

Friday, 31st January, 1902

# **COUNCIL OF THE GOVERNOR GENERAL OF INDIA**

**VOL. 41**

**JAN. - DEC.**

**1902**

**P. L.**

ABSTRACT OF THE PROCEEDINGS  
OF  
THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA  
ASSEMBLED FOR THE PURPOSE OF MAKING  
LAWS AND REGULATIONS,  
1902,  
WITH INDEX.

VOLUME XLI.



Published by Authority of the Governor General.

Gazettes & Debates Section  
Parliament Library Building  
Room No. FB-025  
Block 'G'

CALCUTTA:

OFFICE OF THE SUPERINTENDENT OF GOVERNMENT PRINTING, INDIA.

1902.



*Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., c. 67, and 55 & 56 Vict., c. 14).*

---

The Council met at Government House, Calcutta, on Friday, the 31st January, 1902.

PRESENT

His Excellency Baron Curzon, P.C., G.M.S.I. G.M.I.E. Viceroy and Governor General of India, *presiding*.

The Hon'ble Sir C. M. Rivaz, K.C.S.I.

The Hon'ble Mr. T. Raleigh.

The Hon'ble Sir E. F.G. Law, K.C.M.G.

The Hon'ble Major-General Sir E. R. Ellis, K.C.B.

The Hon'ble Mr. A. T. Arundel, C.S.I.

The Hon'ble Sir A. Wingate, K.C.I.E.

The Hon'ble Mr. C. W. Bolton, C.S.I.

The Hon'ble Rai Sri Ram Bahadur.

The Hon'ble Mr. Gopal Krishna Gokhale.

The Hon'ble M. R. Ry. Panappakkam Ananda Charlu, Vidia Vinodha Avargal, Rai Bahadur, C.I.E.

The Hon'ble Sayyid Husain Bilgrami.

The Hon'ble Mr. R. P. Ashton.

The Hon'ble Mr. R. G. Hardy, C.S.I.

The Hon'ble Rai Bahadur B. K. Bose, C.I.E.

The Hon'ble Maharaja Rameshwara Singh Bahadur of Darbhanga.

The Hon'ble Mr. M. C. Turner.

NEW MEMBER.

The Hon'ble MAHARAJA RAMESHWARA SINGH BAHADUR of DARBHANGA took his seat as an Additional Member of Council.

INDIAN STEAM-SHIPS (AMENDMENT) BILL.

The Hon'ble SIR EDWARD LAW presented the Report of the Select Committee on the Bill further to amend the Indian Steam-ships Act, 1884.

8     *INDIAN TRAMWAYS BILL; ADMINISTRATORS GENERAL  
AND OFFICIAL TRUSTEES BILL.*

*Mr. Arundel; Sir Charles Rivaz.] [31ST JANUARY, 1902.]*

INDIAN TRAMWAYS BILL

The Hon'ble MR. ARUNDEL presented the Report of the Select Committee on the Bill to apply the provisions of the Indian Railway Companies Act, 1895, to certain Tramway Companies.

ADMINISTRATORS GENERAL AND OFFICIAL TRUSTEES BILL.

The Hon'ble SIR CHARLES RIVAZ presented the Report of the Select Committee on the Bill further to amend the Law relating to Administrators General and Official Trustees. He said:— "I propose, with Your Excellency's permission, to add a few remarks to supplement the statement which I made when introducing this Bill at the meeting of the 20th December. On that occasion I confined myself to a very brief explanation, the objects and reasons underlying the measure being, as I then thought, well understood and appreciated. Some of the representations, however, which have been made to the Select Committee, and which have also been the subject of discussion in the public press, have shown that it is desirable to explain more fully the grounds on which the Government of India have acted in the matter, and I proceed to do so.

