

*Friday,
10th February, 1905*

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XLIV

Jan.-Dec., 1905



ABSTRACT OF PROCEEDINGS

OF

THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS,

FROM 1905 TO MARCH 1906.

VOLUME XLIV



Published by Authority of the Governor General.

Gazette & Debates Section
Parliament Library Building
Room No. FB-025
Block 'G'



CALCUTTA :

OFFICE OF THE SUPERINTENDENT OF GOVERNMENT PRINTING, INDIA.

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 10th 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 Rai Sri Ram Bahadur.
- The Hon'ble Mr. L. A. S. Porter.
- The Hon'ble Mr. A. D. Younghusband.
- The Hon'ble Mr. L. Hare, C.I.E.
- The Hon'ble Mr. H. A. Sim, C.I.E.
- The Hon'ble Nawab Fateh Ali Khan, Kazilbash, C.I.E.

QUESTIONS AND ANSWERS.

The Hon'ble Mr. GOKHALE asked the following questions :—

“ 1. Will Government be pleased to state if any general instructions had been issued by the Government of India to the several Local Governments or to the Chancellors of the several Universities in the matter of the notifications

[*Mr. Gokhale; Sir Denzil Ibbetson; the President.*] [10TH FEBRUARY, 1905.]

which the Chancellors were to publish under the Universities Act of last year, and, if so, will they lay these instructions on the table ?

"2. Had Government consulted their legal advisers about the legality or otherwise of the notifications which have been issued by the different Chancellors before introducing the Bill to validate action taken under the Universities Act, 1904 ? And, if so, will they place their opinion on the table ?

"3. Will Government be pleased to state if the Government of India had ever in the past, since the passing of the Indian Councils Act of 1861, to move the Legislature to legislate for validating action taken by the executive authority under Acts passed by the Legislature, and, if so, on how many occasions and in what circumstances ?"

The Hon'ble SIR DENZIL IBBETSON replied :—

"The Government of India did not take any such action as that described by the Hon'ble Member in his first question : nor did they have occasion to consult the Law Officers on the point raised in the second.

"A number of validating Acts have been passed by the Governor General in Council since the year 1861. A list of validating Acts of the particular kind mentioned in the third question is placed on the table,* together with a copy of each Act mentioned in the list. The circumstances under which the Acts were passed appear from the Acts themselves and from the proceedings of the Council."

INDIAN UNIVERSITIES (VALIDATION) BILL.

The Hon'ble MR. GOKHALE said :—"My Lord, before the Hon'ble Member makes the motion which stands in his name, I should like to point out that, under rule 20 of the Rules of Conduct of Business in this Council, every Member is entitled to have a copy of the Bill at least seven days before the time when the Bill is taken into consideration. My copy I got last Saturday, and it is not seven days since ; so unless Your Excellency chooses to exercise the power that is vested in you to suspend the standing orders, the proceedings of today's meeting will not be valid."

His Excellency THE PRESIDENT said :—"I am sorry if the Hon'ble Member has not had the full seven days' notice to which he appears to be entitled. The Secretary tells me that the Bill was sent out on Friday last and

* *Vide Appendix.*

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a copy ought to have reached the Hon'ble Member on Friday evening, in which case the time required by the rules would have been complied with. In any case, if the sense of constitutional propriety of the Hon'ble Member were injured, should he not have let me know at an earlier date instead of acting at the last moment? As I think the opinion of Council will be in favour of condoning any slight departure that there may have been from the rules, and as the Hon'ble Member has admitted that I have the power to suspend the standing orders, I decide in the sense that we may now proceed."

The Hon'ble MR. GOKHALE said:—"I was under the impression that Your Lordship would suspend the standing orders."

The Hon'ble MR. RICHARDS moved that the Bill to validate action taken under the Indian Universities Act, 1904, be taken into consideration.

