Friday,
8th March, 1889

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXVIII

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OF

THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,

ASSEMBLED FOR THE PURPOSE OF MAKING

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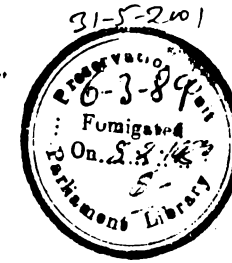

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Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Government House on Friday, the 8th March, 1889.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.
The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.
The Hon'ble A. R. Scoble, Q.C., C.S.I.
The Hon'ble Sir C. A. Elliott, K.C.S.I.
The Hon'ble P. P. Hutchins, C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble R. Steel.
The Hon'ble Sir Dinshaw Manockjee Petit, Kt.
The Hon'ble F. M. Halliday.
The Hon'ble Sir Pasupati Ananda Gajapati Razu, K.C.I.E., Mahárájá of Vizianagram.
The Hon'ble Syud Ameer Hossein, C.I.E.
The Hon'ble Rájá Durga Charn Laha, C.I.E.
The Hon'ble G. H. P. Evans.
The Hon'ble Maung Ôn, C.I.E., A.T.M.
The Hon'ble Muhammad Ali Khan.
The Hon'ble J. W. Quinton, C.S.I.

PROBATE AND ADMINISTRATION BILL.

The Hon'ble MR. SCOBLE moved that the Report of the Select Committee on the Bill to amend the Indian Succession Act, 1865, the Probate and Administration Act, 1881, and the Court-fees Act, 1870, and to make provision with respect to certain other matters be taken into consideration. He said:—

"The first part of this Bill relates to amendments of the Indian Succession Act. The principal object of these amendments is to compel executors and administrators to exhibit inventories and accounts of the estates which come to their hands. The law requires that, when probate or letters of administration are granted, the executor or administrator shall undertake to make a true in-

ventory of the property and effects of the deceased, and also to render a true account thereof. The inventory should be exhibited to the Court by which the grant was made, within six months from the date of the grant, and should contain a 'full and true estimate of all the property in possession, and all the credits, and all the debts' owing to the estate; and the account, which should be exhibited within one year from the same date, should contain a statement of the assets that have come to the hands of the executor or administrator, and the manner in which they have been applied or disposed of.

"Although the duty is thus clearly indicated, the provisions of the existing law have not proved sufficient to enforce the production of these statements, which are of such obvious necessity, especially where the interests of women, children and absentees are concerned. In the absence of penalties, carelessness has become very much the rule. The Bill therefore provides, by section 3, that on any application for probate the petitioner shall, in addition to other particulars, state the amount of assets which are likely to come to his hands, and thus furnish a basis for testing the accuracy of his subsequent inventory and account. In order to give clear notice to executors and administrators of the periods within which the inventory and account respectively should be exhibited to the Court, sections 4 and 5 provide for the insertion of those periods on the grants themselves; and, lest those periods should be insufficient, section 7 empowers the Court to extend them in proper cases. Failure to exhibit an inventory or account is made, by section 2, a 'just cause' for revoking or annulling a grant of probate or letters of administration; intentional omission to do so, when required by the Court, is made punishable under section 176 of the Indian Penal Code; and the exhibition of an intentionally false inventory or account is put on the same footing under section 193 of the Code as the fabrication of false evidence for the purpose of being used in a judicial proceeding.

"In section 9 the Indian law as to the application of the moveable property of a deceased person to the payment of his debts is brought into accordance with the English law on the same subject; and section 10 provides that, when a grant of probate or letters of administration is revoked or annulled, the probate or letters shall be at once delivered up to the Court by which the grant was made, and not left in the possession of the person judicially declared to be no longer entitled thereto.

"The second part of the Bill relates to the Probate and Administration Act, 1881, and sections 11, 12, 13, 15 and 17 merely extend to that Act the amend-

ments with regard to inventories and accounts which I have already described as proposed to be made in the Indian Succession Act. Section 14, as I stated when presenting the Report of the Select Committee, extends to native executors and administrators in India the fuller powers to deal with the estates of deceased persons which are given under the English law; and it is not necessary that I should again recapitulate the arguments in favour of this proposal.

"The third part of the Bill removes an anomaly with regard to the stamping of administration-bonds.

