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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.

1881.

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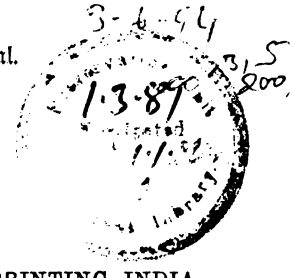

CALCUTTA:
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1882.

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 on Friday, the 14th January, 1881.

PRESENT:

The Hon'ble Whitley Stokes, C.S.I., C.I.E., Senior Ordinary Member of the Council of the Governor General, *presiding.*

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

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

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

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

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

The Hon'ble B. W. Colvin.

The Hon'ble Mahárájá Jotíndra Mohan Tagore, C.S.I.

The Hon'ble C. Grant.

The Hon'ble H. J. Reynolds.

The Hon'ble G. F. Mewburn.

INDIAN GOVERNMENT SECURITIES BILL.

The Hon'ble MR. STOKES presented the Report of the Select Committee on the Bill to provide for certain matters relating to securities of the Government of India.

The Hon'ble MR. STOKES also moved that the Report be taken into consideration. He said the Select Committee had made only one slight verbal amendment. Another change—MR. STOKES could not call it an amendment—had been suggested by an eminent banking authority: in deference to him the passing of the Bill had been postponed; but on consideration he wisely withdrew the suggestion.

The Motion was put and agreed to.

The Hon'ble MR. STOKES then moved that the Bill as amended be passed.

The Motion was put and agreed to.

NORTH-WESTERN PROVINCES RENT ACT, 1873, AMENDMENT BILL.

The Hon'ble MR. COLVIN moved that the Report of the Select Committee on the Bill to amend the North-Western Provinces Rent Act, 1873, be taken

into consideration. He said that the object of the Bill had been fully explained at the time when it was introduced, and that the amendments which had been made had received sufficient notice in the report submitted by the Select Committee. They were mostly of no great importance, and were intended to remedy recognized defects and omissions in the Rent Law of the North-Western Provinces—defects and omissions which had come to light in the working of the Act during the last seven years. He should pass over in silence, therefore, most of these amendments, which had nearly all originated with the officers to whom the administration of the law was entrusted and had received the approval of the Local Government; unless explanation or further information in respect of any of them should be required of him. There were one or two matters, however, contained in the Bill which it did not seem desirable to pass over without more particular notice. The first of these was the alteration which had been made in section 23 of the Rent Act. The intention of that section had originally been to enable the Local Government, whenever it thought fit to suspend or remit the revenue due from landholders, to compel them at the same time to extend the indulgence to their tenants by suspending or remitting the rent due from them. That this had been the real intention of the section was abundantly evident from the speeches made by Mr. Inglis and Sir William Muir at the time when the Act was passed. Before that section became law, there had been no certainty that the tenants would receive any benefit whatever from the relief which the Government might be willing to concede in cases of calamity, and that the landlord, after he had been excused from the payment of revenue might not, if he chose, exact rent to the uttermost farthing from the cultivators who held under him. No argument, MR. COLVIN conceived, was required to shew that this state of affairs required a remedy. Unfortunately, by an oversight in the wording of section 23, instead of applying a remedy to this recognized evil, something more had been done, and the power of demanding a remission or suspension of rent had been placed in the hands of the tenants. As the law now stood, any tenant who could prove that he had lost more than half his crop, however small that crop might be, could apply for the benefit of the section, and it was declared that he should then be entitled to the remission or suspension of his rent, and that the landlord should be similarly entitled to a corresponding remission or suspension of revenue. Any tenant, therefore, however insignificant his tenure might be, might set the section in motion, and if he proved his loss, was able to compel the Government to remit revenue. This result was objectionable on all grounds. It deprived the Government of control over the revenue, with which it never could properly part. It was also at variance with the principle of the thirty years' settlement, which took no account of petty gains and losses, but

dealt with the village, or mahál, as the unit of landed property, and left all variations of profit in particular years out of consideration. Besides this, it was impossible to give effect to section 23 in years of general calamity. If, for instance, the crops had suffered in a single village or pargana, as they did over whole districts in the autumn of 1877, no one who had had experience of the working of section 23 could doubt that the cultivators would have been entitled to relief and would have taken action under it. The Government could not, however, in such cases of general calamity, undertake the minute field-to-field enquiry which section 23 and the rules framed under it required, because the cost of such an enquiry would simply be ruinous; and therefore, when applications for relief were most numerous and made on the best grounds, it was found in practice that the section must be set aside. Briefly, it might be said that the object of section 23 had been to ensure to individual cultivators the benefit of all remissions that might be made. Its practical effect had been to make the Government responsible for every calamity of season which might befall any tenant in the country. The Committee, therefore, in view of these arguments and of the weight of authority in favour of a change, had considered it proper to amend the section, so as to make it express what had been the real intention of the framers of the law, and what seemed to them to be the right meaning to give it.

