

Friday, 3rd February, 1905

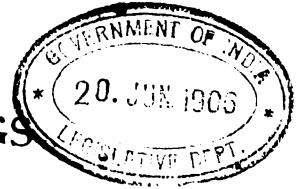
**COUNCIL OF THE GOVERNOR GENERAL  
OF INDIA**

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**P. L.**

ABSTRACT OF PROCEEDINGS



OF

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ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS,

FROM 1905 TO MARCH 1906.

WITH AN INDEX.

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1906.

*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 3rd February, 1905.\*

PRESENT :

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

His Honour Sir A. H. L. Fraser, K.C.S.I., Lieutenant-Governor of Bengal.

His Excellency General Viscount Kitchener of Khartoum, G.C.B., O.M., G.C.M.G., Commander-in-Chief in India,

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

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

The Hon'ble Sir Denzil Ibbetson, K.C.S.I.

The Hon'ble Mr. H. Erle Richards.

The Hon'ble Mr. J. P. Hewett, C.S.I., C.I.E.

The Hon'ble Mr. E. N. Baker, C.S.I.

The Hon'ble Mr. Gopal Krishna Gokhale, C.I.E.

The Hon'ble Mr. E. Cable.

The Hon'ble Nawab Saiyid Muhammad Sahib Bahadur.

The Hon'ble Mr. H. Adamson, C.S.I.

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

The Hon'ble Mr. L. A. S. Porter.

The Hon'ble Mr. A. D. Younghusband.

The Hon'ble Mr. H. A. Sim, C.I.E.

The Hon'ble Nawab Fateh Ali Khan, Kazilbash, C.I.E.

LOCAL AUTHORITIES' LOAN (AMENDMENT) BILL.

The Hon'ble MR. BAKER moved that the Bill further to amend the Local Authorities' Loan Act, 1879, be taken into consideration. He said:—  
“The object of the Bill was explained by Sir Edward Law when introducing it on the 6th January. At present the borrowing powers of the Rangoon Port Commissioners are regulated by the Local Authorities' Loan Act, 1879, which

\*NOTE.—The Meeting of Council which was fixed for the 27th January, 1905, was subsequently postponed to the 3rd February, 1905.

[*Mr. Baker; Mr. Richards.*] [3RD FEBRUARY, 1905.]

is an Act of this Council of general application. It is now desired to empower the Port Commissioners to borrow money in accordance with a self-contained Act of their own, as is the case with the Port Trusts of Calcutta, Bombay and Madras, and a Bill to this effect is now pending in the Burma Legislative Council. To enable that Bill to have effect it is necessary to exempt the Port Commissioners of Rangoon from the Local Authorities' Loan Act. The measure is a purely formal one and it has not been considered necessary to refer it to a Select Committee."

The motion was put and agreed to.

The Hon'ble MR. BAKER moved that the Bill be passed.

The motion was put and agreed to.

#### INDIAN UNIVERSITIES VALIDATION BILL.

The Hon'ble MR. RICHARDS moved for leave to introduce a Bill to validate action taken under the Indian Universities Act, 1904. He said:—"My Lord, the object of the Bill is to set at rest doubts which have been raised as to the validity of the constitution of the Bodies Corporate and Provisional Syndicates of the Universities of India. The matter is one of urgency for the reason that the work of the Universities is at the present moment at a standstill owing to the uncertainty as to the legal position of these Bodies and no progress can be made until the legal questions are determined.

"The purpose and scheme of the Universities Act will be within the recollection of this Council, and in order to explain the difficulties which make it necessary to resort to legislation I need only call their attention to that part of the Act which contains what are called the 'transitory provisions', that is, the provisions which set up machinery for establishing the University in its permanent form. These provisions will be found in the numerous clauses of section 12 of the Act.

