

Friday,
19th March, 1886

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

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OF
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ASSEMBLED FOR THE PURPOSE OF MAKING
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*Abstract of the Proceedings of the Council of the Governor General of India,
assembled for the purpose of making Laws and Regulations under the
provisions of the Act of Parliament 24 & 25 Vic., cap. 67.*

The Council met at Government House on Friday, the 19th March, 1886.

P R E S E N T :

His Excellency the Viceroy and Governor General of India, K.P., G. C. B.,
G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

The Hon'ble C. P. Ilbert, C.S.I., C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

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

The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.

Major-General the Hon'ble T. E. Hughes, R.A., C.I.E.

The Hon'ble Peári Mohan Mukerji.

The Hon'ble H. St. A. Goodrich.

The Hon'ble G. H. P. Evans.

The Hon'ble J. W. Quinton.

The Hon'ble R. Steel.

The Hon'ble W. W. Hunter, C.S.I., C.I.E., L.L.D.

GUARDIANS AND WARDS BILL.

The Hon'ble MR. ILBERT introduced the Bill to consolidate and amend the law relating to Guardians and Wards, and moved that it be referred to a Select Committee consisting of the Hon'ble Sir S. Bayley, the Hon'ble Messrs. Evans and Hunter, the Hon'ble Rao Saheb Vishvanath Narayan Mandlik, the Hon'ble Peári Mohan Mukerji and the Mover. He said :—" I propose to direct the attention of the Council to a few of the more important points raised by the Bill.

" The Bill does not define the term ' minor ' further than by saying that the term means a person who has not reached the age of majority according to the law to which he is subject. In so doing it departs from the precedents afforded by the Acts of 1858 and 1874, which I propose to repeal, but follows the precedent of the Contract Act, and avoids some difficult questions connected with the age of majority. Some of these questions were settled by the Indian Majority Act of 1875, but the effect of that Act is not clear in all respects, and its application is confined to persons domiciled in British India.

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As to persons resident but not domiciled in British India, it seems clear that they do not attain their majority until 21 if they are in a regulation province, but if they happen to be in a non-regulation province it might be a question whether their age of majority is not governed by Act XIII of 1874, which defines a minor as a person who has not completed the age of 18 years. If this is so, the results may be odd. We all know the American story of the full grown railway passenger, who, on his arrival at San Francisco after a through journey from New York, tendered a half ticket, and when asked whether he really professed to be under age, replied 'No, but I was when I started'. In this country, if the view of the law which I have suggested but for the accuracy of which I by no means vouch, is correct, a railway journey from a non-regulation to a regulation province might be attended by a still more startling result. A young British officer stationed with his regiment at Delhi may have attained his majority, but if he is subsequently quartered at Meerut he may, on his arrival there from Delhi, find that he has relapsed into infancy. The repeal of the Act of 1874 would be sufficient to remove this particular discrepancy, but it is impossible that on this and other points the law of majority should be made more clear. If so, however, the necessary legislation should, I think, be embodied in an amendment of the Majority Act and not in the present Bill.

" Passing on to another definition, I may remark that the term ' guardian ' is defined generally as meaning a person having the care of the person of a minor or of his property, or of both, and consequently the provisions of the Bill will apply to all guardians, whether appointed or recognized by the Court, or not, unless their application is expressly limited, as in several cases it is, to particular classes of guardians.

" The second chapter of the Bill relates to the appointment of guardians. Its first two sections deal with appointments otherwise than by the Court, and, in so doing, draw a distinction between the classes to which the Indian Succession Act applies and the classes to which it does not apply.

" In the case of the first class of persons the Bill declares the parental power of appointing guardians in the terms of the European British Minors Act—terms which, to the credit of the Indian legislature, recognize the mother's rights more liberally than they are recognized under the existing law of England.

" In the case of the other class of persons the Bill does not presume to define what powers of appointing guardians are valid under Hindu or Muhammadan law. It merely saves those powers whatever they may be.

