

**ABSTRACT OF THE PROCEEDINGS**

**COUNCIL OF THE GOVERNOR GENERAL OF INDIA**

**LAWS AND REGULATIONS.**

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ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

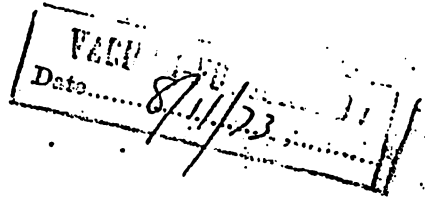
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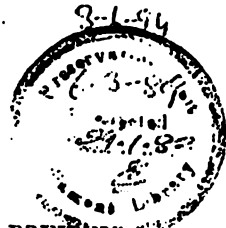
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1880.



*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.*

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The Council met at Government House on Thursday, the 26th June, 1879.

P R E S E N T :

His Excellency the Viceroy and Governor General of India, G.M.S.I., *presiding*.

His Honour the Lieutenant-Governor of the Panjáb, C.S.I.

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

The Hon'ble Sir A. J. Arbuthnot, K.C.S.I.

Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B., C.I.E.

General the Hon'ble Sir E. B. Johnson, R.A., K.C.B.

The Hon'ble Whitley Stokes, C.S.I.

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

The Hon'ble F. R. Cockerell.

The Hon'ble Sayyad Ahmad Khán Bahádur, C.S.I.

The Hon'ble T. C. Hope, C.S.I.

The Hon'ble B. W. Colvin.

PROBATE AND ADMINISTRATION BILL.

The Hon'ble MR. STOKES introduced the Bill to provide for the grant of probates of wills and letters of administration to the estates of certain deceased persons, and moved that it be referred to a Select Committee consisting of the Hon'ble Sir A. J. Arbuthnot, the Hon'ble Mr. Cockerell, the Hon'ble Sayyad Ahmad Khán, the Hon'ble Mr. Colvin and the Mover. He said that, when he had obtained leave to introduce the Bill, he explained that it would apply to the estates of all persons not at present governed by the Indian Succession Act the portions of that Act relating to the grant of probate and administration and the powers, duties and procedure of executors and administrators, omitting, however, those sections (187 and 190) which made it compulsory to obtain probate or administration. He had now to add that the Bill also omitted those sections (200 to 207) which laid down the order according to which the various persons interested were entitled to administration on an intestacy.

These latter sections it would be impossible to apply, as they were in part based on a law of intestate succession differing from that of the classes for which the Bill had been drawn. The only rule it seemed possible to lay down

for these classes was the broad one that the grant should follow the interest; that when several persons inheriting portions of the estate claimed administration, the Judge might grant it to any one or more of them as he thought fit, and that, when no such person applied, he might grant it to a creditor. This was the rule laid down by section 3 of the Bill; and, as it was apprehended that, in some cases of family feuds, a person entitled to a trifling share of the deceased's estate might apply for administration merely for the purpose of harassing his co-heirs by compelling them to apply, a full discretion had been reserved (in section 5) to refuse, for reasons recorded, to grant any application.

The Indian Succession Act, following the practice of the English Ecclesiastical Courts, provided for the taking of security for the due discharge of his office only from an administrator, it being considered that, in the case of an executor who was selected by the testator himself, such security could safely be dispensed with. But amongst the classes to which this Bill would apply, cases would, it was thought, occasionally occur in which it might be expedient to take security, even from an executor; and, accordingly, a section (4) had been inserted in the Bill amending section 256 of the Succession Act in such a manner as to give a power to the Court to require an executor to give security. This was not without precedent; for in England, as an executor was considered but as a bare trustee in equity, if he were insolvent, the Court of Chancery (or, as it is now called, the Chancery Division) would oblige him, as it would any other trustee, to give security before he entered on the trust. Several old cases in which this had been done were quoted in *Williams on Executors*, seventh edition, page 237.