"In the fourth part of the Bill, section 19 is intended to validate transactions by native executors and administrators since the passing of Act V of 1881, which, though proper in themselves, might be impugned on the ground that they were carried out without the consent of the Court. And section 20 gives the Chief Controlling Revenue-authority a very useful discretion in regard to the remission, in whole or in part, of penalties and forfeitures in cases in which an insufficient court-fee has been paid on probates or letters of administration.

"These are the principal provisions of the Bill. Its operation will not be very extensive. The Succession Act does not apply to any Hindu, Muhammadan or Buddhist, and the Probate Act is a permissive measure limited in its operation to Bengal, the Punjab, Assam, Burma, the towns of Madras and Bombay, and the Andaman and Nicobar Islands. It would, I think, do much to quiet titles and obviate litigation if a wider scope were given to the latter enactment; and I hope the amendments of the law now proposed may lead to its extension to other provinces."

The Hon'ble MR. EVANS said:—"I entirely agree with what has been said by my hon'ble and learned friend as regards the changes introduced by this Bill, and the alteration in section 283 of the Succession Act provides a rule for the payment of the debts of foreigners dying in India out of Indian assets, which is conformable to the views of the best text-writers and the latest English decisions, and which is at once just and convenient. Other amendments tend to secure the keeping of better accounts and inventories of estates. The main change, however, introduced by the Bill is the enlargement of the powers of dealing with assets given by section 90 of the Probate and Administration Act to executors and administrators.

"The necessity for the change was very clearly explained when the Bill was introduced and referred to a Select Committee, but I trust it will not be considered superfluous if I add a few remarks upon it.

"Originally grants of probate and administration issued from the ecclesiastical side of the English Courts, and were, and still are, in England confined to personal property, and did not affect land.

"They conferred an absolute power on the executor or administrator to deal with the personal property by way of sale or otherwise for the administration of the estate of the deceased and the payment of his debts.

"This jurisdiction, so far as European British subjects were concerned, was introduced into Bengal by the Charter of the Supreme Court in 1774, if not earlier, but was exerciseable by the Supreme Court only.

"It was found so convenient in practice that the native inhabitants of Calcutta applied for similar grants, and, though there was great doubt as to the jurisdiction, a practice grew up of issuing such grants to natives in Calcutta when they chose to apply for them. The privilege was largely availed of.

"It was found very inconvenient that lands and houses belonging to the migratory and transitory population of Europeans in India could not be sold to pay their debts without ascertainment of the true heirs, which was often difficult; and in 1828, by an Act of Parliament, 9 Geo. IV, c. 33, known as Fergusson's Act, the executors and administrators of European British subjects were empowered to sell the landed as well as personal property of the estate, and apply them in payment of debts.

"This did not apply to natives, and the grants in their case still affected only the moveable property and outstandings.

"In 1865 the Succession Act was passed affecting all persons in India other than Muhammadans, Hindus and Buddhists, and giving full power to the executor and administrator to dispose of all the estate of the deceased, moveable and immoveable.

"In 1870 the Hindu Wills Act was passed affecting Hindus, Jains, Sikhs and Buddhists in Bengal and in the towns of Madras and Bombay.

"This conferred on executors appointed by a will, or administrators acting under a will, the same full power as is given by the Succession Act to Europeans, &c., but did not affect Muhammadans or provide for administration on an intestacy.

"This Hindu Wills Act worked well in Bengal, though practically compulsory to the extent that no one could, where it was in force, claim in Court under a will without taking probate, and I do not think any serious complaint was made that the powers given to executors were too large.

"In 1881 the Government resolved to give facilities to all Muhammadans, Hindus, &c., in India to obtain grants of probate and administration of the estates of deceased persons, whether they died testate or intestate. But they made it entirely optional (except as to wills in Bengal) with the large class comprising the bulk of the natives of India to avail themselves of this privilege or not as they chose, upon payment of a duty on the estate, and further provided that no Courts, except in Bengal, should issue such grants until empowered by notification of the Local Government with the assent of the Governor General in Council.

"But unfortunately they hampered the grants with a provision that neither executors nor administrators should have any power to dispose of any property of the estate, moveable or immoveable, without the consent of the Court issuing the grants, unless the Court at the time of issue should dispense with the provision. This went very far to render the grants useless and embarrassing. The difficulties which arose, and the need for enlargement of the powers, have been fully discussed in a previous stage of the Bill, and I will not recapitulate them. The main question which has had to be considered is whether we should give to the executors and administrators of the Hindus and Muhammadans of India the same full powers as are given to the executors and administrators of European British subjects and others by the Succession Act. The conclusion arrived at, after considering the history of the Acts and the circumstances of the country, is that it would be wise and safe to give to executors who are chosen by the testator himself the fullest powers over immoveable as well as moveable property, subject to the provisions of the will under which they act, and to compel them to take the opinion of the Court only when it becomes necessary to do something which is contrary to the will. The fact that full powers were exercised by Hindu executors in Bengal from 1870 to 1881 without complaint goes far to prove that such power can be safely given.