The Hon'ble Mr. GOKHALE moved that for the words "the Bill to validate action taken under the Indian Universities Act, 1904, be taken into consideration," in the foregoing motion, the words "the consideration of the Bill to validate action taken under the Indian Universities Act, 1904, be postponed *sine die*" be substituted. He said:—"My Lord, last Friday, when I troubled the Council with a few observations on the Bill now before us, I ventured to suggest that the introduction of this measure and the Hon'ble Member's speech in support of it amounted to a practical admission that the notifications issued by the several Chancellors were illegal and *ultra vires*. The Hon'ble Member, however, took exception to my remark, and that makes it necessary that the Council should consider briefly the circumstances connected with these notifications and the position now created by them. For this purpose I would invite the attention of the Council to what has taken place at Calcutta and Bombay, and I take these two Universities, partly because it has been easier for me to obtain precise information in regard to them than in regard to the others during the short time at my disposal, but mainly because the circumstances of the Calcutta University are, or ought to be, within the personal knowledge of several Members of this Council, and at Bombay matters have culminated in a suit being instituted in the High Court. My Lord, I have no wish today to stir up the ashes of the controversy that raged round the Universities Bill last year, though one may say in passing that some of the fears then expressed by the opponents of the measure about the probable exclusion of independent Indians from the administration of the Universities are already being more or less realized. What, for instance, can be more lamentable than that, on the present Syndicate of the Calcutta University, four Faculties out of five should be without a single

Indian representative, and that in Bombay, a man like Sir Pherozeshah Mehta, once a Dean in Arts, who, in point of attainments and of zealous devotion to the best interests of the country, towers head and shoulders above many of those who have of late been posing as authorities on high education in this land, should be excluded from the Faculty of Arts! However, I know that any further complaint in this Council about the policy of last year's Bill is like ploughing the sands of the seashore, and I have no wish to engage in an enterprise at once so fruitless and so unnecessary. My Lord, I must ask the Council to glance for a while at what may be called the scheme of last year's Act in regard to the constitution of the first Senates and of Provisional Syndicates. That scheme, I contend, is both clear and adequate, and if only ordinary care had been taken to adhere to it, the present difficulties would not have arisen. The scheme is set forth in the several clauses of section 12. First of all, there was to be the election of ten Fellows by Graduates or by old elected Fellows or by both. Then there was to be the appointment of not more than eighty Fellows by the Chancellor. And then there was to be the election or rather co-optation of ten more Fellows by the elected Fellows and Government nominees acting together. This co-optation was to complete the Senate and then the Chancellor was to notify that the Body Corporate of the University had been formed, appending to the notification a list of the new Senate. As soon as this declaration was made, the old Senate and the old Syndicate were to cease to exist, and the new Senate, *i.e.*, the Body Corporate, was to elect a Provisional Syndicate, in such manner as the Chancellor might direct, the old bye-laws and regulations of the University continuing in force till new ones were framed, except in so far as they were expressly or by implication superseded or modified. Now two things here are absolutely clear—first, that the election of the Provisional Syndicate is to be by the Senate, *i.e.*, the Body Corporate, and, secondly, whatever discretion might be conferred on the Chancellor by the words 'in such manner as the Chancellor may direct,' that discretion is limited, first, by the express terms of the Act and, secondly, by such old regulations and bye-laws as have not been superseded or modified. The Hon'ble Member said last Friday that unless a very wide meaning was assigned to the words 'in such manner as the Chancellor may direct' there would be a difficulty about fixing the number of the Syndicate. I am surprised at the Hon'ble Member's argument, for he forgets that the old regulations prescribe the number, and the Act being silent in the matter, that number must stand. On the other hand, the regulations prescribe election by Faculties, but the Act expressly provides for election by the Senate; therefore the election by Faculties must go. I therefore contend that the scheme of the Act for

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the constitution of the first Senate and of the Provisional Syndicate is a clear and complete scheme, and the responsibility for the present muddle rests not on those who framed the Act but on those who did not take sufficient care to understand its provisions and exceeded their powers in taking action under it. Indeed, my Lord, I wonder what Sir Thomas Raleigh in his retirement will think of these proceedings in Council and of the justification urged for them, for to my mind they are little less than a reflection on the patient industry and care with which he elaborated the provisions of the Universities Bill; and I think it will strike him as an irony of fate that while these proceedings should be initiated by those who were among the most enthusiastic supporters of his Bill, it should have been reserved for an uncompromising opponent of the measure to protest against the charge of unsatisfactory work which they involve against him!