"It will be seen that these clauses regulate the first elections of Fellows and the constitution of the first Bodies Corporate of the Universities, and that in clause (p) there is provision made for the appointment of a Provisional Syndicate to conduct the business of the Universities until permanent Syndicates have been constituted. It is in regard to this last clause and to the manner in which the Provisional Syndicates have been appointed that the present difficulties have mainly arisen, and with the permission of the Council I will state shortly what those difficulties are.

3RD FEBRUARY, 1905.] [Mr. Richards.]

“ Clause (p) enacts that each Provisional Syndicate is to be appointed by the Senate ‘in such manner as the Chancellor directs’. Those are the words used in the clause. It makes no other provision for the election. It does not specify the number of members of the Syndicate: it does not say whether they are to be, as they have been in the past, representative of the Faculties or not: it leaves everything at large, subject to the power of the Chancellors to give directions.

“ The Chancellors have taken the view that the power given to them is sufficient to enable them to deal with these matters, which are indeed on any other construction left unprovided for, and they have issued directions as to the appointment of the Provisional Syndicates, including directions to ensure the due representation of the Faculties. It does not seem possible that any objection can be taken to the substance of these directions, for they follow with some exactness the procedure in force at the time of the passing of the Act, and the procedure which appears to be contemplated in regard to the permanent Syndicate when that is set up. But the question is whether they are technically *ultra vires*.

“ The directions given have varied in form. In some cases the Syndicate was to be elected by the Senate sitting together but voting by Faculties: in others by the members of the Senate divided into groups according to their qualifications for the purpose of ensuring the proportional representation of the various schools but acting separately. But whatever the differences of form the effect has been the same, namely, to continue the former practice of election by Faculties.

“ In accordance with these directions elections were held at all the Universities and, except in the case of Bombay, were held without protest or complaint. Provisional Syndicates were constituted and have been some time at work preparing the ground for the permanent Syndicates.

“ But unfortunately this has now been stopped.

“ General objection is now taken to the constitution of the Syndicates on the grounds that the action of the Chancellors was *ultra vires* and that they had no powers to give the directions to which I have referred.

“ In Bombay application has been made to the High Court for an injunction to restrain the Provisional Syndicate from acting in the affairs of the University. In Calcutta a distinguished ex-Judge has lent the weight of his name and authority to a formal protest before the Senate of the University, and there are

signs that the controversy will soon extend to Madras, Allahabad, and Lahore, and that litigation may become general. Meantime the work of all the Universities is at a standstill: valuable time is being lost, and unless something be done, and done promptly, the progress of the Universities seems likely to be indefinitely arrested.

“ It is not for this Council to decide on the legality or illegality of the action of the Chancellors: that depends on technical points of construction and must be determined, if it be necessary to determine them, in Courts of law: but it is the concern of the Legislature to ensure that the work of education be not indefinitely arrested, and that it be not suffered to remain in a state of paralysis until such time as the resources of litigation are exhausted.

“ It may be said that the decision of the Bombay Court would settle the whole question and that proposals for legislation are premature until that decision is known. But I submit, my Lord, that that is not so. If the question affected Bombay only, the decision of the Bombay Court would determine the matter, that is, if no appeal were lodged against it (and there might be an appeal to the Privy Council), but it could not determine questions in other Provinces, or questions arising on different facts. Other actions may be started, indeed it is rumoured that they are to be started, before other Courts, and litigation may be indefinitely prolonged.

“ So far I have dealt only with the constitution of the Provisional Syndicates, but it is right to call the attention of the Council to the fact that the difficulties of construction which I have discussed are not limited in their effect to the Provisional Syndicate. The same question arises in regard to the election of Fellows to represent the Faculties under clauses (c) and (f). There again there are no provisions to secure election by the Faculties unless such power is contained in the proviso that the election is to be ‘in such manner as the Chancellor may direct’, and the Chancellors have in some cases given directions to secure this result. These Fellows are to be representative of the Faculties and it would be certainly most unreasonable that the Faculties should be denied any voice in their election: but if the argument against the wider construction of the Chancellor’s powers be good in the case of the Provisional Syndicates, it must be good in this case also. The result follows that the Bodies Corporate of the Universities or at least of some of them have never been properly constituted, and that the whole work must be done over again and the time spent and labour bestowed on them must be absolutely wasted.

