

*Thursday,
19th January, 1893*

ABSTRACT OF THE PROCEEDINGS
OF THE
Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XXXII

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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,

1893

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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 Vict., cap. 67.

The Council met at Government House on Thursday, the 19th January, 1893.

PRESENT :

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

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

The Hon'ble Sir P. P. Hutchins, K.C.S.I.

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

The Hon'ble Sir A. E. Miller, Kt., Q.C.

The Hon'ble Lieutenant-General H. Brackenbury, C.B., R.A.

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

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

The Hon'ble Raja Udai Pratab Singh, C.S.I., of Bhinga.

The Hon'ble J. L. Mackay, C.I.E.

The Hon'ble Dr. Rash Behary Ghose.

The Hon'ble Palli Chentsal Rao Pantulu, C.I.E.

The Hon'ble G. R. Elsmie, C.S.I.

The Hon'ble Sir G. H. P. Evans, K.C.I.E.

The Hon'ble C. C. Stevens.

The Hon'ble Fazulbhai Vishram.

NEW MEMBER.

The Hon'ble FAZULBHAI VISHRAM took his seat as an Additional Member of Council.

PETIT BARONETCY BILL.

The Hon'ble SIR ALEXANDER MILLER moved that the Bill for settling the Endowment of the Baronetcy conferred upon Sir Dinshaw Manockjee Petit, of "Petit Hall," in the Island of Bombay, be taken into consideration.

The Motion was put and agreed to.

The Hon'ble DR. RASH BEHARY GHOSE moved that section 12 of the Bill be omitted. He said :—

" I confess that it is not without a certain degree of reluctance that I move the amendment which stands in my name. One of the foremost captains of indus-

trial enterprise in India, Sir Dinshaw Manockjee, has by his princely charities so endeared himself to all his countrymen that it is by no means an agreeable duty to have to oppose any of the provisions of a Bill which has been settled in concert with his legal advisers and which may therefore be presumed to embody his own wishes. Among a people who have always been distinguished for their munificence there is probably no name more illustrious than that of the recently created Baronet; and the provisions of the Bill now before us may not altogether unreasonably be regarded as a fitting recognition of the eminent services rendered by Sir Dinshaw Manockjee to the country. But, although I trust I yield to no one in my appreciation of the many claims to distinction possessed by the Parsi Baronet, I cannot forget that the proposed legislation is of a very exceptional character. It is an encroachment on the rule against perpetuities as known among lawyers—a rule based not on any artificial reasoning but on the most obvious principles of public policy, and which lays down that except within certain well-defined limits you cannot fetter the free transfer of property unless for purposes useful and beneficial to the public, or, as they are technically called, charitable uses. Among Hindus, as the law now stands, the right to prevent the unrestricted transfer of property exists, if it can be said to exist at all, in a most attenuated form. Greater latitude, and perhaps with more reason, is allowed in the English law, but even in England the limits within which alienation may be restrained are rigidly defined; and the well-known process of settling and resettling estates among the great English landowners does not, I may add, constitute any real exception, as it does not in any way trench upon the rule against perpetuities, but the mode in which this is accomplished is of too artificial a character to be readily intelligible to any one who is not a lawyer. The inviolable character of the rule under discussion and the jealousy with which it is guarded may be very well inferred from the fact that in the course of nearly two hundred years we come across only two instances in which the Legislature in England has interfered with it. Blenheim was settled inalienably on the family of the Duke of Marlborough by 3 & 4 Anne, c. 6, 5 Anne, c. 3, and 5 Anne, c. 4, and more than a hundred years later Strathfieldsaye was in the like manner settled on the family of the Duke of Wellington by 54 Geo. III, c. 161; but no provision is to be found in any of these Statutes at all similar to the provisions of section 12 of the proposed Act. The law, if I might say so without impropriety, has wisely set limits to the right of fettering inheritances, and I do not think that any subject of the Queen-Empress can fairly complain if we deny him a privilege which a great nation, not perhaps effusively demonstrative but full of the most generous impulses, refused to a Marlborough and a Wellington. It is said that this Bill