“ My Lord, I have so far briefly sketched what may be called the scheme of the Act. Let us now see how they have followed this scheme in practice at Bombay and Calcutta. In Bombay the election of ten Fellows by Graduates and by old elected Fellows took place all right. The appointment of eighty Government nominees followed in proper form. Finally these ninety proceeded to co-opt the remaining ten, sitting and voting together as required by the Act. The Bombay Senate was thus regularly constituted and no one has taken any exception to its constitution. Then came the Chancellor's notification about the election of a Provisional Syndicate, in which he arbitrarily divided the Fellows into groups, which he had no power to do, and directed the several groups to meet and vote separately and on separate days, which also he had no power to do. And when the illegal character of the notification was brought to his notice and opinions of eminent lawyers in support of this view were forwarded to him, the University authorities persisted in acting on the notification, with the result that the aggrieved party had to move the High Court for redress! In Calcutta the catalogue of illegalities was even longer. Here the election of ten Fellows by Graduates and by old elected Fellows took place all right and the Chancellor's nominations were also in regular form. From this point, however, commenced a regular series of irregularities. The ten Fellows to be co-opted were not co-opted by the elected and nominated Fellows sitting and voting together, as required by the Act. The constitution of the Calcutta Senate itself was thus defective. Then the Chancellor divided the Senate into Faculties for the purpose of electing the Syndicate, which he had no power to do. The old regulations which are still in force recognize only four Faculties, but the Chancellor constituted five Faculties on his own responsibility, which was irregular. Under the old regulations

every Fellow, *ex officio* or ordinary, must belong to at least one Faculty; but the Chancellor did not assign the *ex officio* Fellows to any Faculty, which was irregular. Finally the Provisional Syndicate was elected by the Faculties, instead of by the Senate, as expressly required by the Act, and this was irregular. And now, after all these irregularities have been committed, the Government of India come to the Legislature with a proposal to validate all that has been done! In doing so they ignore the fact that they are interfering with a pending suit, destroying the protection of High Courts which the public prizes above everything else, lower the dignity of the Legislature, and create throughout the country a most deplorable impression about the practical irresponsibility of the Executive Government. And yet, when it is said that the action of the Government is a practical admission that the notifications were illegal, the Hon'ble Member thinks it necessary to protest against the inference! My Lord, I think the matter is pretty clear. In any case, the view that the notifications are illegal and *ultra vires* is supported by three distinguished members of the Bombay Bar—two of them being European Barristers, who have taken no part in recent educational controversies and who occupy the foremost position in their profession at Bombay. Can the Hon'ble Member quote on the other side any authority of equal eminence, of anything like equal eminence, of any eminence at all? Is he prepared to pledge his own reputation as a lawyer to the view that the notifications are legal? And if he is not, I submit that my inference is a fair inference and I think I am entitled to draw it. The Hon'ble Member complained last time that I had no alternative course to suggest. This was surely a most extraordinary complaint to make, for in the very next sentence he proceeded to show how my suggestion, namely, that the faulty notifications should be withdrawn and others in accordance with law substituted in their place, would involve waste of time and work and prove harmful to the interests of the Universities. My Lord, I really think that it is the duty of the Government, not less than that of private individuals, to face whatever inconvenience has to be faced in obeying the law. And the only proper and dignified course for the Government was to have waited till the Bombay High Court had pronounced its judgment, and, if that decision had been adverse to the Government, to have withdrawn the notifications held to be illegal and to have substituted others in their place framed in accordance with the law, a validating Bill being at the same time introduced to legalize the work done during the interval by the defectively constituted bodies. If, on the other hand, the Court had decided in favour of the Government, nothing further need have been done in the matter unless the decision had been reversed by a higher authority. The Hon'ble