"The combination of the offices of Administrator General and Official Trustee has almost from the first been contemplated as suitable by the Statute-law, an express provision on the subject having been included in Act VIII of 1855, reproduced in Act XXIV of 1867 and again reproduced in Act II of 1874, the enactment now in force. So far as the nature of the duties appertaining to those offices is concerned, there would seem to be everything in favour of the combination and nothing against it, the only question remaining being as to its practical feasibility. The Finance Committee of 1887 not only came to the conclusion that it was feasible, but went further by submitting the larger proposal that a central Government office should be maintained to manage the estates of insolvents and intestates, estates in litigation and estates under trusts, two officers being appointed, one to assist the other and both to be remunerated by the Government, the balance of the commission and fees leviable and levied under the law being retained by the Government. In other words, the Finance Committee suggested the amalgamation of all four offices of Administrator General, Official Trustee, Official Assignee and Official Receiver under two officers, the one to be the Deputy and Assistant of the other.

"In 1897 the Government of India referred the whole question of amalgamation (along with certain others to which I need not now advert) to a strong

[31ST JANUARY, 1902.] [Sir Charles Rivaz.]

Committee, on which the High Court and the Bar were represented by the present Chief Justice of Bengal, as President, and by Sir Griffith Evans and Mr. Dunne, then Standing Counsel, as members, the remaining three members being the Home Secretary and the Deputy Secretaries in the Finance and Legislative Departments. The relevant parts of the Committee's report of the 20th April, 1898, which was submitted in response to this reference, I will now read to the Council.

"The Committee", it was said, "have carefully considered the proposal for the amalgamation of the four offices, with the result that they doubt whether it would be possible to combine the control of all four, in one person. The office of Official Assignee, in particular, is a special one which has little in common with any of the others, while it is essential that it should be filled by a lawyer who has made a special study and practice of the intricate law of bankruptcy. Moreover, one officer alone could clearly not undertake the duties of the four offices; and, in the case of the Official Assigneeship, there is this objection to the alternative proposal to allot the duties of the appointment to a Deputy working under the supervision of a Chief, that the Deputy, if a proper appointment were made, would be a specialist and, consequently, more capable of supervising his particular branch than the Chief himself.

"The Official Assigneeship might, however, in the opinion of the Committee, be combined with the Official Receivership, and this combination would be the more appropriate because both offices are directly connected with the High Court and with proceedings pending on the Original Side of that Court. The Official Assignee is appointed by the Chief Justice under section 14 of the Indian Insolvency Act, 1848 (11 & 12 Vict., c. 21), while the existence of the Official Receiver is entirely dependent upon the orders of the High Court, which purport to be passed in pursuance of section 503 of the Code of Civil Procedure (Act XIV of 1882).

"Both the Administrator General and the Official Trustee of Bengal are appointed by the Government under the Administrator General's Act, 1874 (II of 1874) and the Official Trustees Act, 1864 (XVII of 1864), respectively, and there seems to be no reason why the same person should not hold both appointments. That there would be no legal objection to such an amalgamation is clear from the fact that the first proviso to section 9 of the Act of 1874 expressly contemplates it.

"The holder of the appointment (of Administrator General and Official Trustee) ought, in the opinion of the Committee, to be a barrister, and he should be debarred from general practice and from undertaking, otherwise than in his official capacity, any executorship or trusteeship. The mere fact of his being a Government servant in receipt of a fixed salary from the Treasury would materially alter his position and enable the Government to exercise such supervision over him as it might think fit. It would not be in his interest either to keep, or to refrain from keeping,

[Sir Charles Rivaz.] [31ST JANUARY, 1902.]

an estate in the Administration Department of the office rather than in the other branch, and one of the grounds of complaint which has been suggested, would then probably disappear. But, in order to place him still more under control, the Committee would recommend that power be taken for the High Court, similar to that conferred by section 4 of the Judicial Trustees Act, 1896 (59 & 60 Vict. c. 35), either on request or without request, to give such general or special directions in regard to any administration or trust as might to it seem right and proper.

The Government would be credited with all the receipts, and it would, *per contra*, bear all the charges, accepting, of course, the entire responsibility connected with the administration of estates through its officers, and probably safeguarding the interests of the public by requiring such security as is now furnished by the Administrator General.