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[*Dr. Rash Behary Ghose ; Sir Griffith Evans.*]

has been drawn on the model of Act XX of 1860. Now, I have looked into that Act, and I do not find anything in it at all analogous to section 12 of the present Bill. The section under notice is altogether a new departure for which I confess I have not been able to find any sufficient justification. It would also seem to be wholly unnecessary. The income of the property comprised in the proposed trust is evidently deemed sufficient, at any rate for the present, to support the dignity of a Baronet conferred upon Sir Dinshaw Manockjee. If, however, at any time in the future, that income should happen to be inadequate for the purpose, the funds might be easily augmented by the less objectionable process of adding to them such securities as are mentioned in section 11 of the Bill. I would also beg to point out that, even as regards any contemplated addition of immoveable property in the future, the acceptance of my amendment would only make this difference, that, instead of applying to the Governor of Bombay in Council, Sir Dinshaw Manockjee, or his successors, as the case may be, would have to move, the Legislature ; and I am sure any application bearing the honoured name of Sir Dinshaw Manockjee would always secure the respectful attention of Hon'ble Members. Moreover, there is no reason why the Legislature should delegate its functions in such matters to the Local Government, a course which, in my humble judgment, should be adopted only in cases of imperative necessity. I have only to add that in setting aside the ordinary law of the land in favour of a subject, however distinguished, we cannot proceed too cautiously, that such measures do not always fulfil the expectations entertained by their promoters, and that, in this country specially, exceptional legislation of the present order might create a precedent of a very inconvenient and embarrassing character."

The Hon'ble SIR GRIFFITH EVANS said that he was not aware until he was informed by his hon'ble friend the mover of the amendment that this Bill differed in its lines from the Jamsetjee Jeejeebhoy Act. He had originally only read the Statement of Objects and Reasons.

"The Statement of Objects and Reasons was as follows :—

'The object of this Bill is to settle the endowment of the Baronetcy conferred on Sir Dinshaw Manockjee Petit.

'It has been framed on the lines of Act XX of 1860 and has been settled in concert with Sir Dinshaw's advisers and the Government of Bombay.'

This satisfied him, and he had not looked at the Bill itself and did not suppose it was at all different from the Act of 1860. He found, however, that, as had

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been pointed out by his hon'ble friend Dr. Rash Behari Ghose, there were two clauses of it entirely different from, and not to be found in any form in, the Jamsetjee Jeejeebhoy Act. The Jamsetjee Jeejeebhoy Act provided, roughly speaking, for an endowment for making inalienable a sum of money calculated to produce a lakh of rupees in order to support the title and dignity of the Baronetcy. The present Bill made an endowment of securities yielding an income of Rs. 1,25,000, which securities were bonds of the Municipal Corporation of Bombay and which were not likely to alter in value. That was amply sufficient. But section 11 of the Bill, which was not to be found in any other Act, and which he would be inclined to omit altogether, provided that a Baronet for the time being or any one on his behalf might, with the sanction of the Bombay Government, augment the funds and securities, and that the trustees might accept those securities, which would be added to the endowment and which would be for all time withdrawn for purposes of commerce; for the notification by which this would be done would be irrevocable, and it was a matter which could not be undone.

The next section (12), that against which the amendment was directed provided in a similar manner with regard to immoveable property. It provided that, upon application to the Government of Bombay, the Baronet for the time being might ask to be allowed to add any immoveable property in the Presidency to the endowment, and that upon a resolution of the Governor of Bombay in Council the property in question should be so added and the Act should take effect with respect to it. It did not seem to him that those provisions were in any way necessary. He should perhaps not have troubled about them, seeing that the Bill was only a personal one, if it were not that those personal Acts were likely to be more or less numerous unless power was taken by Government to deal generally with this matter; and the reason why he desired to trouble the Council in this particular instance was that a precedent would be created, and if the Council had anything to do of this kind in Bengal there would be considerable dissatisfaction if the same powers were not given as those which were proposed in this Bill; and, therefore, if the clauses in question were allowed, an exceedingly embarrassing precedent would be created for the future. He should also remark that in this particular case those Parsi Baronets belonged to a trading class—a class illustrious for their wonderful power of making money and managing business. One must remember that the case was not the same as it would be in England, where a man who belonged to a great trading house had some high honour conferred upon him and thereupon generally became a member of the landed aristocracy and left trade. There was