"As regards administrators, we have deemed it absolutely necessary to give them full power of dealing with moveable property, shares, Company's paper, outstandings, &c., but we have, in deference to the fears expressed by many officials in 1881 and to the opinion which seemed to prevail among many native gentlemen of experience, accepted the new section as drafted, and have

not given to the administrators the power to dispose of immoveable property without the sanction of the Court. The powers they will possess as to immoveable property in the capacity of administrators will be the same as those possessed by the statutory guardians of infants. It is no doubt anomalous that administrators under the Succession Act should have larger powers than administrators under the Probate and Administration Act, but this is necessarily a country of anomalies, and the Procrustean principle of legislation is dangerous. We have done our best to place within the reach of the Hindus and Muhammadans the means of obtaining such powers as to the administration of the estates of deceased persons as appear necessary for the transaction of business, and as they themselves appear to desire.

"I observe that from 1881 to the present time several of the Local Governments have abstained from issuing the notifications necessary to enable any Courts in their provinces to issue grants of probate and administration under this Act. There may be local areas so uncivilised that it is not desirable to introduce the system, even as an optional one. But this is not the case with the greater portion of these provinces, and it seems hard upon the finances of the Government and upon the people that they should not have the opportunity of showing whether they value these grants sufficiently to pay the duty on them.

"When the opportunity has been given the demand for them has gone on increasing, and it will, I doubt not, increase more under the Act as now amended."

The Motion was put and agreed to.

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

The Motion was put and agreed to.

SUCCESSION CERTIFICATE BILL.

The Hon'ble SIR DAVID BARBOUR moved that the Report of the Select Committee on the Bill to facilitate the collection of debts on successions and afford protection to parties paying debts to the representatives of deceased persons be taken into consideration. He said:—

"The object with which the Succession Certificate Bill was introduced was explained by the Hon'ble Mr. Westland when the Bill was brought before

this Council on 22nd August last, but it will be convenient if I re-state at this time the main reasons which led to its introduction.

"As matters now stand, the law, which provides for the collection of a stamp-duty of 2 per cent. on the value of all debts and securities of a deceased person dealt with under the authority conferred by a succession certificate, is frequently evaded.

"The existing law regarding the grant of such certificates is contained in Act XXVII of 1860, but this Act does not provide either for a stamp-duty or for the entry in the certificate of the debts to be collected. In the Court-fees Act, VII of 1870, Schedule I, article 12, it is provided that a duty of 2 per cent. shall be levied on the amount or value of the property in respect of which the certificate is granted, and it is further provided that the person to whom the certificate is granted, if the effects to be dealt with exceed ₹1,000 in value, shall, after the expiration of twelve months from the granting of the certificate, and at such other dates as the Court may require, file a statement on oath of all moneys recovered or realised by him under the certificate. The latter provision has been to a great extent a dead letter. The person wishing to obtain a certificate enters, in the first instance, only a portion of the debts due to the estate, obtains a certificate entitling him to collect all the debts due to the estate, collects under the certificate, neglects to certify to the Court the total amount of debts collected, and in this way escapes payment of a large portion of the fee which the law intended him to pay.

"Evasion has also been facilitated by the provisions of section 2 of Act XXVII of 1860, which enable a person not holding a certificate to recover a debt in Court if the Court is satisfied that payment of the debt was withheld from fraudulent and vexatious motives and not from any reasonable doubt as to the party entitled.

"It is now provided in section 6 of the Bill that an application for a certificate must set forth the debts and securities in respect of which the certificate is applied for; and under section 14 (*1*) such application must be accompanied by the deposit of the proper amount of fee.

"If the person applying for the certificate omits to enter any debt or security in his application, whether he does so through oversight or intentionally, and finds thereafter that he cannot collect the debt or deal with the security because it has not been so entered, he will be at liberty to apply to the Court to extend the certificate to such debt or security, but in such case he will be required to pay 3

per cent. on its amount instead of 2 per cent. This provision will have the effect of preventing an applicant from speculating on the possibility of being able to collect debts without entering them in his application and paying the proper fee. If an applicant chooses to speculate in this way, he will run the risk of having to pay 3 instead of 2 per cent.