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Member drew last time a dismal picture of the results, which a state of uncertainty would produce. That picture, however, need not frighten anybody—at any rate, no one who is acquainted with the inner working of an Indian University. It would not have taken so very long after all to set matters right, and in the interval, the Vice-Chancellor and the Registrar could have carried on the ordinary executive business of the University. And whatever temporary inconvenience had resulted should have been borne as inevitable. Instead of this, the Government have chosen to adopt a course which is hardly respectful to His Majesty's Judges, which intervenes by means of legislation in favour of one party to a pending suit, which lowers the dignity of the Legislature, and which proclaims that the executive authority in this country is practically above law. I decline to be a party to such a course and I therefore beg to move the amendment which stands in my name."

The Hon'ble MR. RICHARDS said :—" My Lord, I have to ask the Council to reject the amendment just moved by the Hon'ble Mr. Gokhale, and I propose to state my reasons for doing so but briefly, because the matter has already been discussed at some length on a former occasion, and because it lies in a comparatively small compass. I do not propose to follow the Hon'ble Member in his comments on the composition of the various Faculties, nor in his discussion of the construction he would place on this somewhat complicated section of the Act. If we were arguing the case elsewhere, in a building situate not far from this room, I should be happy to go into the matter with him, and to deal with this section in detail, and I should do so with a very strong confidence that I should persuade the tribunal that the Chancellor of the Calcutta University had kept within the four corners of the Act. But this is not the place to argue that question. This Council cannot decide the question of legality or illegality. It can make clear the meaning of the Act by legislation, but not by other means. The section is admittedly difficult to construe, and it appears to me that there must be doubts as to the correctness of any construction. The Hon'ble Member, when dealing with these matters, made it certain, I think, that there would be great confusion, even in his own view, of the construction of the section. He maintained that the election of the Provisional Syndicates was covered by the existing bye-laws. But the existing bye-laws apply to a totally different state of things, *vis.*, the election by the Faculties only; they apply to the state of the things which the Chancellors have established by their action but which the Hon'ble Member says is illegal. If the elections are to be on a totally different basis, if they are to be by the Senates not divided into Faculties, it is quite impossible to say how far those bye-laws would apply. It would be impossible to say what parts were

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applicable to the election in question, and what not applicable. If elections had been held in accordance with the view of the Hon'ble Member, it seems to me that reasons as numerous and objections as formidable could have been raised to show that those elections were bad as any that have been advanced against the elections now in question.

"My Lord, I have to suggest to this Council that the matter under discussion today is one that has been very greatly exaggerated. It seems to be supposed that these Provisional Syndicates have in their hands the whole future fortunes of the Universities. It seems to be supposed that they are going to mould them for good or ill for all time. My Lord, that is not the case. These bodies are merely transitory bodies, existing for temporary purposes only, carrying on the business of the University, granting degrees, regulating examinations, and so on, for a time only, until superseded by permanent Syndicates. They have in themselves no uncontrolled authority. The Senate alone is the authority under this Act. The Provisional Syndicates can do nothing without the control of the Senate. They can submit regulations to the Senate, but it is for the Senate to say whether those regulations should be passed, and, if so, in what form. The Provisional Syndicates have not, therefore, the importance attributed to them in this discussion.

"My Lord, in moving the introduction of this Bill, I pointed out that there was a state of confusion and doubt existing as to the status of these Provisional Syndicates, and that that state of confusion and doubt was most detrimental to the progress of the work of the Universities. I called the attention of the Council to the fact that in Bombay legal proceedings had been taken, and that in Calcutta they were threatened, and I now know that a protest has been made before the University of the Punjab. It seems impossible that the proceedings in Allahabad and Madras, which stand on the same footing, could have continued unchallenged if no action had been taken by the Government. These facts are not disputed; it is admitted that this state of doubt and confusion exists, and the question is, what is to be done? Is it right to let things drift, or is it right to do something to put a stop to this state of things? There can be only one answer. Every well-wisher of the University, and among the most sincere of these I include the Hon'ble Member who has just spoken, must desire to put an end to this state of things at once. The only question, therefore, as I submit, for the consideration of this Council is whether this Bill affords a proper remedy, or whether any remedy more suitable can be suggested. In considering this question, I would ask the Council to defer for the moment the consideration of the case of Bombay. The Hon'ble Member is shortly