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no reason to suppose that those Parsi traders would ever be anything else but great and wealthy traders, or that they would depart from the line followed by their forefathers. There was a great objection to those clauses being made use of to tie up large funds and obliterate them for the general use for ever, and there was still greater objection to tying up land, specially in the Island of Bombay, a great trading centre, where land was limited, and to making such land inalienable for ever, unless there was some necessity for such a step. There was only one precedent, so far as he knew, for the course proposed, and that was to be found in the Murshidabad Act. In that Act the Council would find a clause which provided for the addition of further immoveable property to the Murshidabad endowment with the sanction of the Governor General in Council. That had been done under special circumstances. It was felt generally that the existing endowment was not as large as one would like it to be considering the position of premier noble of Bengal which had been given to the Nawab. It was also felt that our connection with the Nawab's family, the former Rulers of Bengal, whose estate had gradually shrunk to its present dimensions, made it desirable that his case should receive exceptional consideration; and it was believed that any addition that could be made without expense to the State to the Murshidabad endowment would be gratifying to everybody in view of the fate which had befallen the House. That was partly a political matter, and it was felt that there would be no danger of any excessive endowment being made: it was also thought that the Murshidabad Nawabs might inherit certain lands in the hands of other members of the family and desire to add them to the endowment.

The only object in this case was to provide such an endowment as would prevent the hereditary honour conferred by Her Majesty being brought into contempt by the poverty of the holder. This seemed amply provided for without these sections. He was aware that the power was safeguarded in the present Bill by requiring the sanction of the Governor of Bombay in Council; still he feared that if in future the Government were to be approached for leave to add to the endowment by a wealthy holder of the title who had earned gratitude by fresh benefactions, such leave might be granted without much consideration as to the evil effects of rendering a trader's assets inalienable and tying up land in Bombay for ever. But it was mainly on the ground of its being a bad precedent and one that might embarrass the Government here in dealing with this subject that he objected to the clauses in question. He would suggest whether it might not be well under those circumstances to adjourn the consideration of the Bill and refer the matter to Bombay. He should not like the Council to do anything so ungracious as to cut out anything from a Bill of this kind without

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further consultation with the Bombay Government and Sir Dinshaw Petit. But he thought it must be evident to the Council that it would be inadvisable to allow any power in the Bill such as the clauses in question provided for, and it was very possible that if a further reference was made to the Bombay Government the matter would be satisfactorily arranged.

The Hon'ble SIR ALEXANDER MILLER said :—

“ With regard to the last point which the hon'ble member has mentioned, I may explain that this question was deliberately raised by the Government of Bombay, and I should like to read to the Council the correspondence which passed rather more than a year ago. If, however, the Council should be of opinion that any object would be gained by sending this Bill back to the Bombay Government, I should have no objection.

“ On the 18th November, 1891, the Advocate General wrote the following opinion. I do not propose to read it all and will leave out the immaterial portions of it :—

‘ I see no reason on behalf of the Government of Bombay, to object to any of the provisions of the Bill as now settled by the Legal Remembrancer, except those contained in sections 11 and 12 thereof, which seem to me to require the serious consideration of Government before they should be allowed to form part of the Bill. Section 11 enables any person or persons at any time or times hereafter to increase the stocks and moveable securities subject to the trusts of the Act, and no limit is placed on the amount of increase. It is possible, but by no means certain, that the assent of the Corporation would be required. Section 12 gives the same power with regard to immoveable property in the Presidency of Bombay, subject, however, in the case of persons other than the Baronet for the time being to the consent of the Governor of Bombay in Council. I give what seems to be the effect of the clauses without following their wording.

‘ Now the Bill is in itself an exception to the ordinary law forbidding the creation of perpetuities, and like Act XX of 1860 creates such a perpetuity for the purpose of adequately supporting a hereditary dignity conferred by Her Majesty. For that purpose Act XX of 1860 settled funds producing an annual income of Rs. 1,00,000, and the present Bill settles funds producing an annual income of Rs. 1,25,000, in each case a mansion house being also settled. Presumably the amount settled is in each case sufficient in the opinion of Government, adequately to support the dignity conferred. It seems to me a matter open to grave objection that it should be hereafter possible to place a larger amount of property than the Legislature has allowed beyond the reach of the ordinary law against alienation and perpetuity. I am disposed to think that the Legislature ought again to be consulted before this is done ; and I am decidedly of opinion that at least the consent of this Government or of the Government of India should be in every case a condition precedent. I do not think that

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the risk of excessive endowment is an imaginary one, for in my experience as counsel I have constantly found it to be the desire of wealthy natives to tie up their property to the utmost extent practicable, even at the risk of litigation; and I think that this tendency would be encouraged if the settler could subject his property to a perpetual statutory settlement, as would be the case under these clauses of the Bill as they at present stand. I should add that no similar clauses are to be found in Act XX of 1860.