"It is also provided in the present Bill that no Court shall pass a decree or proceed to execute a decree against a debtor of a deceased person for payment of his debt to a person claiming to be entitled to the effects of the deceased, except on production of a certificate granted under this Act, and having the debt specified therein, or on production of other proper authority to collect the debt.

"The Select Committee has further provided that in future a certificate granted under the Succession Certificate Act shall not afford indemnity to persons paying under it except in respect of debts entered in the certificate. The provision seems a very reasonable and proper one, and will undoubtedly check the disposition which exists at the present time to obtain and use a certificate while omitting to pay the fee fixed by the legislature. If a debtor pays his debt to a person holding a certificate, he will obtain complete indemnity if his debt is mentioned in the certificate. If, however, he chooses to pay without reference to the certificate, and merely on his general knowledge that the person claiming to recover the debt is legally entitled to do so, he will not be able to make the certificate the ground of a plea for indemnity. He acts entirely on his own judgment and must accept the consequences of so doing.

"If a person claiming to be entitled to the effects of the deceased finds that there are debts which he can collect without a certificate, or without entering them in his application, and if the debtor chooses to pay such debts without the indemnity which is given by the entry of the debt in a certificate, the law will not interfere. If the parties to the transaction prefer not to avail themselves of the facilities and protection which the law provides, they need not pay the prescribed fee, and they take the risk of any inconvenience or loss which such action on their part may involve.

"The provisions to which I have just referred are those which are of most importance, at any rate from a fiscal point of view, but there are others intended for the improvement of the law, to some of which I think it desirable that I should also call attention.

"In section 7, sub-section (*3*), of the Bill as it now stands, provision has been made which will enable the Court to prevent an application for a

certificate being perverted into a means for obtaining a decision on intricate and difficult questions of law or fact. Such decisions are not conclusive as to the rights of the parties concerned, and it is desirable that prolonged litigation, which is necessarily of an inconclusive character, should be discouraged. This is done by giving the Court power to stay proceedings when it considers it necessary to do so, and to grant a certificate to the person who appears *primâ facie* to have the best claim to it.

"Any person who may consider himself aggrieved thereby has his remedy in a regular suit. Any risk of loss to the parties legally entitled to the effects of the deceased arising from a summary decision of this nature is obviated by requiring that in every such case the Court shall require security to be given before the grant of the certificate is made. In other cases it will be optional with the Court to require security or not as the circumstances of the case may appear to require.

"Section 18 of the Bill as now amended also makes a very necessary provision for the revocation of certificates in certain cases.

"Under section 5 of the Bill power has been given to District Courts to grant applications for certificates; but it would obviously be very inconvenient and unduly expensive in some cases if every applicant had to attend at the Court of the District Judge, and the hardship would be specially great if the effects in respect of which a certificate was desired happened to be of small value. For this reason and for other reasons of less weight section 26 of the Bill as it now stands gives power to the Local Government to invest any Court, inferior to a District Court, with the functions of a District Court in respect of these certificates, as well as to cancel or vary any such notification.

"In the Bill as originally introduced it was proposed to repeal Bombay Regulation VIII of 1827, and I still believe that that course was in itself desirable. But Regulation VIII of 1827 applies to immoveable property as well as to debts and securities, and if it had been repealed it would have been necessary for the Bombay Government to authorise District and perhaps other Courts to receive applications for probate or letters of administration under the Probate and Administration Act of 1881.

"That course has not yet been adopted by the Bombay Government, and the local authorities in that presidency are strongly in favour of retaining Regulation VIII of 1827. In deference to their wishes the Regulation has been left on the statute-book, but advantage has been taken of the present

opportunity to amend the procedure under the Regulation in question and to assimilate it, as far as practicable, to the procedure of the present Bill. Consequently the provisions of the present Bill as regards the particulars of the debts and securities to be set forth in an application for a certificate, the limitations of the powers that may be granted by a certificate, the taking of security, the extending of a certificate to a debt or security not originally specified therein, the extent of the indemnity afforded to debtors, the revocation of certificates, appeals, the surrender of certificates which have been suspended or become invalid, and regarding other minor matters, as well as the provisions of section 98 of the Probate and Administration Act, 1881, regarding the exhibition of inventories and accounts, have been made applicable to certificates under Bombay Regulation VIII of 1827.