One other point in the Bill might be briefly noticed. It happened sometimes that, in the course of an application under the Rent Law, a question of title arose, and it had been considered doubtful how far the decision of the Revenue Courts in such cases should be final. On the one hand, it did not seem right, when some question of title had been decided, that the decision should for ever bar the person against whom it had been made from bringing a suit in the Civil Court. On the other hand, there were great objections to allowing a summary decision to be passed on points provisionally and subject to reconsideration in a regular suit, as it was the inevitable tendency in such cases of a summary proceeding to become as long and elaborate as a regular one, by which the cost and delays of litigation were doubled. The Committee proposed to get over the difficulty by empowering the Revenue Court, in the course of a summary proceeding, to direct any party to file a suit in the Civil Court for the determination of any question at issue which appeared to the Revenue-officer to be better fitted for decision by the Civil Court. That seemed to be the best solution possible of the difficulty, and it was the one which had been advocated by the Local Government.

These were the only two substantive provisions of the Bill in respect of which any observations seemed necessary. There remained, however, a question

of form to be dealt with. It would be seen by paragraph 20 (the last paragraph) of the Committee's report, that the Committee did not recommend the Bill to be passed in its present shape. An Act which consisted of such fragmentary alterations and verbal changes as this did—a thing of shreds and patches—was never very intelligible. Indeed, it was not intelligible at all, unless the Act amended was placed alongside the amending one, and that might not always be at hand. It was more convenient, when possible, to have the whole law on one subject contained in a single enactment. He knew of no practical objection to repealing the present law and re-enacting it in a consolidated shape so long as the numbering of the sections remained unaltered. To alter the numbering of the sections would, of course, be inconvenient to persons who were familiar with the present law. In the case of the present Act, however, the necessary changes could be made and a consolidating Act passed without any disturbance of the numbering of the sections, and the Committee had accordingly recommended that this should be done. It would not cause any delay beyond that of a very few days, he hoped, and the gain to all who were concerned with the Act would be great. No change would be made either in the frame or in the wording of the present Act, except by the introduction of the amendments which the Bill contained. It was possible that the drafting of the former Act might be susceptible of improvement in many respects, but there was no present necessity for any such improvements, because the Act in practice had worked very successfully, and he thought it would be perfectly safe to leave any such further amendments till the time came, whenever that might be, for a complete revision of the Act.

The Motion was put and agreed to.

The Hon'ble MR. COLVIN also moved that the Bill be referred back to the Select Committee, with a view to the course recommended in the last paragraph of their report being carried out.

The Motion was put and agreed to.

PROBATES AND ADMINISTRATION BILL.

The Hon'ble MR. STOKES moved that the further Report of the Select Committee on the Bill to provide for the grant of probates of wills and letters of administration to the estates of certain deceased persons, be taken into consideration. He said that the Council would see from the report that the Committee had made only two changes of any importance: one was the omission of the section inserted in the Bill as previously settled, under which it would have been obligatory, outside the Lower Provinces, to obtain

probate of a will of property exceeding rupees one thousand. This matter was intimately connected with the extension of the Hindú Wills Act—a project of law which was still under the consideration of the Executive. For this reason, and also because some of the Local Governments were averse to anything like compulsion, the majority of the Committee had voted for expunging the section. The Bill had thus become, as it was at first, a purely permissive measure. But it would not, he hoped, be the less effective. For as soon as it came fully into force and was understood by the people, its necessary effect in quieting titles, obviating litigation as to the ownership of the property of a deceased person, and thereby increasing the value of that property, would induce them to avail themselves largely of its provisions.

The other change was the insertion of a clause providing that, when, after a certificate under Act XXVII of 1860 had been granted, probate or administration was granted in respect of the same estate, the fee payable on the latter grant should be reduced by the amount of the fee payable on the former grant. The object of this was, of course, to induce people to avail themselves of the system established by the Bill, which, inasmuch as it conferred a complete representative title, good against the world, was superior to the certificate system, which really established no right beyond that of collecting debts, and this only as against the debtors.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the following proviso be added to section 2, that is to say:—

"Provided also that, except in cases to which the Hindú Wills Act, 1870, applies, no Court in any local area beyond the limits of the towns of Calcutta, Madras and Bombay and the territories for the time being administered by the Chief Commissioner of British Burma, and no High Court in exercise of the concurrent jurisdiction over such local area hereby conferred, shall receive applications for probate or letters of administration until the Local Government has, with the previous sanction of the Governor General in Council, by a notification in the official Gazette, authorized it so to do."