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going to move an amendment relative to Bombay, and I understand from that amendment and from his statement on a former occasion, that the case of Bombay stands on a special and different footing to that of the other Universities. When he calls attention to these special circumstances, I shall be prepared to deal with the case of Bombay. At present I will consider the situation in regard to the four other Universities only. Now, in regard to these other Universities no reasonable man can contend that the objection to the procedure in the election of the Provisional Syndicates is anything else but technical. No objection of substance can be urged against these elections, which proceeded in exactly the same way as election of Syndicates have always proceeded in the past. They proceeded in the manner prescribed by the bye-laws of the University; more than that, they were held in the presence of and with the approval of the Senates and no objection or protest was made against them. Therefore, my Lord, I claim to be well founded in saying that the objection we have to deal with in the case of these Universities is the purest technicality. The Bill which I have the honour to bring before you today sets right that technical error in the promptest and least expensive way, setting at rest all doubt as to the legality of the proceedings, and allowing the progress of the work of the University to continue forthwith. Is there any other so effective a remedy? The Hon'ble Member who has just spoken has argued that legislation is not the proper course, that a Bill to explain the construction of the Act is not a proper measure to pass in the present circumstances, but that a fresh appointment of Provisional Syndicates should be made by the Senates. I answered this suggestion on a former occasion by pointing out the great delay that the latter course would entail. Another and even more fatal objection is this. The Senate can make only one appointment of a Provisional Syndicate. It has no power to revoke an appointment once made and to make another. It would be possible, therefore, for the Senate to make a fresh appointment only if it was beyond doubt that the present Provisional Syndicates were invalid. If the present Provisional Syndicates were properly appointed, as to which there is at the very least a reasonable doubt, there is no power to make a further appointment. By doing so we should be establishing a Provisional Syndicate, whose position would be at least as ambiguous as that of the present Provisional Syndicate, and it would be open to any member of the present Syndicate to bring an injunction against the second Syndicate to prevent them from acting. Confusion would thus be doubled, and the situation would be two-fold worse than at present. I cannot advise the Council to embark upon any course such as this, which must lead to increased confusion and difficulty. The fact is, my Lord, that this question can only be settled by

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litigation or legislation. Litigation involves delay and expense and a prolonged suspension of University work. Legislation is free from those drawbacks. I therefore submit to the Council that legislation is the proper and only means of putting an end to this state of affairs, and allowing the work of the University to continue, and I ask them to reject this amendment and to allow the Bill to proceed."

The Hon'ble SIR DENZIL IBBETSON said:—"I have only a few remarks which I wish to make as a member of the Select Committee which last year dealt with the Universities Bill; and I propose to confine them to a single point. Last Friday the Hon'ble Mr. Gokhale urged upon us with great insistence, and he has repeated the argument today, that if an illegal procedure has been followed, our proper course is not to condone the illegality by validating the procedure, but to remedy it by setting aside the proceedings and substituting in their place new proceedings which shall be in accordance with the law. Now the word 'illegality' has an ugly sound, and may have a very serious meaning; but I hope to be able to convince the Council that in this particular case it has very little meaning indeed. If it were the case that the action which has been taken seriously conflicted either with the intention of the Legislature or with the spirit of the law, I should admit that there was a great deal to be said for the contention of the Hon'ble Member, although even then, as the Hon'ble Mr. Richards has just shown us, there would be great difficulties in the way of adopting it; but my contention is that the action which has been taken has been closely in accord both with the intention of the Legislature and with the spirit of the law, and that whatever irregularity there may have been (if there has been any, which I must not be taken to admit for one moment) has been of a purely technical nature, and has arisen from the failure of the letter of the law to express all that it was intended to express.