“So that my hon’ble friend will see that this very point has been raised by the Advocate General in the most explicit form possible. Upon that the Under-Secretary to Government wrote to Sir Dinshaw Petit on the 3rd December, 1891, as follows :—

‘I am directed to enclose copy of an opinion stated by the Hon’ble the Advocate General on sections 11 and 12 of the draft Baronetcy Endowment Bill. I am to inform you that Government concur in the Advocate General’s view of the impolicy of those sections even if the consent of Government is made a condition precedent, and am to request that you will state whether you have any objection to make to the omission of the sections from the Bill.’

“So that the Council again will see that the Government of Bombay thought that the *primâ facie* case was exactly the same as the Advocate General had described it.

“On the 17th December, 1891, Sir Dinshaw Petit replied acknowledging the receipt of that letter and saying :—

‘In submitting the clauses in question for the consideration and approval of His Excellency the Governor in Council, I can assure His Excellency that I had no intention that the Act should be availed of for the purpose of tying up property which was not required for the support of the title. My object in inserting the clauses in question was to provide to some extent against the contingency of the income afforded by the present endowment at some future date proving inadequate for the due support of the title.

‘An income which comparatively few years ago was sufficient to cause the possessor of it to be regarded in Bombay as an exceptionally wealthy man is now possessed by hundreds of natives in Bombay, and it therefore occurred to me that what is to-day considered an exceptionally large income may at no great distance of time come to be regarded as quite the reverse. I had also in mind the possibility of the holder of the title being possessed of no means other than the property subject to the trusts of the Act, and being the father of a large family or having large calls upon his income.

‘As I myself am concerned to see that all future holders of the title are in a position to support the title with due dignity and also to command the influence and respect which, in this country more particularly, are largely attributed to wealth, and wealth alone, I should be glad if Government would reconsider the matter with a view to some such provisions as those referred to being inserted in the Act.

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'I submit that the previous sanction of His Excellency the Governor in Council to any addition to the property subject to the trusts of the Act is a sufficient safeguard against the abuse of the powers intended to be conferred by sections 11 and 12 of the Act, and I should have no objection whatever to that consent being made a condition precedent to the exercise of the powers proposed to be conferred by section 11, as it already is to the exercise of the powers proposed to be conferred by section 12 of the Act.'

"Now that letter was written on the 17th December, 1891, and it is obvious that the Government took it into very serious consideration, for they did not answer it till the 19th January, 1892, and their answer was practically contained in a letter to the Acting Solicitor to the Government of Bombay to the following effect :—

'I am to intimate that Government approve of sections 11 and 12 as modified by the Remembrancer of Legal Affairs, and to request, if the Hon'ble the Advocate General has no further corrections to suggest, that the Bill may be forwarded to the legal advisers of Sir Dinshaw for any remarks they may have to record before it is finally submitted to the Government of India.'

"So that the Council will see that the question has been before the Government of Bombay, that the point has been stated in the most explicit form has been considered after hearing what Sir Dinshaw Petit had to say upon the subject, and that the Government of Bombay have deliberately come to the conclusion that these clauses should be inserted. Personally I have myself rather a strong objection to the tying up of land in perpetuity, and I think it very likely that if, in the first instance, the case had come before me, I should have taken the objection, at any rate to section 12—I have no very strong objection to section 11—that was taken by the Hon'ble Dr. Rash Behari Ghose; but, although I have no particular interest in the question personally, I should hesitate very much to interfere with the deliberate conclusion which has been come to—I may almost say as a matter of agreement between Sir Dinshaw Petit and the Government of Bombay, though of course I do not dispute the right of this Council to alter the Bill in any way it pleases."

The Hon'ble SIR GRIFFITH EVANS asked permission to make a remark on the letters which his hon'ble friend had just read. He had heard those letters now for the first time, and there was no indication of anything of the kind in the Statement of Objects and Reasons. Now, having heard them, he was wholly dissatisfied with the reasons given in the letter of Sir Dinshaw's advisers. The same considerations would apply to every person who had wealth and on whom an honour of this kind had been conferred. All that the Legislature was concerned with was upholding sufficiently the dignity of the title which Her

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Majesty had given. The Council would, no doubt, take into serious consideration anything that Sir Dinshaw Manockjee Petit had said ; but the Government of Bombay had given no reason for abandoning the objection taken by itself and its Law Adviser, and this was a matter which might embarrass the Legislature in other directions ; and therefore he would still ask the Council to adjourn the discussion in order that the question might be referred for the further consideration of the Bombay Government.