He said that the object of this addition was to give substantial effect to the wishes implied in a recent Legislative Despatch of the present Secretary of State for India, in which Lord Hartington suggested to the Government of India the expediency of leaving it to the Local Governments to apply the proposed Act from time to time to such part of the territories respectively under them as they should consider to be fitted for it. A reference to section 59 and chapter XIV of the Bill would shew how difficult it would be to give effect in form to this suggestion. The Presidency-towns and British Burma, where the Bill was urgently wanted, were exempted from this proviso, and there

the Bill in its entirety would come into force on the 1st April next. The result would be that, in the Presidency-towns, Natives would for the first time be able to obtain grants of administration affecting immoveable as well as moveable property and grants limited to certain property or for certain purposes. In Burma the people had, he understood, found out the comparative uselessness of Act XXVII of 1860; and the Judge of Maulmain had informed us that the passing of the Bill was awaited by the representatives of at least one large estate. Moreover, as he (MR. STOKES) had explained when introducing the Bill, doubts had been raised in Burma as to the validity of certain grants of probate and administration which had been made by the Recorder of Rangoon. It was expedient to lay these doubts as soon as possible, and section 154 of the Bill would do so.

The Motion was put and agreed to.

The Hon'ble MR. STOKES then moved that, to section 3 the following clause be added, that is to say :—

"'District Judge' means the Judge of a principal Civil Court of original jurisdiction."

He said that the necessity for this amendment arose from the fact that the General Clauses Act, I of 1868, declared that the expression "District Judge" should not include a High Court in the exercise of its original civil jurisdiction; but the Bill was intended to apply to the High Courts on the original side.

The Motion was put and agreed to.

The Hon'ble MR. COLVIN, in the absence of the Hon'ble Mr. Kennedy, moved that, for section 152 of the Bill, the following two sections be substituted, that is to say :—

"152. In the said Act No. XXVII of 1860, section three, after the word 'title,' the following shall be inserted, namely,—'and shall state the amount of the assets of the deceased person likely to come to the hands of the heirs, executors or other representatives of such person.'

"Act XXVII of 1860, section 3, amended.

"To the same section the following shall be added, namely :—

"In determining such right, the Court shall have regard to the provisions of the Probate and Administration Act, 1881.

"153. In the Court-fees Act, 1870, schedule I, Nos. 11 and 12,

"Act VII of 1870, schedule Nos. 11 and 12, amended.

"(*a*) in the second column, after the words 'one thousand rupees,' the following shall be inserted, namely :—

"*Explanation.*—In the case of a certificate under Act No. XXVII of 1860, such property shall be deemed to include all assets of the deceased person likely to come to the hands of the heirs, executors or other representatives of such person; and

"(*b*) in the third column, after the words 'amount or value,' the following shall be inserted, namely:—

"Provided that, when, after a certificate has been granted as aforesaid in respect of any estate, probate or letters of administration is or are granted in respect of the same estate, the fee payable in respect of such latter grant shall be reduced by the amount of the fee paid in respect of the former grant."

He said that he had been requested to move the amendments of which Mr. Kennedy had given notice. He regretted very much that the hon'ble gentleman was unavoidably absent, and that his amendments should thereby be deprived of the support which his superior knowledge and authority on such questions would have lent to them. But as he (MR. COLVIN) had voted with the hon'ble member in the minority when the Bill was under consideration in Committee, he would endeavour, as far as he could, to supply his place, and explain the reasons which had led them to adopt what had been—hitherto at least—the losing side in this controversy. The principal reason which in their opinion made it unadvisable to leave the Certificate Act without the amendments which were now before the Council was this:—That to do so would cause great inconvenience and loss to persons who were now living under that law. A few words would, perhaps, be necessary to explain the nature of this loss and inconvenience. The Certificate Act, which was passed in 1860, provided, in the absence of any more complete powers of administration, for a partial and imperfect kind of administration of the estates of deceased persons. Its effect was to enable the holder of a certificate to collect debts which might be due to the estates of deceased persons, and it protected debtors who paid their debts to the holder of a certificate, but the Act settled nothing whatever as between the holder of the certificate and any rival claimants who might think themselves better entitled to succeed to an estate. Any disputes as to the right to succeed were left to be decided by civil suits. The Bill which was now under consideration, on the other hand, would give to any person who had once obtained letters of administration, not only a title against the debtors, but a conclusive title against all the world, which would not be open to question in a civil suit. It would put the administrator therefore into a far better position than the holder of a mere certificate, and the Bill expressly provided (in section 151) that, when letters of administration had been granted to any one, a certificate, if already issued, should be superseded. The Bill, therefore, when it came to be generally understood, would completely supersede and take the place of the Certificate Act in all places to which it might be extended.