[3RD FEBRUARY, 1905.] [Mr. Richards; Mr. Cokhale.]

“My Lord, I have now put before the Council the main features of this unfortunate controversy, and trust that I have convinced them that the matter is one which demands prompt treatment in the public interests.

“The Bill is a short one and does no more than validate the action of the Chancellors in regard to the constitution of the Senates and Provisional Syndicates. That action does not affect the ultimate constitution of the Bodies of the University: it is of a temporary character only: and if there be a dispute as to the meaning of the Act in regard to it, it seems better to do as the Chancellors have done and to follow the procedure which was in force before the passing of the Act, until such time as the Universities are finally constituted.”

The Hon'ble MR. GOKHALE said:—“My Lord, I beg to oppose this motion. It was only last night that I received the agenda paper of this meeting, and then I saw that it was proposed to introduce a measure of this kind at to-day's Council. There was, however, no copy of the Bill with the agenda paper—there is no copy even now before me on the table—so I was entirely in the dark, until I heard the speech of the Hon'ble Member in charge of the Bill, about the precise nature and scope of the proposed legislation. Now, my Lord, I respectfully submit that this is somewhat hard on Members of this Council. For I find myself compelled, if I want to enter my protest at all, to speak just on the spur of the moment, without any opportunity to look up facts and references, relying solely on my mere recollection of things. My Lord, I was one of those who did their utmost last year to prevent the passage of the Universities Bill. But having done that, as soon as the Bill was passed, I was among those who recognised the wisdom of the appeal so earnestly made by His Honour the Lieutenant-Governor of Bengal to both friends and opponents of the measure that they should after that bury their differences and in the best interests of higher education endeavour to co-operate with one another to make the Act a success. I should therefore have been glad if there had been no occasion for me to oppose any further the proposals of Government in regard to the Universities of India. But as the Government have thought fit to introduce the present measure, and as I disapprove of it most strongly, there is no course open to me but to offer it such resistance as I can. My Lord, I interpret the Hon'ble Member's speech as a practical admission that the notifications which the Chancellors in the different Provinces have issued are illegal and *ultra vires*, and that the action taken under them cannot be sustained. For, if there had been the faintest possibility of the notifications being upheld by the High Courts, the Government, I am sure, would not have taken this unpleasant and not wholly dignified course of coming to

[*Mr. Gokhale.*]

[3RD FEBRUARY, 1905.]

the Legislature to validate what they have done. Now, my Lord, one might easily ask the question how such illegal notifications came to be issued, for with the resources at the disposal of the various Governments in the matter of expert legal advice and in other ways the public have a right, even in this country, to expect work less careless than that. But when a mistake has been admitted, in public life as in private life, the less one dwells on it the better. But though I do not care to press the question how these notifications came to be issued, I must protest emphatically against the course proposed to be adopted to set right the illegality that has been committed. I think, my Lord, the only proper course for the Supreme Government on this occasion was to call upon the various Chancellors to withdraw these objectionable notifications and substitute others in their place more in accordance with the law. Instead of following this plain course, the Government have chosen to come to the Legislature with proposals to remedy, not any defect in the law, but a serious illegality committed in taking action under the law, and persisted in in spite of warnings and protests. My Lord, in all civilised countries there is a well-understood and well-defined distinction between the Legislature and the Executive Government, and the Legislature is regarded as higher than the Executive. In India unfortunately this distinction for the most part is of only a nominal character, for with the present constitution of the Councils the Executive Government can get what law they please passed by the Legislature without the slightest difficulty. I submit, however, that it is not desirable, it is not wise, that this fact should be forced on the attention of the public in so unpleasant a manner as on this occasion, and I think the distinction becomes a farce if our Legislature is to be thus at the beck and call of the Executive Government, and if it is to be called upon to exercise its powers of legislation to remedy defects not in existing laws but in executive action taken under those laws. My Lord, I respectfully but emphatically protest against this lowering of the dignity of the Legislature. Of course there is nothing to prevent the Government legally from coming to the Legislature with such proposals as they please. But I venture to think that there are moral limits on the competency of the Government in this matter. I think that the Government should come forward with proposals of amendment only in the event of the existing law being found so defective as to be unworkable, errors in executive action being set right as far as possible by executive action alone. I can imagine a case where, soon after passing a measure, the Government suddenly discover a flaw which makes it impossible to carry the measure into practice. In such a case, however one may regret the necessity of amending legislation, one would be prepared to regard the position of Government with a certain



