

*Wednesday,  
22nd August, 1888*

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXVII

Jan.-Dec., 1888

ABSTRACT OF THE PROCEEDINGS

OF

THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS

VOLUME XXVII



Published by the Authority of the Governor General.

CALCUTTA :  
PRINTED BY THE SUPERINTENDENT OF GOVERNMENT PRINTING, INDIA.  
1889

*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 Vict., cap. 67.*

The Council met at Viceregal Lodge, Simla, on Wednesday, the 22nd August,  
1888.

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 the Punjab, K.C.S.I.

His Excellency the Commander-in-Chief, Bart., V.C., G.C.B., G.C.I.E., R.A.

The Hon'ble Lieutenant-General G. T. Chesney, C.B., C.S.I., C.I.E., R.E.

The Hon'ble A. R. Scoble, Q.C.

The Hon'ble Sir C. U. Aitchison, K.C.S.I., C.I.E., LL.D., D.O.L.

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

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

The Hon'ble Nawáb Sir Nawázish Ali Khán, K.C.I.E.

The Hon'ble G. R. Elsmie.

SALT-DUTY BILL.

The Hon'ble MR. WESTLAND moved that the Bill to regulate the payment of duty in respect of Salt where there has been an alteration of the rate of duty payable in respect thereof be referred to a Select Committee consisting of the Hon'ble Mr. Scoble, the Hon'ble Sir Charles Elliott, the Hon'ble Mr. Elsmie and the Mover, with instructions to report within two months.

The Motion was put and agreed to.

PROBATE AND ADMINISTRATION BILL.

The Hon'ble MR. SCOBLE moved for leave to introduce a Bill to amend the Indian Succession Act, 1865, the Probate and Administration Act, 1881, and the Court-fees Act, 1870, and to make provision with respect to certain other matters. He said :—

“ Under section 90 of the Probate and Administration Act, 1881, the consent of the Court by which probate or letters of administration is or are granted is required to every disposition of property made by an executor or administrator,

[ *Mr. Scoble.* ]

[ 22ND AUGUST,

subject to the proviso that the Court may, when granting probate or letters of administration, exempt the executor or administrator from the necessity of obtaining such consent as to the whole or any specified part of the assets of the deceased.

“Neither under the Indian Succession Act, section 269, nor under the Hindu Wills Act, 1870, nor under the law as applied in the case of letters of administration granted by the Presidency High Courts, was any consent of the Court required previous to the disposal of property by an executor or administrator, and the provisions to this effect in section 90 of the Probate and Administration Act, 1881, though no doubt prompted by caution, were distinctly retrogressive.

“As might have been expected, considerable difficulties have arisen from this alteration in the law. Hindus in the presidency-towns have gone on taking out probates and letters of administration in the old form for the last seven years, and they now find that many of their sales and transfers of property are liable to be called in question because the consent of the Court has not been obtained. As an illustration, let me take the simple case of Government promissory notes, which have frequently to be sold to provide funds for the payment of debts of a deceased person. The Secretary and Treasurer of the Bank of Bengal writes :—

‘It is only recently that the restrictive effect of section 90 of Act V of 1881 has been realized by the Public Debt Office, and for some years past no distinction was made between the powers of European and Asiatic executors and administrators with respect to the disposal of notes belonging to the estates administered by them; and, so far as I am aware, no complaints have ever arisen from such want of distinction. The new state of things, on the contrary, is causing much dissatisfaction amongst the persons to whom the Indian Succession Act does not apply, and who are interested in questions relating to the law of succession to Government securities.’

“On referring to the records in the Legislative Department, I find that section 90 of Act V of 1881 was apparently based on a proposal of the Lieutenant-Governor of the North-Western Provinces to require ‘the consent of the Judge to the sale or mortgage of immoveable property’ only. The Select Committee to whom the Bill was referred went beyond this recommendation, stating it to be their opinion that the power to dispense with the necessity for consent, which it conferred on all Courts, would be sufficient to prevent any practical inconvenience. This expectation has not been realized; and I think a strong case has been made for a return to the former practice, and for legalizing intermediate transactions which have occurred since the alteration of the law in 1881.

1888.]

