behalf of tenureholders, and I understand the Hon'ble Peári Mohan Mukerji to say that he accepts it on behalf of zamindars, and he is very probably right in saying—although I do not remember precisely what took place—that it was the intention of the Select Committee to qualify sections 12 and 13 of the Bengal Tenancy Act in some such way as the Hon'ble Mr. Evans now proposes. Under these circumstances I need hardly say that no objection will be offered to the Bill on behalf of the Government of India."

The Motion was put and agreed to.

The Hon'ble MR. EVANS also introduced the Bill.

The Council adjourned to Friday, the 19th February, 1886.

S. HARVEY JAMES,

Offg. Secy. to the Govt. of India,

Legislative Department.

FORT WILLIAM; }
The 17th February, 1886. }