Unfortunately this, which would be the result of passing the Bill that was now under consideration, might not be generally understood throughout the

country for some time to come. The legal effect of the certificate had never been anything more than he had explained, but in practice it had been permitted to carry a great deal more weight over the greater part of India than it was really entitled to. In the absence of any complete system of Probate and Administration, this limited and imperfect power of administration had been looked upon as carrying a title to a deceased person's estate. The High Court of Calcutta, for instance, had recently said that "as a matter of fact, certificates under Act XXVII, 1860, are, in four cases out of five, taken out simply as evidence of title to the estate of a deceased person, and though legally they are not any evidence of this, they are commonly accepted as such, even by Courts of Justice in the mufassal." MR. COLVIN could state from his own knowledge that the Act was used for precisely the same purposes in the North-Western Provinces. There was plenty of evidence to show that the same state of affairs existed in other parts of India, but he was unwilling to take up the time of the Council in proving what was not likely to be seriously contested. This being the practical working of the Act, it would probably be some time before people could be disabused of the idea that a certificate carried a title to the estate of a deceased person. If the Certificate-law were left with no material change, he thought people would be confirmed in that mistake, and would not suspect that any important change had taken place. Moreover, if the certificate procedure was allowed to remain, as it was now, very much cheaper than the procedure which was necessary for obtaining letters of administration, people would be invited and attracted to resort to it, and between the cheapness and the previous practice in this respect, people might for a long time go on taking out certificates which would be found, when too late, to be not worth the paper on which they were written. He thought it better to save the people from the loss and vexation which this misunderstanding would cause them by putting the certificate on the same footing as letters of administration, and not tempting litigants to resort to the wrong law by leaving to it the delusive attraction of greater cheapness.

Objection had been taken to the provisions which the amendment contained on the ground that to put certificates and letters of administration on the same footing in respect of cost might cause great hardship in the case of persons who succeeded to very large estates, which perhaps only included one or two small debts. For instance, if a man succeeded to landed property to the value of ten lákhs of rupees, and had to recover interest on a small investment of only rupees five hundred, the effect of the amendment would be to make him pay two per cent. on the total value of the estate—on the ten lákhs as well as on the rupees five hundred. MR. COLVIN did not deny that this would be oppressive and

unreasonable if there was no doubt about the claimant's title to the debt. But to meet cases where there was no such doubt, the law contained a provision, which he thought should be generally sufficient to obviate any hardship even in the extreme case supposed. Section 2 of the Certificate Act said that "no debtor of any deceased person shall be compelled to pay his debt without a certificate, unless the Court should be of opinion that the payment of the debt is withheld from fraudulent or vexatious motives, and not from any reasonable doubt as to the party entitled." It was evident from the preamble and the section which he had quoted, and from the whole tenor of the Act, that it was only intended to be used in cases in which reasonable doubt existed. If there was reasonable doubt, then, as to the title to part of the estate in the case which he had supposed, there would probably be doubt also as to whether the claimant was entitled to the whole estate. Anyhow, wherever the title was in question, the parties must resort ultimately to the administration law; either that, or a civil suit, was the only way in which the dispute could be finally determined, and there was no good in charging the applicant a fee, however small, for a useless certificate, in addition to the administration or institution-fee which he would be compelled to pay.

If it should be said that this argument pointed rather to the necessity of repealing than of amending the Certificate Act in the sense proposed, and that it would be better openly to rescind the law than to deprive it of its effect by increasing its cost, he was not prepared to dispute the justice of such an argument, but the question of repealing the Act was not before the Council; if it were, he would have preferred repealing it to adopting the present amendment. But he feared that if any proposal to rescind the Certificate Act were made at this stage, it would lead to prolonged enquiry and deliberation, and whilst those enquiries and deliberations were being carried on, the mischief which he desired to avoid would have been done. The people would have learned, at the cost of a good deal of time, money and useless litigation, that the Certificate Act had been virtually repealed wherever this Act came into operation, and the formal repeal, when sanctioned, would come too late to save them from the inconvenience and loss which he anticipated.