"The object of the transitory provisions, the construction of which has been called in question, was to bridge over the gap between the old order of affairs and the new. Among other things they provide for the appointment of a Provisional Syndicate to carry on the business of the University until a permanent Syndicate should be appointed under the regulations, and they do so by declaring that the Senate shall appoint a Provisional Syndicate 'in such manner as the Chancellor may direct'. That is the whole of the operative provisions of the Act; that is all the help or guidance that the law gives regarding the constitution of the Provisional Syndicates. The Hon'ble Mr. Richards has just shown that the old regulations are inapplicable to the new conditions, and therefore they afford no help. Consequently, whatever guidance is to

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be got must be got from the directions of the Chancellor. Now those who attack the action which has been taken, contend that the words which I have just quoted empower the Chancellor to deal with the question of procedure only: that he could direct the Senate to meet at a given time and place, and to vote by ballot, voting papers, or show of hands, and so forth; but that, having given these directions, he had exhausted his powers under the Act and could go no further. That would mean that you would have a body of 60 or 70 members, upon which strongly conflicting views and interests are represented, brought together, and bidden then and there to appoint an important committee like the Syndicate, without one trace of guidance or instruction or direction. The result must have been chaos. Moreover, if no such directions were to be given, it would have been open to the Senate to appoint a Syndicate of 2 members, or of 20, or for the matter of that, of 200; it would have been open to them to appoint to that Syndicate men who had no connection whatever with the University; it would have been open to them to appoint a Syndicate which should not include one single representative of education; it would have been open to them to exclude the Vice-Chancellor altogether. In all these respects they would, as will presently appear, have contravened the plainly declared intention of the law. Now I do not suggest for a moment that the Bombay Senate or any other Senate would have actually done all or any of these things. But I do suggest that it could not have been the intention of the Legislature to leave it open to the Senate to do these things; that it could not have been the intention of the Select Committee which framed the transitory provisions, or of this Council which passed them into law, to leave the Senate absolutely in the air—absolutely without guidance in such an important matter. As regards the Select Committee, of which the Hon'ble Member and myself were both members, my recollection is that that was *not* our intention; that we contemplated the issue by the Chancellors, not of course of the precise directions, but of precisely the *sort* of directions which they have issued; and that we intended to confer upon them the power to issue directions of that nature.

“But if it is true that the action which has been taken by the Chancellors was covered by the discretion which it was intended to confer upon them, it is equally true that that action is in accord with the whole spirit and intention of the law as evidenced by its permanent provisions. I am afraid that I must take the case of Bombay to exemplify my argument, as I have not got with me details of the action of the other Universities. But allowing for differences, which are only differences of detail, what I am about to say is equally true of the action of all the other Chancellors. Now when the Bombay Chancellor framed his direc-

tions to the Senate in the exercise of the discretion which he believed the law to have given him, he evidently kept two main objects before him. He followed closely the permanent provisions of the law, so as to make the Provisional Syndicate coincide as nearly as possible with what the permanent Syndicate will be when it comes to be appointed; and whenever those permanent provisions left a point open and gave him discretion, he adhered to the old practice of the University. Thus section 15 lays down that the Vice-Chancellor and the Director of Public Instruction shall be members of the permanent Syndicate, and the Chancellor appointed them to the Provisional Syndicate. Section 15 lays down that the number of elected Syndics shall not be less than 7 or more than 15: the past practice of the Bombay University has been to elect 10, and the Chancellor directed the Senate to elect 10 to the Provisional Syndicate. Section 15 prescribes the proportion which the elected Syndics must include of Principals of or Professors in a College affiliated to the University: the Chancellor applied that prescription without alteration to the Provisional Syndicate. Finally, section 15 prescribes that the elected members of the Syndicate are to be 'elected by the Senate or by the Faculties in such manner as may be provided by the regulations.' Now that discretion, which permits election by the Senate or the Faculties, was inserted in order to avoid a disturbance of the existing practice, which is, that in Allahabad the Senate, and I believe in all other Universities, and certainly in Bombay, the Faculties, elect the elected members of the Syndicate; and, if it had been possible to do so, there can be no doubt that the transitory provisions would have given the same discretion. But it was not possible to do so, for the very simple reason that the constitution of the Syndicate under sub-section (*p*) precedes the constitution of the Faculties under sub-section (*q*), so that at the time when the Syndicate would have to be appointed there would be no Faculties in existence. That is precisely the sort of point which it was intended to cover by the exercise of the discretion which it was intended to give to the Chancellor. In the exercise of that discretion he divided the Senate, for this temporary purpose only, into four groups corresponding with the four Faculties of Arts, Law, Medicine, and Engineering and allotted to each the same number of elected Syndics which the old regulations allot to the corresponding Faculty.