[3RD FEBRUARY, 1905.]

[Mr. Gokhale.]

amount of sympathy. But that is not the case on the present occasion. It is not contended that no executive remedy is possible to set matters right, for, by withdrawing the present notifications and substituting others in accordance with law, the whole difficulty can be got over. The Hon'ble Member has told us that this would involve much loss of precious time and of valuable work already in process of being done. Surely this is not such a calamity as to justify the present proposals. It is true that those who get into power for the first time often imagine that they must begin their reforming work at once, and that the situation cannot brook a moment's delay. Everyone will not, however, necessarily sympathise with such impatience, and some may even welcome circumstances which necessitate their going more slowly. As regards the fear that in some places examinations will have to be postponed unless the election of the present Syndicates is validated, even that need not frighten us much, as examinations have been postponed in the past on account of plague and other difficulties, and there is no great harm if they have to be postponed for a time in any place this year. The Hon'ble Member has further told us that after all the defects that have been discovered in the notifications are of a purely technical character. Now I cannot subscribe to this view of the matter at all. Take, for instance, the formation of the Faculties. If this function had been left to the Senates as required by the law—if it had not been illegally usurped by the Chancellors—we should have had the Faculties formed in accordance with some clear and intelligible principle as in old times. But in what the Chancellors have done there is no such clear principle recognisable. Thus in Bombay a man like Mr. Justice Chandavarker, than whom there are few more cultured Fellows—European or Indian—in the Bombay Senate, has been excluded from the Arts Faculty, which after all is the most important Faculty, and relegated to the Faculty of Law, which is made to include every Fellow who has taken the LL.B. degree. So it is not only a mere setting right of technical defects that is involved in this Bill. My Lord, there is another most important question that must be brought to the notice of this Council. I am not sure that I quite followed the Hon'ble Member in what he said about the effect of this Bill on the Syndicates which have been elected under the illegal notifications. I understood him to say, and I speak subject to correction, that the elections would stand. If this be so, I can only protest against what is proposed as a great wrong, at least so far as the Bombay University is concerned, for there the opinion of eminent Counsel had been obtained, which declared that the notification was clearly illegal and *ultra vires*. This opinion had been forwarded to the University authorities before the elections were

[*Mr. Gokhale ; Mr. Richards.*] [3RD FEBRUARY, 1905.]

held, and the only request that was made was that the elections should be postponed till the Chancellor had reconsidered the whole question in the light of that opinion. An opportunity was thus given to the party that is anxious to introduce the new order of things to set matters right by cancelling the notification and issuing another in its place. Instead of that, they preferred to hold the elections in accordance with the notification, and now it is proposed to condone the illegality committed with open eyes by means of fresh legislation ! My Lord, the unfairness of this arrangement becomes all the more obvious when it is remembered that those who saw the illegality of the notification did not take part in the election beyond entering their protest. They did not allow themselves to be nominated as candidates : neither did they exercise their undoubted right to vote because of the illegal character of the whole proceeding. On the other hand, those who chose to act on the notification acted as though they were determined to carry out their object, whatever the obstacles in their way. Thus a motion for adjournment, which the Vice-Chancellor, who presided over the Arts meeting, allowed to be put to the meeting one day, was under exactly similar circumstances ruled out of order the next day at the Law meeting by the Judicial Member of the Executive Government, whose interest in University matters was suddenly aroused, and who attended to take the chair—which otherwise would have been occupied by the senior Fellow present, Sir Pherozechah Mehta.