The Hon'ble MR. GRANT said that Mr. Kennedy's motion aimed at assimilating the method and equalising the cost of proceedings under the Certificate Act of 1860, and the Bill now before the Council. The question was considered by the Select Committee, and as he then demurred to Mr. Kennedy's suggestions, he wished very briefly to explain why, notwithstanding the strong reasons with which Mr. Colvin had been able to support them, he was unable to change his opinion.

In doing so, however, he had no desire to contest the force of the plea for probates, as conferring a complete representative title. On such a point the opinion of eminent lawyers, whose experience had not only acquainted them with the weak points in the present system, but had also suggested the best means of remedying them, must be accepted, not only with respect, but with gratitude, by all who desired amendment of what was admitted to be an anomalous and inconvenient state of things. On the other hand, it must be remembered that the hon'ble and learned author of the amendment had derived his knowledge of the case mainly from what he had observed in one of the most enlightened and advanced sections of the Empire, whilst this Council was bound to look to India as a whole—to the backward rural communities, which covered so large a part of the continent, as well as to the inhabitants of great cities.

The present Bill was one adapted, as would be seen from even a cursory perusal of its provisions, to meet all, or nearly all, the requirements of a somewhat advanced social condition. True, all these provisions need not be called into play unless they were specifically wanted, but they existed, and furnished a complete machinery for dealing with succession. The Certificate Act, on the other hand, was a simple measure to facilitate the collection of debts, and so to prevent the violent interruption of ordinary business relations on the death of an owner of property. It was easily understood by the people of the country and was popular among them—so much so, indeed, that its benefits had been somewhat abused, and on this abuse was founded the main argument for restricting its operation. As they knew, the people in many cases, and the judges in some cases, believed that a certificate conferred a representative title, and so the courts were set in motion to secure great advantages without payment of the corresponding stamp-duty. But even admitting this misconception to be more general than he believed it to be, surely its existence could not justify the trenchant remedy which the hon'ble gentleman proposed to apply. What he suggested was in effect, that a certificate to collect a debt, bearing perhaps a mere infinitesimal proportion to the whole property concerned, should be charged with stamp-duty on the entire value of that property. The result would be that, in many cases, it would not be worth while for the representatives of deceased persons to collect small debts at all. But Mr. Colvin had contested that position by referring to the provisions of section 2 of the Certificate Act. He said that, if there was unreasonable opposition to the collection of debts, the Court would compel payment even without a certificate, on the ground that the payment had been withheld from fraudulent and vexatious motives, and not from any reasonable doubt as to the party entitled to collect. That might well happen, if the opposition was

palpably made in bad faith. But, as the Council knew, the pleas raised in defence were often very ingenious and plausible, and it was not always possible to detect bad faith. But omitting, for the moment, all consideration of inconveniences in practice, he thought it must be admitted that the assimilation of the charges for establishing a good representative title, and for conferring a mere provisional right to collect debt, would be intrinsically inequitable and indefensible. The advantages given by a certificate might be overvalued by the Native public, but such misconceptions could not long co-exist with the spread of legal science and the increase of lawyers. Rather than try to remedy even an admitted abuse, by an attempt to bring about a forced equalisation of essentially unequal things, why should they not wait a little longer, and try the effect of the natural operation of time, and increasing knowledge of rights?

The representation of deceased persons was by no means the only branch of judicial procedure in which claimants in this country sought to grasp a substantial advantage, by means of a cheap and summary process provided for other purposes. For example, there had been numerous cases in which titles to property had been asserted and determined in suits for agricultural rents. The judgments of the Revenue Court in such cases would have no determining force, except for the mere purposes of the immediate suit; but they were, no doubt, often treated by all concerned as setting at rest the question of title. And yet it had never occurred to any one, so far as he was aware, to propose that in rent suits, involving questions of title, the full duty payable on the property concerned should be levied.

But, indeed, he would go further, and submit that the question was not one which, in its present form, could properly be discussed from a financial point of view. It might be very right and proper that all classes should pay a succession duty, which was now levied only on the property of Europeans, to whom the Succession Act applied, and of a few others. But, if so, the imposition of these duties should be considered as an independent question on its merits.

If the proposal before the Council was adopted, succession duty would certainly be levied on some Native estates, but not on all; and the distinguishing test would turn on the mere accidental question, whether the particular estate included debts to be collected, or interest to be realised on Government securities. Obviously, under such a system, the richest estates might escape altogether free, whilst the poorest were taxed. Therefore, even as a measure of financial reform, the motion before the Council would land them in even greater anomalies and inequalities than those which it purported to remove, and thus, from

whatever point of view it was considered, it seemed to him open to serious exception.