[*Mr. Scoble.*]

“Theoretically, no doubt, the consent of the Court appears to be a great safeguard, but in practice it is not very much to be relied on. ‘Such applications,’ says a District Judge of great experience in Bengal, ‘are ordinarily made on affidavit or some merely formal evidence, and no Judge can feel sure whether, in granting the application, he is permitting the executor to make a necessary sale or authorizing an act of waste. As the law stands at present, it appears to me to serve only to cause useless trouble and expense to an honest executor, and probably to protect a fraudulent executor, who might plead the sanction of the Court, if called to account for a sale improperly made.’ Mr. Gould, the late Administrator General of Madras, tersely describes section 90 as a ‘trap for the unwary and a stumbling-block for the wary.’ And my learned friend Mr. Woodroffe, whose long experience lends great weight to his opinion on the subject, considers that the retention in the section of the words ‘with the consent of the Court’ and of the proviso renders litigation frequent and ‘necessitates constant applications to Courts, which, being almost always *ex parte*, are but of little real protection to the beneficiaries.’ The true safeguard, it seems to me, is to be found in the simple but effective process of requiring adequate security to be given, under section 78 of the Act, for the due administration of estates.

“In these circumstances it is proposed by section 7 of the Bill to substitute for section 90 of the Probate and Administration Act, 1881, a section conferring on an executor or administrator an absolute power of disposal over moveable property, but, as regards immoveable property, subjecting an executor ordinarily to such restrictions, if any, as are imposed on him by the will appointing him, and an administrator to restrictions similar to those imposed on a guardian by Acts XL of 1858 and XX of 1864. It is also proposed by section 10 of the Bill to confer on persons who have already taken out probate or letters of administration under Act V of 1881 the unrestricted powers, prospectively and retrospectively, which under the Hindu Wills Act used to be conferred, and under the Indian Succession Act are conferred, on executors and administrators.

“It is further proposed by section 10 of the Bill to remove a doubt whether section 90 of the Act of 1881 is to be construed, with respect to transfers made after the first day of April, 1881, as applying to executors and administrators to whom probates, and letters of administration with copy of the will annexed, were granted under the Hindu Wills Act, 1870, before that day.

“The other sections of the Bill are of secondary importance.

[*Mr. Scoble; Mr. Westland.*]

[22ND AUGUST,

“Sections 4 and 8 will enable Courts which are not Courts of Record, and cannot punish for such contempt as is involved in the omission to submit an inventory or account, to insist in proper cases, either in the interests of the revenue or at the instance of a person interested in the administration of an estate, on the submission of such documents as Acts X of 1865 and V of 1881 now require to be submitted in all cases, without, however, making any express provision for enforcing their submission.

“Section 9 is designed to remove a doubt which has existed since the enactment of article 2 of the first schedule to the Indian Stamp Act, 1879, with respect to the stamp to which an administration-bond under the Indian Succession Act, 1865, or the Probate and Administration Act, 1881, is liable.

“Article 16 of the second schedule to the Court-fees Act, 1870, fixed the fee on an administration-bond at eight rupees; under the Stamp Act, 1879, the same duty as that payable on a security-bond, which in no case exceeds five rupees, is imposed; but the former provision was not repealed, and questions have arisen as to the Act under which the duty ought to be levied. With the consent of my hon'ble friend Mr. Westland I propose to abolish the higher rate and to fix five rupees as the maximum duty.”

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also introduced the Bill.

The Hon'ble MR. SCOBLE also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and 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.

#### SUCCESSION CERTIFICATES BILL.

The Hon'ble MR. WESTLAND moved for leave to introduce a Bill to facilitate the collection of debts on successions and afford protection to parties paying debts to the representatives of deceased persons. He said :—

“The present Bill has a history which goes back to 1881. In that year Mr. Pitt-Kennedy made a proposal that Act XXVII of 1860 and the Court-fees Act should be amended so as to impose upon a person taking out a certificate a fee

1888.]

[ *Mr. Westland.* ]

of two per cent. upon the entire value of the estate of the deceased. The proposal was based on these grounds—first, that the lower fee taken on certificates under Act XXVII of 1860 tempted persons to substitute the certificate procedure for the more perfect system of taking out administration ; second, that the system of certificates gave an advantage to some classes of the community over others, who could proceed only by the regular system of administration ; and, third, that the grant of a certificate was by large classes of the community regarded, though erroneously, as equivalent to the establishment of a representative title as against the world.

“ These proposals were referred to Local Governments in April, 1881 ; but the weight of local authority was against giving any new character to the Certificate Act ; it was considered that the mass of the people were not ripe for the imposition of a regular system of administration as a condition precedent to the realization of the deceased's debts. But it was shown that the neglect and evasion of the law which were among the grounds of Mr. Pitt-Kennedy's proposals were extremely common. Though the law nominally imposed a two per cent. duty, it practically left it quite optional with the payer whether he should pay it or not.