"I hope I have succeeded in showing, my Lord, that the discretion which has been exercised by the Chancellors was precisely the sort of discretion which the Legislature intended to confer upon them; that in exercising it they have scrupulously endeavoured to follow the prescriptions of the law and to respect existing practice; and that the irregularity, if any, has been purely verbal,

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technical and unimportant, and that the Council may condone it with a clear conscience."

The Hon'ble MR. GOKHALE said:—"My Lord, I desire to offer a few observations by way of reply to what has fallen from the Hon'ble Mr Richards and the Hon'ble Sir Denzil Ibbetson. The Hon'ble Mr. Richards began by saying that the confusion that has been caused is admitted by everybody, but this Council is not the place where the legality or otherwise of the notifications issued by the Chancellors can be profitably discussed. I am inclined to agree with him, but he will not allow me to discuss it anywhere else. As a matter of fact, my friends have taken the matter to the High Court, which is surely a properly constituted body to discuss the legality or otherwise of what has been done. But the Hon'ble Member will intervene, before the High Court has delivered its decision, and he will pass a law which will take the matter out of the jurisdiction of the High Court, so that, if I may say so, the responsibility for the question being raised here is the Hon'ble Member's and not mine.

"Then, my Lord, the Hon'ble Member said that the Provisional Syndicate is only a transitory body and therefore so much fuss need not be made over the manner in which it has been constituted. He said, after all, what will the Provisional Syndicate do? It will attend to the duty of conferring degrees and to a few small details of executive administration. He forgets, however, that the principal work of this Provisional Syndicate will be to draft the regulations, which afterwards are to govern the conduct of the business of the University. In Bombay, no matter can be first brought before the Senate until it has been first considered by the Syndicate, and therefore the whole future administration of the University really depends in a measure upon the Provisional Syndicate, and one can easily see how important it is to have it properly constituted.

"The Hon'ble Sir Denzil Ibbetson has referred to what was in the mind of the Select Committee when these transitory provisions were framed. I, too, was a member of the Select Committee, but I did not refer before this to what took place in the Select Committee, because I understood that a reference to the proceedings of the Select Committee was not allowed, as they are confidential. However, I may very well follow the example of the Hon'ble Member, and may say this: if my recollection is right, the Select Committee did not intend that the Provisional Syndicate should be constituted as it has been in so many places. As a matter of fact, I remember it being said that the principal work of the Provisional Syndicate would be the drafting of rules and regulations, and

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for that it would be necessary to have a body of men who had the confidence of the whole Senate, and that was all that was necessary to provide.

"The Hon'ble Member proceeded to say that, unless the Chancellor had given certain specific directions, there would have been confusion, as there was conflict between the Act and the old regulations.