The Hon'ble MAHÁRÁJÁ JOTÍNDRA MOHAN TAGORE said he was inclined to support the view taken by the hon'ble member to his right (Mr. Grant). As he understood it, the present Bill was to be entirely of an optional nature, and he thought it had been judiciously decided to give this character to it in the first instance. If, however, the amendment moved by his hon'ble friend to his left (Mr. Colvin) be accepted, and the fees leviable under the Certificate Act be assimilated to those to be imposed under this Bill, not only the Certificate Act would virtually be rescinded, but the optional character of the present Bill would be necessarily destroyed, which he thought was not at all desirable. Every law which tended to give greater security to title and property, and prevented litigation was, in his humble opinion, of great advantage to the community, and such, he took it, was a law of probates and administration. In the interior of the country, however, people might not perhaps view the present Bill in this light at first, and if the fees under the Certificate Act be raised to the standard of those under the present Bill, it would no doubt be considered a great hardship by the people, for, as the hon'ble member to his right had justly observed, in many cases applications for certificates under Act XXVII of 1860 were made simply to enable a party to collect the debts of a deceased person, which debts might not be large, though the whole of his assets might come to a heavy amount, and under such circumstances it could not but be considered a hardship to be obliged to pay fees for the full amount of the assets. He felt sure that when by experience it would be found that the Probates and Administrations Act afforded additional security to title and prevented litigation, and as a consequence gave an increased value to land, the advantages of such an enactment would be at once patent, and he thought the people would take more kindly to it than if it were a compulsory measure, as it would be if the Certificate Act were in effect repealed in the way proposed.

After the lapse of some time the practical working of the Act would give the Government an opportunity, not only to make the necessary amendments (if any) in its details, but also to consider how far the optional character of the measure ought to be altered, and whether the Certificate Act ought or ought not to be repealed.

The Hon'ble MR. STOKES said that three propositions for further legislation had been on that day mentioned to the Council. One was the proposal to render probate compulsory outside the Lower Provinces and the towns of Madras and Bombay; another was Mr. Kennedy's amendments of Act XXVII of 1860; and a third was a total repeal of that Act. MR. STOKES was the last person

in the world to seek to restrain the liberty of the Legislative Council, but he ventured to think that the policy of these projects of law should first be settled by the Executive Council after consultation with all the Local Governments. This had not yet been done. As to the proposal to render probate compulsory, *that* was intimately connected with—was in fact suggested by—the proposal to extend the Hindú Wills Act, which had for some time been under the consideration of the Government of India. He believed the Act had worked satisfactorily. It provided securities, such as the requirement of writing, signature and attestation, for the due exercise by Hindús of that testamentary power which a long series of decisions had declared them to possess. It prohibited oral revocations of written wills. It prohibited nuncupative wills, except in case of soldiers and sailors on active service, and thus precluded much fraud and perjury. It prevented the creation of perpetuities, and by requiring all wills to be proved and deposited in Court for safe custody, rendered fraudulent alteration almost impossible. It imposed a salutary check on executors by requiring them to exhibit inventories and accounts of their testator's assets. It defined the character and powers of Hindú executors, and thus enabled them to sue for their testators, and in case of sale or mortgage to make title to their testator's estate. At the same time, it did not interfere with the Hindú law of inheritance.

But it must be admitted that in inserting the clause requiring probate of all wills of property exceeding rupees one thousand, the Select Committee had trenched on the province of the Executive. The Government of India had then, and had now, under consideration the expediency of extending the Hindú Wills Act to Provinces other than Lower Bengal. In last September we asked the Lieutenant-Governor of Bengal for a report on the working of the Hindú Wills Act in that Province; and as soon as His Honour's reply was received, the question would, MR. STOKES trusted, be finally and satisfactorily dealt with.

As to Mr. Kennedy's amendments, those also had been, and indeed were still, under the consideration of the Executive, and the Local Governments would be consulted upon them. He might, however, say that the arguments adduced by Mr. Kennedy, and repeated to-day by Mr. Colvin, had hitherto failed to convince the Government of India. The Government were inclined to think, first, that in order to induce people to resort to the provisions of the Bill rather than to the Succession Act, where difficulties arose in connection with Native successions, it was not necessary to make certificates as expensive as probate or letters of administration, and that in other cases there was nothing to justify our using any pressure. Secondly, they thought that, as an effort towards establishing equality between all classes in the matter of