The Committee have further considered the question whether section 56 of the Administrator General's Act, 1874, ought to be repealed or maintained, and their conclusion is that it ought to be repealed as soon as vested interests admit. The Committee believe that, if the action of the Administrator General is brought under some sort of supervision and control, such as is contemplated by this report, there is but little danger of the public preferring private agency-houses to official administration. If, on the other hand, official administration is unsatisfactory and nothing is done to improve it, they think that the public ought not to be precluded from employing private agency.

These views appeared to be in themselves well-considered, reasonable, and sound; they were endorsed both by the Government of Bengal and by the Calcutta High Court; and, emanating as they did from such high authority and with such support, neither the Government of India nor the Secretary of State felt any hesitation in accepting them and deciding that they should be acted upon as soon as the occasion presented itself. Meantime, however, we had grave reasons for believing that, quite apart from the question whether the office of Administrator General should be filled by a salaried officer of the Government or by a practically independent official, the public were not fully satisfied with the manner in which the office was being actually administered.

The Government determined, therefore, to appoint a Committee, presided over by a Judge of the Calcutta High Court and including the Comptroller General and an experienced Divisional Commissioner to advise on matters connected with finance and the management of estates in the mufassil. The late Mr. Broughton had, in answer to certain inquiries made of him, maintained that his system of administration and management was perfectly sound and complete, and had frankly asked for an inspection of his office. Mr. Justice Sale's Committee was requested to accept this invitation and to

**ADMINISTRATORS GENERAL AND OFFICIAL TRUSTEES BILL. 11**

[31ST JANUARY, 1902.] [*Sir Charles Rivaz ; Mr. Raleigh.*]

report the result. In due course they submitted the following recommendations to the Government:—

"(1) that the remuneration of the Administrator General by commission should be abolished and that he should be remunerated by salary, carrying with it a pension;

"(2) that the Administrator General should have a Deputy, also remunerated by salary;

"(3) that the Government should accept responsibility for mistakes and errors in the future administration of estates by the Administrator General;

"(4) that the office-establishment should be strengthened and the work re-arranged; and

"(5) that the repeal of section 56 of Act II of 1874 should be accompanied by proper provision being made for the exercise of control over non-official administrators, especially as regards the charging of commission and the keeping and auditing of accounts.

"These recommendations were supported by facts which supplied full confirmation of the view that a change in the method of administration was demanded in the public interests; and, as to the sequel, I need add only this, that the late Mr. Broughton tendered his resignation with effect from the 1st of January. From what I have now stated, it will, I sincerely trust, be manifest that the Government of India, have from first to last, acted on the best advice at their command and with due regard to the interests of the public.

"I hope, My Lord, to move at the next meeting of the Council that the Report of the Select Committee, which I have had the honour to present to-day, be taken into consideration, and that the Bill, which, it will be seen, has been materially simplified and revised by the Committee, be passed."

The Hon'ble MR. RALEIGH said:—"My Hon'ble Colleague has given the history of the Bill now reported. I ask leave to add a few words on the legal effect of the Bill, on the alterations made in Committee, and on some of the objections which have been taken to the measure out of doors.

"The Select Committee has accepted the proposal to make further provision for combining the offices of Administrator General and Official

[Mr. Raleigh.]

[31ST JANUARY, 1902.]

Trustee. It has been contended that the work of the two offices is more than one man can undertake; but we are not in fact proposing that one man should do the work of two; the Bill makes provision for the appointment of a Deputy. Government has accepted amendments, the effect of which will be that the Administrator General will always be a barrister, while the Deputy may be either a barrister or solicitor. It was suggested that the higher appointment should also be open to solicitors, but the Committee came to the conclusion that if the head of the office possesses the higher qualification, his opinion will be more readily accepted when legal questions arise in the course of administration. It must be admitted that the interests of the Bar are to some extent affected by the Bill. An officiating appointment now reserved for barristers will be open to another branch of the Profession; and the position of Administrator General, though we are perhaps making it more secure, will not be so lucrative as it has been in the past. I regret that the Bill should have this incidental effect, but in framing a measure of this kind we have to consider, first and chiefly, the interest of the public.