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“ We now pass to the appointment of guardians by the Court, and here the Bill recognizes two classes of cases—one where no guardian has been appointed and the Court is called on to do what the parent might have done, and the other where there are conflicting claims to the guardianship and the Court has to decide between them. Accordingly the Court is empowered either to appoint a guardian or to declare the title of a person claiming to be a guardian. For this purpose concurrent jurisdiction is given to the High Court and to the District Court, and it is provided that as a general rule applications for guardianship of the person of a minor are to be made to the Court having jurisdiction where the minor resides, but this rule is not absolute and convenience is to be regarded. The procedure on the application is to be practically the same as under the European British Minors Act. The rules with respect to the considerations to be observed in appointing a guardian are also taken from that Act, but the Court is expressly directed to have regard to the law to which the minor is subject, and a special rule is added with reference to the particular cases of minors belonging to an undivided Hindu family. My friend Mr. Mandlik referred last week to the conflicting decisions about the power of a Court to appoint a guardian of a minor belonging to such a family, and it will be found that in framing the Bill and Statement of Objects and Reasons those decisions have not been overlooked. We should, I think, all admit that as a rule it is highly desirable to leave a minor belonging to a Hindu undivided family to his natural guardians, without any interference on the part of the Court, but there may be exceptional cases where the intervention of the Court may be required for his protection. The Bill recognizes the possibility of such cases, but expressly provides, *first*, that, where the minor is a member of an undivided Hindu family, special weight is to be attached to any claim which the managing member of the family may make to be appointed or declared guardian, and to any objection which he may take to a proposed appointment or declaration; and *secondly*, that, if a guardian of the property is appointed in such a case, the Court must, except where it is satisfactorily proved that the minor's interests have been actually imperilled, impose such restrictions on the guardian as will prevent him from interfering with the powers of the managing member of the family.

“ The chapter relating to the duties, rights and liabilities of guardians is largely taken from the European British Minors Act, with some additions and omissions. A section has been added laying down certain principles which are recognized by the English law as flowing from the fiduciary relation of guardian and ward. On the other hand, a section relating to the religion in

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which a ward is to be trained has been omitted. It merely declares what is well-settled English law in the very rare cases in which it is brought into operation, and I did not feel sure that, if applied to a wider class, it might not raise or suggest more difficulties than it removes. If, however, the Select Committee should think that it can with propriety be re-enacted, either with or without modifications, I would gladly insert it in the Bill.

“The sections relating to the powers of a guardian of property deal with one of the questions which was most discussed in the replies elicited by the Government Resolution that preceded the preparation of this Bill.

“The Hon’ble Mr. Melvill was strongly impressed with the dangers to which the interests of minors are exposed under the existing law, and, in order to prevent or check improper alienations of the property, suggested that it should be rendered unsafe for any person to enter into any transaction with respect to the immoveable property of a minor except with a guardian or administrator holding a certificate granted by the Court. On the other hand, he would put a premium on applications for such certificates by removing that provision of the Minors Act which requires the previous sanction of the Civil Court to any alienation or encumbrance by a certificated guardian.

“The Resolution of the Government of India in commenting on these suggestions pointed out that the former of them might interfere, to a much greater extent than is necessary or desirable, with the vast number of transactions which daily take place in relation to immoveable property in which minors are interested, and might flood the Civil Courts with applications for certificates; but with respect to the second suggestion inclined to the view that the existing restrictions on the powers of certificated guardians might in certain cases be relaxed.

“The opinions received on these points appear to me to point to the conclusion that it would not be safe or desirable to restrict the powers of uncertificated guardians in the manner proposed by Mr. Melvill; that as a general rule guardians not appointed or recognized by the Court should have such powers as are given to them by the law to which they are subject, and by the instrument (if any) to which they owe their appointment; that as a general rule also guardians appointed or recognized by the Court should not alienate the ward’s property without the leave of the Court; but that the Court should be empowered to relax these restrictions.