“ And it is now proposed to support by fresh legislation the illegalities committed in this high-handed manner by those who chose to ignore the warning and opinion of eminent Counsel, and it is proposed to punish those who protested against the illegalities and refrained from being a party to them. I think it is absolutely unjustifiable thus to disfranchise a large number of Fellows and accept the elections made by a handful of men in each group as made by the Faculties, and once more I protest emphatically against the contemplated wrong.

“ My Lord, these are some of the observations which suggest themselves to me on this occasion. I have been under some disadvantage in having had to speak on the spur of the moment, and I can only trust I have made no mistake in my statement of facts, nor have I employed stronger language than the exigencies of the situation demanded.”

The Hon'ble MR. RICHARDS said :—“ I desire to say a few words, and only a few words, in answer to the speech of the Hon'ble Mr. Gokhale. He commenced by complaining that he had not had an opportunity of seeing this Bill. Well, that is a matter which will soon be remedied, for before the Bill comes

[3RD FEBRUARY, 1905.] [*Mr. Richards ; Mr. Gokhale.*]

on for the second reading he will have a copy of it, and will then be in a position to comment upon it in detail.

“The Hon’ble Member then said that this Bill was an admission that these notifications were illegal. Against that view I must enter an emphatic protest. The Bill does not admit that they were illegal. The object of introducing the Bill is simply to put an end to the prevailing state of suspense. As I said before, we cannot determine ourselves whether these notifications were legal or illegal. What we have to do is to put an end to the state of suspense.

“Now, the sole question is, what is to be done in order that the work of education in these Universities may go on? That, as I take it, is the whole question which the Legislative Council has to consider, and I listened, and I listened in vain, for any suggestion from the Hon’ble Member as to how that state of suspense could be put an end to. As I understand, if we were to assent to the course of action he proposed, the whole procedure would have to be gone through over again. All that has been done would be wasted and lost. The Senates would have to be reconstituted ; the Provisional Syndicates would have to be reconstituted—

[The Hon’ble MR. GOKHALE—“Not the Senates”.]

“Well, I think that the Senate is composed of Fellows, the election of some of whom would be void, at least in some of the Universities, if the view which the Hon’ble Member puts forward were correct ; therefore the Senate would have to be reconstituted ; and the Provisional Syndicates would have to be reconstituted. That, my Lord, is a matter which one would view with the very gravest concern. The object of everybody—the object of the Hon’ble gentleman, and the object of every one of us—is to further the work of the Universities ; and the object of the Bill is to put an end to these difficulties and to let the work of the Universities go on.”

The motion was put and agreed to.

The Hon’ble MR. RICHARDS introduced the Bill.

The Hon’ble MR. RICHARDS moved that the Bill, together with the Statement of Objects and Reasons relating thereto, be published in English in the Gazette of India and in the local official Gazettes.

The motion was put and agreed to.

**GOVERNMENT STORES.**[*Major-General Sir Edmond Elles.*] [3RD FEBRUARY, 1905.]**GOVERNMENT STORES BILL.**

The Hon'ble MAJOR-GENERAL SIR EDMOND ELLES said :—" My Lord, I beg to state that the Government have decided to withdraw the Government Stores Bill."

The Council adjourned to Friday, the 10th February, 1905.

CALCUTTA ;  
*The 6th February, 1905.* }

J. M. MACPHERSON,  
*Secretary to the Government of India,*  
*Legislative Department.*