succession duties, Mr. Kennedy's proposal was based upon no reasonable principle, inasmuch as it made the question whether a Native estate was to pay the duty or not depend on the accidental circumstance of the assets including or not including debts. If a Native died leaving property worth lákhs of rupees, but no debt due to him and recoverable only by legal proceedings, the estate would, under Mr. Kennedy's scheme, get off scot-free; but if the Native happened to leave a debt of one hundred rupees due from a troublesome debtor, or if he happened to leave five hundred rupees invested in Government paper, duty would have to be paid on the whole estate, unless indeed the representatives chose to forego their claim and bear the loss, as they doubtless would when the debt or paper was less in amount than the duty. Thirdly, the Government considered that if it was thought desirable as a matter of financial administration to put all classes on an equality as regarded succession duties, such duties should be imposed on some principle which would make them fall equally on all classes of Native successions, and should not be introduced by a side-wind which would cause them to fall capriciously on some classes of successions and not on others. Fourthly, they held it unreasonable to charge for a certificate which gave a title only to a part, perhaps an insignificant part, of the assets, as much as for probate or letters of administration, which gave a title to the whole, and that the circumstance that ignorant people attributed to the certificate the force of probate or letters of administration, was no answer to this. Fifthly, the effect of making Mr. Kennedy's amendment would be to cause Act XXVII of 1860 to be disused everywhere, in other words, virtually to repeal it. But the repeal of that Act (which MR. STOKES admitted fully deserved all the bad words that had been said about it) should be made honestly and openly, expressly and directly, after full discussion with the Local Governments and notice of our intention to the Secretary of State.

MR. STOKES fully agreed with Mr. Colvin, that wherever this Bill came into force, Act XXVII of 1860 would become of little use, and he might mention that, as soon as the present Bill was passed, the Home Department would consult the Local Governments as to the expediency of repealing the Act in question.

For the present, MR. STOKES thought the Council would do well to pass the Bill merely with the amendments which he had already proposed and those which he was about to bring forward. The Bill had had a sufficient period of gestation—eighteen months—it was a purely permissive measure, and could therefore cause no hardship. If after it came into force any one obtained a certificate under the Certificate Act and paid two per cent. on the amount of the debt, he would, under section 152, get back his money in case he afterwards took out admin-

istration or probate. No such loss or vexation as Mr. Colvin anticipated would therefore occur. On the other hand, the Bill would for the first time provide means of conferring upon the bulk of the Hindú, Muhammadan and Buddhistic population of this empire complete and conclusive titles as representatives of deceased persons, and the result would ultimately be, first, a diminution in litigation, and, secondly, a vast increase in the selling or mortgaging value of property all over British India.

The Hon'ble MR. COLVIN, prior to the President putting the motion, said that he had begun by saying that he was advocating what had hitherto been a losing side, and it was likely, he feared, to remain a losing side. Still one or two arguments had been used, which he would like to notice. In the first place, it had been said by the Hon'ble Mr. Grant, that the Council must not look only to the practice followed, and the opinions entertained, in the most enlightened parts of the country, namely, the Presidency-towns, but also to the distant and more backward Provinces. With reference to this, he would remark that the whole object of the amendment was to remedy the inconvenience and loss which was likely to accrue to people inhabiting the backward and distant parts of the country. Where the law was correctly understood, no difficulty would arise; but where people did not understand the true value of a certificate, they would waste their time and money in taking out certificates which would be of no use to them. Again, his hon'ble friend had said, that the fact that the Certificate Act might have been abused did not furnish sufficient ground to justify an amendment of the kind proposed. MR. COLVIN was not prepared to say that the Certificate Act had been abused; all that he had said or intended to say was that, rightly or wrongly, the Act had been used to furnish evidence of title, in the manner which he had described. What the Council had to deal with was the actual operation of the law, not the way in which it should have operated if it had been correctly interpreted; with the facts, not with the theory of the law. It was to obviate the mischief which might be caused by a sudden and imperfectly understood change in the practical working of the law, not to put a stop to any abuse of it, that the amendment had been introduced. Nor was he prepared to admit that the purport of the amendment was a very sweeping one. His hon'ble friend the Mahárájá (he thought) had said that it was so, and that it would have the effect of repealing the Certificate Act. In reply to that, he (MR. COLVIN) would say that it was not the amendment which would repeal the Certificate Act, but the Bill before the Council, if it was passed; because, if a person applied for a certificate thereafter in any part of the country where the Bill had become law, his opponent had only to apply for letters of administration, and those letters of administration, under section 151 of the Bill, would supersede the certificate and render it useless. It was

evident, therefore, that all questions of title in disputed successions must be determined thenceforward under the Administration Law and not under the Certificate Act.