In a letter addressed to the Government of India by the Bengal Chamber of Commerce, objection is taken to the proposed combination of offices, apparently on the ground that the two officers in question are appointed by different authorities. 'Official Trustees', so the letter runs, 'are appointed by the Chief Justices of Bengal, Madras and Bombay'. The gentleman who supplied this statement to the Chamber must, I think, have used a copy of Act XVII of 1864, without inquiring whether the law had undergone any change in the ensuing 38 years. The appointment of Official Trustees is vested in Government, and this has been the law since 1890.

Clause 3 of the Bill contains the necessary provisions for making the Administrator General a salaried officer of Government. It is now a principle, very generally accepted, that where a Government office is paid by commission or fees for services rendered, the heads of the office should be remunerated by salary, and the profits (if any) should be taken by Government. Where this is not the case, the office becomes an independent concern, and defects in its procedure are not easily corrected. When, for example, the public began to complain of delays and abuses in the office of the Administrator General of Bengal, we could only refer to the Administrator General himself, until at last the complaints became so serious as to demand a formal inquiry.

"In drafting clause 3, certain general words were used to make it clear that Government on taking over the office will be entitled to all profits, and will

[31ST JANUARY, 1902.] [Mr. Raleigh.]

meet all liabilities. These general words were interpreted in some quarters as indicating a design on the part of Government to alter fundamentally the present methods of administration, and to appropriate, in some unexplained manner, the estates of deceased persons. Thus, in a letter addressed to Government by the Calcutta Trades Association, it is suggested that 'the scheme and main object of the Bill is to legalise what otherwise would amount to a breach of trust; and thereby to afford an additional source of revenue to Government'. I do not quite grasp the meaning of this, nor am I aware of anything in the declarations or the conduct of this Government which justifies these apprehensions and suspicions. But, as our clause was misunderstood, the Select Committee has taken it to pieces, leaving out any words which might be construed as going beyond the purpose of the Bill, and inserting new provisions which ought to make the position clear. We do not propose to make any subversive change in present methods; the Bill, when it becomes an Act, will be read together with the principal Act. As stated in the Report, accounts will be kept and estates managed as heretofore; decrees and orders of the Courts will operate as they do now. That is the intention of Government; if the Bill as amended does not express that intention, there is still time to consider any suggestion for its improvement.

"Before leaving clause 3, I must deal with an objection which is urged in the letter of the Chamber of Commerce. It is there argued that 'the constitution of the office both of Administrator General and Official Trustee is that of a corporation sole'; and that the effect of the Bill is 'to extinguish the offices in question, and to repeal the material provisions of the existing Acts'. On this I would remark, in the first place, that, when the Legislature creates a corporation, express words are usually employed for the purpose; and in this connexion I may refer, by way of illustration, to the Act of Parliament, 39 & 40 Vict., c. 18, by which the Solicitor to the Treasury was made a corporation sole. The office of Administrator General was constituted by Act VII of 1849, amended and re-enacted by Act VIII of 1855, then by Act XXIV of 1867, and finally by Act II of 1874, which is now in force. In these Acts there are no express words of incorporation; but it may be admitted that in some important points a corporate character has been given to this office. Under section 29 of the principal Act, letters of administration are granted to the Administrator General by his name of office; under section 33, estates and interests vested in the Administrator General are divested when he vacates his office, and vest in his successor immediately on his appointment; and under section 34, suits and other proceedings commenced by or against an

[*Mr. Raleigh.*] [31ST JANUARY, 1902.]

Administrator General in his representative character are brought by or against him in his name of office. It seems to me doubtful, in point of law, whether these sections, taken together, amount to the constitution of a corporation sole, and the language of section 34 is not easy to reconcile with the theory now put forward. But, supposing the theory to be correct, has it any practical bearing on this Bill? Assuming that the Administrator General is a corporation, there is not, and never was, anything in this Bill to deprive him of that status. If the adviser of the Chamber is under the impression that a salaried officer cannot be a corporation, I may refer once more to the case of the Solicitor to the Treasury.