"In conclusion, I may mention that it has been provided that the Act shall not come into operation till 1st May, 1889, so as to afford time for the making and circulation of the necessary translations."

The Hon'ble MR. SCOBLE said:—"As this Bill has a legal as well as a fiscal aspect, I will venture to add a few words to the statement which has just been made by my hon'ble friend Sir David Barbour.

"The Bill is not designed to furnish a complete system of administration of estates, but rather to give security to those who are called upon to pay debts to the representatives of deceased persons in the absence of probate or letters of administration. In this country, where the personal law varies so greatly, according to the origin or religion of the individual, it is necessary that some simple method should exist whereby debtors to a deceased creditor may be certified that they will not be called upon to pay their debts more than once. If a will is left and probate obtained, or if letters of administration are taken out, they have this security by paying the debts to the executor or administrator; but these cases are comparatively few, and, where the succession is disputed, the debts either remain unpaid or the debtor runs the risk of paying the wrong person. To obviate this difficulty a system was long ago introduced of granting certificates to persons claiming to be 'the representatives of deceased Hindus, Muhammadans and others not usually designated as British subjects,' which served the double object (1) of conclusively establishing the representative title of the holder against all debtors to the deceased, and (2) of affording full indemnity to all debtors paying their debts to the person in whose favour the certificate had been granted.

"It would be wearisome to trace the history of legislation on this subject. Act XXVII of 1860 embodies the existing law in British India generally, though Bombay has, in Regulation VIII of 1827, a special system of its own, which gives to the certificate-holder rather more extensive powers and privileges than he enjoys in other provinces. The Bill, in deference to the wishes of the Bombay Government, leaves this Regulation unrepealed, though modifying it in certain respects; while it absolutely repeals Act XXVII of 1860.

"As my hon'ble friend has said, the principal feature of the Bill is that it limits the power of the certificate-holder as regards the collection of debts and securities of a deceased person to those debts and securities which are specified in the certificate. The fiscal reasons for this limitation are obvious; it is, I think, equally obvious that for the protection of the debtor the certificate should clearly show that the person seeking to recover the debt had satisfied a competent Court of his title to do so. It is not to be expected, nor is it the intention of the Bill, that the certificate should apply to all debts and securities belonging to the estate, or that the applicant should include in his certificate debts which he might expect to collect amicably without one: the value of the certificate will be where debts are contested, and it would not be fair to the defendant to put him to the expense and trouble of disputing the representative character of the claimant as well as the liability to the debt. Moreover, the insertion of the debt in the certificate may be expected to operate as a check upon false claims, for a man would scarcely pay duty on the amount of a debt which he did not consider himself legally entitled to recover.

"Section 4 of the Bill accordingly provides that no Court shall (*a*) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming to be entitled to the effects of the deceased person or to any part thereof, or (*b*) proceed, upon an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of his debt, unless the person so claiming has established, by some method recognized by the law, his title to represent the estate of the deceased in regard to the claim.

"In laying down this rule the Bill follows the general tenor of the decisions of the High Courts which establish that a plaintiff is bound to prove his representative title before he can obtain a decree or execute a decree already obtained by the deceased person through whom he claims, though he may institute his suit or apply for execution without such proof provided he completes his title before decree or before execution issues.

"Section 6, which specifies the particulars to be given in applications for certificates, is drawn very widely so as to include applications by creditors, as well as by heirs, of a deceased person.

"In section 7 it is provided that proceedings on these applications are to be of a summary character. Under section 3 of Act XXVII of 1860, the Judge had 'to determine the right to the certificate'. This phrase has led to many conflicting decisions. The Bill adopts the ruling of the Madras High Court that in determining the right to a certificate the Courts are not required to enter on the determination of intricate questions of law or of fact, but that the proper course is to issue the certificate to the person who *primâ facie* has the clearest title to the succession, such as the natural heir, and to leave a person whose claim to a superior title is on reasonable grounds disputed to establish that title by regular suit. And, in deciding between various applicants who stand in pretty much the same relation to the deceased, the Bill further provides that the Court may have regard to the extent of interest, and the fitness in other respects, of the several applicants.

"As my hon'ble friend has mentioned, in section 18 provision is made for the revocation of certificates for just cause. Sections 21 and 22 provide for cases in which certificates have become superseded; and section 27 enacts that certificates which have become invalid from any cause shall be delivered up to the Court which granted them.