The Hon'ble Mr. Grant had also spoken of the impropriety of using the amendment for the purpose of imposing a "succession duty," but he (MR. COLVIN) had not put forward its financial effects as one of its recommendations, because it did not appear to him that they would furnish any argument in its favour. If a succession duty should ever be required, which he had no reason to suppose was the case now, he thought that its imposition should be set about in a very different way, and that the Bill which was now before the Council would be of very little use for that purpose. There were one or two things, however, to be said on the other side of the argument, even looking at the question from a "succession duty" point of view. In the first place, whatever objections might be urged against levying a partial and unequal succession duty by charging two per cent. on voluntary applications for letters of administration, those objections would apply equally to the unequal and partial succession duty which was now being levied from all classes in the country, except Hindús and Muhammadans, and in certain places, that is to say, in the Presidency-towns, from them also. He did not think there was any ground on which the levy of the duty referred to in this shape could be defended which would not also serve to justify the fee on Probates and Letters of Administration under the Bill before the Council. Again, he would point out that, although no succession duty under that name was now paid in cases of disputed inheritance, yet people did actually pay, and the State receive, sums which probably amounted to more than two per cent. on the value of disputed estates (which would be the rate leviable under the amendment), because such disputes, as things stood, could only be determined by a civil suit, and it was very questionable whether the cost of a civil suit would not be much heavier to the parties concerned in it than any fees which would be chargeable for administration.

The Motion was put and negatived.

The Hon'ble MR. STOKES moved the following amendments :—

"That in section 33, line 7, before 'lunatic,' the words 'minor or' be inserted, and that, for the last seven words, the words 'minor or lunatic, until he attains majority or becomes of sound mind, as the case may be,' be substituted.

"That in section 93, line 4, after 'become,' the words 'in the absence of any direction to the contrary in the will or grant of letters of administration,' be inserted.

"That in section 107, paragraph 2, after 'and,' the words 'in the absence of any direction to the contrary in the will,' be inserted.

"That in section 124, line 5, after 'legatee,' the words '(if any)' be inserted.

"That to section 131, the following words be added:—'or unless the will contains a direction to the contrary.'

"That in chapter XIV, before section 148, the following section shall be inserted:—

"'148. In chapters VIII, IX, X and XII of this Act the provisions as to an executor shall apply also to an administrator with the will annexed.'

and

"That the numbers of the subsequent sections be altered accordingly."

He said that these amendments required scarcely any explanation. The first would extend to minors the section as to administration for the use and benefit of lunatics. The others were mere corrections of certain oversights due to the framers of the Indian Succession Act, from which this Bill had for the most part been copied.

The Motion was put and agreed to.

The Hon'ble MR. STOKES then moved that the Bill as amended be passed.

The Motion was put and agreed to.

DISTRICT DELEGATES BILL.

The Hon'ble MR. STOKES also moved that the further Report of the Select Committee on the Bill to make further provision for the grant of probates of wills and letters of administration in non-contentious cases, be taken into consideration. No substantial change had been made.

The Motion was put and agreed to.

The Hon'ble MR. STOKES then moved that the Bill as amended be passed.

The Motion was put and agreed to.

MADRAS PORT-DUES BILL.

The Hon'ble MR. GIBBS moved that the Report of the Select Committee on the Bill to enhance the rate of Port-dues leviable at Madras, be taken into consideration. He presented the Report at the last meeting of the Council and had then observed that there was only one alteration which had been suggested by the Madras Government, but to which the Select Committee had not assented. The Madras Government suggested that, in the second section, paragraph (2), clause 3, the words "not exceeding eight annas per ton" should be altered to "six annas," which they considered would cover all charges. But the Select Committee thought it would be better to leave the

maximum rate at eight annas, as there might be a doubt whether a rate of six annas per ton would cover the charges; and it was a mere matter of administrative action to restrict the power of levying the due to six annas per ton. That was the only observation he had to make.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

PETROLEUM BILL.

The Hon'ble MR. STOKES presented the Report of the Select Committee on the Bill to regulate the importation, possession and transport of Petroleum and other substances of a like nature.

FORT WILLIAM MAGISTRATES BILL.

The Hon'ble MR. REYNOLDS introduced the Bill to provide for the better government of Fort William and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Stokes, Sir D. M. Stewart and Mr. Paul and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. REYNOLDS also moved that the Bill be published in the *Calcutta Gazette* in English and in such other languages as the Local Government might think fit.

The Motion was put and agreed to.

The Council adjourned to Friday, the 21st January, 1881.

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

CALCUTTA;
The 14th January, 1881.

Gover... No. 373 L. D.—21-1-81.—250.