His Excellency THE PRESIDENT said :—

“ I think it is quite clear that the suggestion made by the Hon'ble Sir Griffith Evans for an adjournment is a perfectly reasonable one. The point which has been discussed is probably presented for the first time to several Members of Council, and it certainly is by no means an unimportant one. The Bill, as has been observed, is a personal Bill, but there is no doubt that it affects very important questions of principle. It is a matter of notoriety that the Government of India has been approached with suggestions for similar legislation of a personal character, and I believe it is no secret that the larger question, whether it may not be desirable to provide by legislation of general application for the settlement of different forms of property, has also been urged upon us.

“ Under these circumstances I think it would be very regrettable that, in a Bill of this kind, we should take any steps which might hereafter commit us upon so important a matter.

“ I should myself be inclined to say that, of the two clauses— clauses 11 and 12—to which special attention has been drawn, clause 12 is open to much more serious objection than clause 11. The power to settle land has always been regarded with much greater jealousy than the power to settle securities, and my first impression is that the power to settle securities, subject to the consent of the Local Government, is not, on the face of it, an unreasonable power to ask for. The power, however, to settle land has always been regarded, and rightly regarded, with much greater jealousy, and the proposal to confer it in the present case raises much more serious difficulties.

“ Under these circumstances, I think the discussion had better stand over for the present, and we shall consider whether it will be necessary or desirable to approach the Government of Bombay again, before proceeding further.”

The further consideration of the amendment was postponed.

BANKERS' BOOKS EVIDENCE BILL.

The Hon'ble SIR ALEXANDER MILLER moved that the Bill to extend the provisions of the Bankers' Books Evidence Act, 1891, to the Books of Post Offices carrying on Savings Bank or Money Order business be taken into consideration. He said :—

“ I have been asked in making this Motion to explain that I was under a misapprehension last week when I said that the Director General of the Post Office had taken exception to the view of the Select Committee that these books were public documents. Mr. Fanshawe writes to me to say that he never in any way questioned the view of the Select Committee that the books were public documents. What he did was to consult the Government Solicitor as to the procedure to be followed when postmasters were called upon to produce their books, and thereupon the Advocate General volunteered the opinion that the books were not protected by the Act. I beg leave, therefore, to withdraw Mr. Fanshawe's name from what I said in the matter last week. Under any circumstances, however, it is more desirable to settle a question of that kind by legislation than by litigation, and therefore I still propose to ask the Council to pass this Bill. But, before moving that it should be passed, I must ask permission to propose a verbal amendment. The fact is I was not able to give notice of this amendment because I did not know until late night the particular form in which Mr. Fanshawe would like the Bill to be passed and I could not give notice of the amendment until I had heard from him on the subject. He prefers, instead of the words ‘ any post office carrying on savings bank or money order business in respect of such business,’—the only really enacting clause in the Bill,—the words ‘ any post office savings bank or money order office.’ That will involve an alteration in the title and an alteration in the preamble, and, with the permission of the Council, I propose to alter the whole thing, so that it shall run in the way in which I am going to read it. It will be—

‘ A Bill to extend the provisions of the Bankers' Books Evidence Act, 1891, to the Books of Post Office Savings Banks and Money Order Offices.’

Whereas it is expedient to extend the provisions of the Bankers' Books Evidence Act, 1891, to the books of the savings banks and money order offices of the Post Office ; It is hereby enacted as follows :—

Short title and commencement.

(1) This Act may be called the Bankers' Books Evidence Act, 1893 ; and

(2) It shall come into force at once.

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After clause (b) of sub-section (2) of section 2 of the said Bankers' Books Evidence Act, 1891, the following clause shall be added in section 2, sub-section (2), of Act XVIII of 1891. namely :—

“(c) any post office savings bank or money order office.”

“That re-arrangement will put it into the shape in which the Post Office desire it to be, and it is made entirely for the satisfaction of the Post Office.”

The Hon'ble SIR PHILIP HUTCHINS remarked that he understood the substance of the Bill would not be altered by these verbal amendments.

The Hon'ble SIR ALEXANDER MILLER replied that it would be precisely the same.

The amendment was put and agreed to.

The Motion was then put and agreed to.

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

The Motion was put and agreed to.

The Council adjourned to Thursday, the 2nd February, 1893.

J. M. MACPHERSON,

<p>CALCUTTA :</p> <p><i>The 26th January, 1893.</i></p>	}	<p><i>Offg. Secretary to the Government of India,</i></p> <p><i>Legislative Department.</i></p>
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