"The last matter to which I need refer is the power given by section 26 to Local Governments to confer upon lower Courts the functions of a District Court under the Act. If there is any great increase in the number of applications for certificates after the passing of this Bill, it will be essential that the Courts which are to exercise jurisdiction with respect to them should be more accessible and less expensive than District Courts."

The Hon'ble MR. EVANS said:—"The alterations made by the Bill, and the reasons for them, both from a fiscal and administrative point of view, have been so fully detailed by the hon'ble mover and the hon'ble Mr. Scoble that they have left little or nothing for me to say as to the details, except that I agree with what they have said.

"But I propose to make some observations upon the relation between the Bill and the one immediately preceding it, and upon the principles underlying them.

"Succession or, as they are often termed, death duties are recognised as one of the least objectionable forms of taxation. If there be one occasion more than another upon which a tax can fairly be levied upon property, it is when the owner has ceased to exist and the property is about to pass to a person who has done nothing to acquire it except being born into the world—an occasion on which he plays a passive rather than an active part.

"The Europeans in India, and the Eurasians, Jews, Armenians, Parsis and others who have not the privilege of being Muhammadans, Hindus or Buddhists, are practically obliged to take out probate or administration, as the case may be, and to pay the succession-duties on the whole estate or inheritance by the combined effect of the Succession Act and the Court-fees Act.

"It has long been seen that it would be fair in principle to render the payment of such duties compulsory on all alike. But principle is one thing: practice is another. It was found that it would be very difficult, if not impossible, without great hardship, to render it compulsory upon all the inhabitants of India to take out probate or administration so as to subject them to these duties. India, in spite of the ferment of Western ideas among the educated classes, is very immoveable and slow to change. It has often been found impossible by legislation to compel the inhabitants to do things which they have not been in the habit of doing and which they do not wish to do. Witness the abortive Regulation and Acts by which it was sought to force the raiyats to take leases from the zamindárs and the zamindárs to give leases to the raiyats.

"It takes years for any Act introducing a novelty to get known and worked in the remoter districts.

"If an Act like the Succession Act had suddenly been made compulsorily applicable for the whole of India, the consequences would have been very serious. The people would for a long time have paid no attention to it, and their dealings with their property after a succession would have been invalid, and much confusion and injustice would have ensued.

"But what can be got out of them in the way of succession-duties without friction or injustice it is, I take it, the duty of the Government to itself and to the class which pays these duties to get. There are two methods by which this object can to some extent be effected—one is by encouraging Hindus and Muhammadans to resort of their own accord to the probate and administration procedure on account of the certainty of title which it gives and its manifold advantages. Even if they did so, a very large quantity of Hindu property would

escape taxation under the present law, owing to the Mitakshara doctrine of survivorship among co-owners. The other method is by means of the Certificate Act, which is now being amended.

"The certificate procedure was introduced in 1841 for the purpose of protecting debtors from being harassed by conflicting claimants after the death of the creditor, and to facilitate the collection of debts on succession by the issue of a certificate which should render it safe for the debtor to pay the holder of it. Various amending Acts were introduced from time to time, and the certificates are now granted under Act XXVII of 1860.

"The certificates were made liable to a duty by the Court-fees Act of 1870.

"Theoretically the result was that no Hindu or Muhammadan could have the benefit of the aid of the Courts to enable him to collect debts as representative of a deceased person without obtaining a certificate and paying duty upon the amount of outstanding debts due to the estate. Thus, in theory he paid on outstanding claims, but not on property already in possession of the deceased, while his fellow-subjects paid on the whole estate. But in practice the result to the State in the way of taxation was very small. The first source of leakage, so to speak, was that the Court might dispense with the certificate if it thought the objection of the debtor to the creditor's title was frivolous. This, I am told, was very largely done by some Courts. Secondly, the applicant for the certificate seldom or never put down anything like the real amount of the outstandings of the estate. Having got the certificate upon a small payment, he proceeded to collect very large amounts of outstandings. Thirdly, the applicant often used to get an order for a certificate and then never pay the duty or take out the certificate, but show the debtor a copy of the order as a proof of the title and collect on the strength of this.

"The first and the third methods of evading the payment of the duty have been easily met by slight alterations of the Act, and we have defined securities so as to cover shares, &c., of various sorts.