“ First of all, a person could obtain a certificate on a valuation of Rs. 20 only, and having got it could apply it to the collection of a debt of Rs. 20,000. The Court-fees Act, indeed, laid down that the holder had to file an account after a year ; but the provision was not effective, and, as a matter of fact, was continually evaded. So also it was found that applicants occasionally pursued their cases in the Court so far as to have themselves declared entitled to a certificate, but stopped at that point in order to avoid payment of the duty required upon its actual issue. And the law itself contained an express provision against absence of certificate being considered a disqualification even in the case of a refractory debtor sued in Court ; for it is provided that the Court should not admit the plea unless it considered it was founded upon a real doubt as to the title of the claimant.

“ To remedy these defects in the law Major Baring introduced in this Council in March, 1883, a Bill to amend Act XXVII of 1860. The main provision of the Bill was that the certificate should be a certificate for the collection only of such debts as were specifically enumerated in it. Following out the principle that there should be no compulsory administration, the Bill was so worded that the certificate-holder was not obliged to take out a certificate for, or pay duty upon, debts which he believed he could amicably collect without one, but he

[ *Mr. Westland.* ]

[ 22ND AUGUST, ]

could not sue for any debt unless it was first expressly included ; and of course he had a strong motive to insert, and pay duty upon, any debts regarding the collection of which he was not quite assured.

“ This Bill was referred to Local Governments, and was for the most part favourably reported on. Several improvements in detail were recommended ; and the only objection made to it on principle was that the certificate should be made to compulsorily include all the debts due to the estate, and even the whole estate. But, as I have already stated, the Government was not prepared to adopt the view that no powers in respect of a deceased's estate should be given which fell short of complete administration ; in fact, the primary principle of the Bill was the protection of debtors and not the administration of the estate.

“ While this was going on, and before the Bill of 1883 had reached the stage of reference to a Select Committee, the Government of Bengal laid before the Government of India a representation regarding the absence of any security for the due realization of the stamp-revenue both in the case of applicants for certificates and in the allied cases of applications for administration and for guardianship.

“ The whole question was again submitted to local authorities, executive and judicial, and the present Bill is the outcome of such further amendments and suggestions as have received general approval. Part of these suggestions have been considered with reference to the Bill which the Hon'ble Mr. Scoble has to-day introduced.

“ So far as regards the Bill relating to certificates, it will be observed that we still adhere to the voluntary principle. We have rejected proposals to include the whole of the debts of the estate, and not only those which will not be amicably paid ; we have rejected proposals to attach a penalty to the non-submission of accounts, and proposals to give rewards to informers who bring to notice evasions in respect of valuation. And, although the certificate is not valid for the enforced recovery of any debt not mentioned in it, we protect any debtor who in good faith pays such a debt to the holder.

“ The Bill is not a fiscal Bill in the sense of its imposing any new duties or taxes, but it will no doubt have the effect of increasing the revenue by preventing what are reported to be the very frequent evasions of the duties prescribed by the existing law.

---

1888.]

[*Mr. Westland; Mr. Scoble.*]

“ The form of the Bill is changed since the subject was last before the Council. In 1883 it was thought sufficient to amend the Act of 1860, but it is now thought best, considering the additional changes now proposed, to abolish the old Act and substitute an entirely new one.”

The Motion was put and agreed to.

The Hon'ble MR. WESTLAND also introduced the Bill.

The Hon'ble MR. WESTLAND also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and 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.

#### CIVIL PROCEDURE CODE, &c., AMENDMENT BILL.

The Hon'ble MR. SCOBLE moved for leave to introduce a Bill to amend the Code of Civil Procedure and the Presidency Small Cause Courts Act, 1882. He said:—

“ The purpose of this Bill is two-fold—in the first place, to make it quite clear what chapters and sections of the Code of Civil Procedure, as amended by recent legislation, apply to Presidency and Provincial Courts of Small Causes, respectively; and, secondly, to regulate the course of appeal from orders in insolvency-matters under the Code.

“ Doubts have been expressed by competent authority as to the effect of Acts VI and VII of 1888 in respect of both these matters. Such doubts lead to unnecessary litigation, which it should be the object of the legislature to prevent. I therefore ask the Council to permit me to remove them by this Bill, which is a mere corollary to the earlier legislation of this year upon the subject.”

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also introduced the Bill.

The Hon'ble MR. SCOBLE also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the

[ *Mr. Scoble.* ]

[ 22ND AUGUST, 1888. ]

local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 5th September, 1888.

SIMLA;	}	S. HARVEY JAMES,
<i>The 24th August, 1888.</i>		<i>Secretary to the Government of India, Legislative Department.</i>

---

*Note.*—The Meeting fixed for the 8th August, 1888, was subsequently postponed to the 22nd idem.