"The case of the Official Trustee is on the same footing as that of the Administrator General. Under section 17 of the Act of 1864, he is appointed to act in any case by his name of office; and under section 18, suits and other proceedings are brought by or against him by his name of office. I should think it incautious to say, on the strength of these provisions, that the Official Trustee is a corporation sole; but if he is, the Bill will not alter his position.

"Your Lordship may perhaps think that I am asking the attention of Council to matters fit only for a court of law. But I am constrained to deal with these matters here, because this legal reasoning has been used to excite alarm in the general community, to persuade a body of business men that Government has brought in a dangerous Bill. I cannot argue the Trades Association and the Chamber of Commerce out of their present frame of mind, except by showing them that their criticism has been directed against an imaginary Government and an imaginary Bill.

"In clause 6 of the Bill referred to the Select Committee, it was proposed to confer a rule-making power on the High Courts. For the reasons given in the Report, that proposal has been dropped, but there is one small part of it which I should like very briefly to mention. It is commonly known that an executor, who owes his appointment to the confidence of his testator, is not usually required to furnish security when he enters on the administration of the estate. The Judges of the High Court say he should only find security when he is insolvent or in embarrassed circumstances. But in this small class of cases we proposed that the Judges should determine by rule who should give security, and in what form. I was prepared to suggest a verbal amendment in clause 6, sub-clause (1) (a); but I was not prepared for the remarkable argument which has been founded upon it. It was at once assumed that the High Court would make an oppressive rule, requiring all executors to give se-

ADMINISTRATORS GENERAL AND OFFICIAL TRUSTEES 15  
BILL; IMPERIAL LIBRARY (INDENTURES VALIDA-  
TION) BILL.

[31ST JANUARY, 1902.] [Mr. Raleigh; Mr. Turner.]

curity, and fixing the amount without regard to circumstances. The Court was to do this, not of its own accord but at the instigation of Government; and the object of Government was to make the private executor's position so burdensome and so embarrassing that he would be driven to transfer the estate to the Administrator General. This piece of morbid fiction has attained a considerable circulation in the present month. Your Lordship will observe that the Government is accused of an unscrupulous design to create a monopoly in favour of the Administrator General—and this at the very moment when, by repealing section 56 of the principal Act, we are admitting private persons to compete with the Administrator General.

“I trust, My Lord, that the explanations given to-day will remove some at least of the many misconceptions which have gathered round this Bill.”

IMPERIAL LIBRARY (INDENTURES VALIDATION) BILL.

The Hon'ble MR. RALEIGH moved that the Bill to confirm and validate certain indentures made between the Agricultural and Horticultural Society of India and the Calcutta Public Library, respectively, and the Secretary of State for India in Council be taken into consideration.

The motion was put and agreed to.

The Hon'ble MR. RALEIGH moved that the Bill be passed. He said :—  
“The objects of this Bill were fully explained by Your Lordship, and by myself, at the time of its introduction. No objection has been received to anything in the Bill and Schedules, and I now move that the Bill be passed”.

The Hon'ble MR. TURNER said :—“Before this Bill is passed, I desire to take this opportunity of congratulating Your Excellency's Government in having arrived at so satisfactory an agreement as that which will be legalised by the passing of the Bill. As a member of the Horticultural Society, I was under the painful necessity of attending meetings at the Metcalfe Hall, and it invariably struck me that the condition of that historic hall was a reproach and a disgrace to Calcutta. Under the new conditions, this, My Lord, will be impossible in the future, and that alone in itself is a worthy object that has been attained. But, apart from that, the arrangements made have enabled a deserving and useful Society—the Agri-Horticultural Society—to acquit itself of certain liabilities. It has also enabled the Government of India to form the nucleus of a most valuable Public Library of reference—a library which, I believe, will

be of inestimable value to those of the present and future generations. I think, My Lord, that the thanks of the public are due to Your Excellency, and also to His Honour the Lieutenant-Governor, for having brought about such a happy result."

The motion was put and agreed to.

The Council adjourned to Friday, the 14th February, 1902.

Calcutta:	}	H. W. C. CARNDUFF,
<i>The 3rd February, 1902.</i>		<i>Offg. Secretary to the Government of India,</i> <i>Legislative Department.</i>