"The second has been a great difficulty. It has been found practically impossible to verify or check the statements put in, and the plan has been adopted of allowing the applicant to insert what debts or securities he pleases, and of providing that his certificate shall be of no avail in any way except as regards the particular debts or securities inserted in it.

"Whether this particular plan will yield any practical result in the way of increased payment of duty I have no sufficient data to judge. But I think that on the whole the Act will be productive of some increase of revenue. And the limitations of the effect of the certificates will, I hope, induce many persons to prefer the more costly but more effectual letters of administration, and to pay the duty on the whole estate in consideration of the benefits they will derive and the troubles they will avoid.

"The administration procedure, when questions of title are raised, decides them once for all, whereas the certificate procedure decides nothing except as between the particular debtors and the applicant. The one confers the right to possession of land, the other does not.

"One reason why I have troubled Your Excellency and the Council at this length is because it appears to me of great importance that no reasonable means should be left untried of obtaining in some form or another, from those who are not under the Succession Act, the same succession-duties as are paid by their fellow-subjects so far as is practicable. I do not consider that this result can be obtained except to a very small extent by means of the Certificate Act. A little is better than nothing. But I anticipate a considerable increase from applications under the Probate and Administration Act, and I do marvel, when the Government of India has announced its policy of offering the advantages of the Probate and Administration Act to those who will pay for it, to see the Local Governments year after year steadily declining to empower any Courts in their provinces to grant either probates or letters of administration to Hindus or Muhammadans.

"I also wished to show that there was no hardship in confining the effect of certificates granted to Hindus and Muhammadans to the particular debts mentioned therein, seeing that they were not provided with the same facilities as their brethren of other religions for obtaining grants of administration covering the whole estate. It is not unlikely that means will some day be devised for bringing property held under Mitakshara law within the reach of a succession-duty. I do not think the difficulties will be insuperable."

The Hon'ble MR. HUTCHINS said:—"Sections 7 and 9 have been referred to by my hon'ble friends the mover and Mr. Scoble as laying down certain rules of procedure to guide District Courts in dealing with applications for certificates. Speaking from twenty years' experience of a High Court and District Courts, I feel justified in saying that these rules contain nothing novel.

They simply recognise and sanction the judicial practice which has grown up out of the necessities of the case and from what the best Judges took to have been the intention of the legislature.

"The only new departure is the conversion of a certificate from one of a general character, enabling the holder to collect any debt, into one which will be mere waste paper in respect of any debt not particularly mentioned in the schedule. In my opinion this is the proper principle to adopt. If a man wants to establish his general representative character, he should take out letters of administration; if he merely wants to collect one or more specific debts, let him particularise it or them. I can see no just reason why one class of Her Majesty's subjects should be made to pay succession-duty on the whole inheritance, while another can obtain almost equal advantages without paying anything at all.

"The change, however, is an important one, and it cannot be stated too often or too emphatically; for until debtors realise it they may be liable to be imposed on. If a debtor chooses to pay without reading the certificate, he may have to pay again. Before, however, this can happen two things must combine—the certificate-holder must turn out not to have been rightly entitled, and the person who is entitled must have some strong reason for electing to sue the innocent debtor rather than his own adversary, who has presumed to collect his money.

"I think it desirable to point out further that the present Bill follows the old law in speaking of the 'effects of a deceased person'. A debt due to an undivided coparcenery will not be affected by any alteration of the law now made."

"I hope, with my hon'ble friend opposite, that the effect of this measure will be to drive most representatives to take out letters of administration. To enable them to do so without difficulty, and to meet what has been said by the Hon'ble Mr. Evans, the Home Department will address the Local Governments, pointing out the necessity of authorising all District Courts, under Act V of 1881, to grant administration."

The Motion was put and agreed to.

The Hon'ble SIR DAVID BARBOUR also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

PORTS BILL.

The Hon'ble SIR DAVID BARBOUR also moved that the presentation of the Report of the Select Committee on the Bill to consolidate and amend the law relating to Ports and Port-charges be deferred until the next meeting of the Council.

The Motion was put and agreed to.

SEA CUSTOMS AND TARIFF ACTS AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR also moved that the Select Committee on the Bill to amend the Sea Customs Act, 1878, and the Indian Tariff Act, 1882, be instructed to submit their Report at the next meeting of the Council.

The Motion was put and agreed to.

The Council adjourned to Friday, the 15th March, 1889.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

FORT WILLIAM;
The 13th March, 1889.