“These are the lines upon which the Bill has been drawn. It provides that where a guardian has been appointed or declared by the Court, he shall not sell,

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borrow or grant long leases without the previous permission of the Court, but the Court may, subject to rules to be made by the High Court, exempt a guardian from the necessity of obtaining the permission, either generally or in special circumstances, and as to either the whole or any specified part of the ward's property. It then, describes the considerations which are to be observed in granting this permission, and then, in a section relating to the general powers of a guardian of property, it goes on to say that—

“first, where a guardian has been appointed or declared by the Court, the Court may by order define, extend or restrict his powers in such manner and to such extent as it may consider to be for the advantage of the ward and consistent with the law to which he is subject ;

“secondly, subject to any such order and to the specific restrictions to which I have referred, a guardian appointed by will or other like instrument is to have the powers and be subject to the restrictions conferred and imposed on him by that instrument ; and

“lastly, subject to these possible restrictions, a guardian may do all acts which are reasonable and proper for the realization, protection or benefit of the ward's property and are allowed by the law to which the ward is subject.

“Thus in the cases where the Court does not intervene, which will of course be the great majority, the guardian is left practically as he is under the existing law, but where the Court exercises its power of intervention it is given considerable discretion to mould the powers of the guardian in such way as it may consider conducive to the interests of the ward.

“The section giving this discretion follows the lines of a section in the Probate and Administration Act (section 90), which, I am told, is not working quite satisfactorily in practice. It is very possible that the experience gained in working that section may suggest improvements in the present Bill, but it must be borne in mind that there is a considerable difference between the position of a guardian and the position of an administrator to a deceased person's property, and that restrictions which are unnecessary or undesirable in the latter case may be justified or required in the former.

“The sections to which I have just referred are those which I found it most difficult to frame. In the later portions of the Bill the existing law for the

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most part furnished a sufficient guide, but it will be found that additions have been made which will I think be found advantageous both to guardians and to wards. Thus a guardian is empowered to apply to the Court for advice as to the execution of his duties, and is protected if he acts in good faith on that advice. On the other hand, the Court is empowered, either on application by any person interested or of its own motion, to make an order regulating the conduct or proceedings of any guardian whether he is appointed by the Court or not.

“ It will have been observed from what I have said that the Bill deals with certain points about which there is room for considerable difference of opinion. If, however, the Council approves of the general lines on which the Bill is framed, it may safely leave these points to be considered and discussed by the Select Committee.”

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

INDIAN SECURITIES BILL.

The Hon'ble SIR A. COLVIN moved that the Report of the Select Committee on the Bill to amend the law relating to Government Securities be taken into consideration. He said :—“ Since this Bill was sent to the Select Committee the only change which has been made is the addition of two sub-sections to the section (7) providing for the case of indorsements by the past holders of public offices, and also for cases where there is more than one holder of such office. The opportunity has also been taken for consolidating the law relating to Government securities. The provisions of the Indian Securities Acts of 1881 and 1885 have accordingly been embodied in the present Bill.

“ For the rest, I have nothing to add to what was explained when this Bill was first introduced, and I need not detain the Council by further remarks on the subject.”

The Motion was put and agreed to.

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[Sir A. Colvin; The President.]

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

The Motion was put and agreed to.

OUDH RENT BILL.

HIS EXCELLENCY THE PRESIDENT said :—" As this is the last meeting of the season, and we are about to adjourn *sine die*, I think it well to explain that the reason why we have not gone on with the Oudh Tenancy Bill, which was introduced some weeks ago, has been the unavoidable absence of our colleague, the Hon'ble Raja Amir Hosan, who has great knowledge of the conditions of Oudh agriculture, and takes a special interest in the proposed legislation. As we counted on his co-operation and assistance, and as a severe illness unfortunately prevents him from taking his place amongst us, we have thought it better to postpone taking the Bill through its second stage. In order, however, not to lose time, the Local Government intends, I understand, to publish a draft of the Bill, and to collect the opinions of competent authorities upon it."

The Council adjourned *sine die*.

S. HARVEY JAMES,

Offg. Secy. to the Govt. of India,

Legislative Department.

FORT WILLIAM; }

The 22nd March, 1886. }