Section 6 of the Bill saved in the fullest manner the substantive laws of succession of the classes to which the Bill applied. Section 8 was intended to put an end to the imperfect grants of probate and administration under the old Supreme Court Charters already referred to. To what, when moving for leave to introduce the Bill, he had said as to the insufficiency of a grant of probate of a Hindú's will he would now add that a grant, under those Charters, of letters of administration to a Hindú's estate did not affect land (I. L. R. 2 Calc. 433), so that, in the case of a Hindú dying intestate and leaving both moveable and immoveable property in a Presidency-town, it was necessary to have two representatives,—one for land and houses, and the other for goods—a matter of great inconvenience. It had, moreover, been quite recently ruled (4 Calc. Law. Rep. 290) that, if Hindús take out letters of administration at all, they must take out general letters. The useful power of making grants limited to certain property or for certain purposes was, therefore, now inapplicable in their cases. The Bill would set this right by declaring Part XXX of the Succession Act to apply in the case of every Hindú dying after the first of January next.

The portions of the Hindú Wills Act specified in section 9 were repealed merely because they were re-enacted with a wider application in the present Bill.

Section 10 was intended to remove all doubt as to the validity of certain grants of probate and administration which had been made in British Burma by the Recorder of Rangoon. The validity of those grants had been on two occasions upheld by Sir Barnes Peacock (see *Goods of Kokya Dine*, 2 Bengal Law Rep. App. Civ. Jur. 79; *Goods of Adam Saw*, 11 Suth. W. R. 413). But now-a-days, with some of the legal Sir Bediveres of India, "Authority forgets a dying king," or, at all events, a retired Chief Justice; and a late Recorder, Mr. Housman, had raised doubts as to the soundness of those decisions—doubts which, according to their usual practice, the legislature was bound to remove.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill be published in the local official Gazettes, in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

#### DISTRICT DELEGATES BILL.

The Hon'ble MR. STOKES introduced the Bill to make further provision for the grant of probates of wills and letters of administration in non-contentious cases, and moved that it be referred to a Select Committee consisting of the Hon'ble Sir A. J. Arbuthnot, the Hon'ble Mr. Cockerell, the Hon'ble Sayyad Ahmad Khán, the Hon'ble Mr. Colvin and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. STOKES moved that the Bill be published in the local official Gazettes, in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

#### BENARES FAMILY DOMAINS BILL.

The Hon'ble MR. COLVIN introduced the Bill to amend Bengal Regulation VII of 1828, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Stokes and Cockerell, the Hon'ble Sayyad Ahmad Khán and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. COLVIN also moved that the Bill be published in the *Government Gazette, North-Western Provinces and Oudh*, in English and in such other languages as the Local Government might think fit.

The Motion was put and agreed to.

#### RELIGIOUS CONGREGATIONS BILL.

The Hon'ble MR. STOKES introduced the Bill to provide for the holding of property by certain Religious Congregations, and moved that it be referred to a Select Committee consisting of the Hon'ble Sir A. J. Arbuthnot, the Hon'ble Mr. Colvin and the Mover. He said that the Council would observe that, as far as regarded immoveable property, the Bill was confined to cases in which such property was acquired for,—

- (a) a church, chapel, meeting-house or other place of religious worship ;
- (b) a dwelling-house for the minister of such congregation, with offices and garden ;
- (c) a hall or rooms for the meeting and transaction of the business of such congregation.

It had, however, been suggested by the gentleman (Mr. Chapman), whom we might properly call the promoter of this Bill, that it might be desirable to extend the scope of the measure, so as to apply to immoveable property used as an endowment or for other purposes not above specified. That was a matter which he (MR. STOKES) hoped would be considered by the Select Committee.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill be published in the local official Gazettes in English.

The Motion was put and agreed to.

#### CIVIL PROCEDURE CODE AMENDMENT BILL.

The Hon'ble MR. STOKES asked leave to postpone the presentation of the final Report of the Select Committee on the Bill to amend the Code of Civil Procedure.

Leave was granted.

The Council adjourned to Thursday, the 10th July, 1879.

SIMLA;  
The 26th June, 1879. }

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