"I think, however, that this fear was groundless. The Act of last year contemplates three authorities being put together before any action is taken. There is, first of all, the Act, which is of course above everything else. After the Act come the regulations, which have not been expressly or impliedly superseded. If there is any conflict between the two, the Act prevails and the regulations go. If there is nothing to bring about a conflict between the two, the regulations supplement the Act. It is only after the Act and after the regulations that the discretion of the Chancellor comes in. The discretion of the Chancellor is to support the regulations and the Act and not to twist the express language of the Act or of the regulations that are already in force so as to suit his own view of things. If you take these three things together, what do you see? You first of all see that the Act requires that the election shall be by the Senate. Therefore, if the old regulations say that the election should be by Faculties, those regulations are to that extent inoperative. Again, if the old regulations say that the number shall be so and so, the number is not left to the Chancellor. However, I do not wish to elaborate this point any further. The Hon'ble Member said that the Chancellor of Bombay had scrupulously followed the old regulations in the grouping of the members of the Senate. The Hon'ble Member is entirely mistaken. In old times, where a man held a degree in more Faculties than one, he was appointed a Fellow in all those Faculties. The Chancellor, however, has arbitrarily restricted the members to certain Faculties. For instance, Sir Pheroze Shah Mehta holds only an Arts degree, so far as the Bombay University is concerned. He has, however, been relegated to the Law Faculty and removed from the Faculty of Arts. Under the old regulations this would not have been possible.

"I do not think that I need detain the Council further. The defects that you are going to validate are not merely technical, and there is an important principle involved, and I therefore submit that the Bill should not be proceeded with."

The amendment was put and negatived.

The Hon'ble MR. GOKHALE said:—"When I gave notice of the second amendment standing in my name [*vis.*, that for the words "the Bill to validate action taken under the Indian Universities Act, 1904, be taken into considera-

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tion." in the motion of the Hon'ble Mr. Richards, the words "the consideration of the Bill to validate action taken under the Indian Universities Act, 1904, be postponed till the 24th February, 1905, or to such later date as may be thought proper", be substituted], the High Court of Bombay had not postponed the suit before it *sine die*, and my object in sending notice of this amendment was to give the High Court an opportunity of pronouncing a judgment before this Bill was passed. As, however, the suit has been postponed *sine die*, there is no point in my moving this amendment, and, therefore, I beg leave to withdraw it."

His Excellency THE PRESIDENT said:—"The first amendment of the Hon'ble Member having been defeated and the second having been withdrawn, I now have to put the original motion of the Hon'ble Mr. Richards."

The motion was put and agreed to.

The Hon'ble MR. GOKHALE moved that after clause 1 of the Bill the following clause be added, clauses 2 and 3 being re-numbered 3 and 4, respectively, namely:—

"2. Nothing in this Act shall apply to the University of Bombay."

Applicat on.

He said:—"My Lord, I have already twice referred to what has taken place at Bombay, but in asking that the Bombay University be excluded from the operation of this Bill, I must recapitulate once more the facts on which I base my motion, and I hope the Council will bear with me while I do so. The most important difference between Bombay and elsewhere has been this—that while in other places the illegality of the notifications was not discovered before the elections and no formal protests were in consequence made at the time, in Bombay even this plea of acquiescence on the part of members of the Senate is not available to Government. Of course such acquiescence or the absence of it does not affect the legal position, but it is a moral consideration of very real importance. In Bombay, the illegal character of the notification was perceived as soon as it was issued. The members, who perceived it, thereupon took legal opinion. They first consulted Mr. Inverarity and the Hon'ble Mr. Setalwad, who both condemned the notification in unequivocal and emphatic terms as illegal. Then they consulted Mr. Lowndes, who was equally emphatic in his condemnation. All three Counsel thought that the illegality was so patent that it had only to be brought to the notice of the Chancellor, and they felt confident that he would see the necessity of withdrawing the notification. Armed with these opinions, Sir Pherozeshah Mehta, himself a lawyer occupying a commanding position at the Bar, and several other Fellows approached the Chancellor and asked for a

reconsideration of the question before it was too late. All this was done before the date of the first election. The University authorities, however, took it upon themselves to ignore the whole thing and proceeded to hold the elections as directed in the notification. At the meeting of the Arts group, the Vice-Chancellor presided and he allowed a motion to adjourn, so as to give time to the Chancellor to reconsider the matter, to be put to the meeting. The next day, the Law group met, the Judicial Member of the Bombay Government, whose interest in University matters has hitherto been by no means conspicuous, attended and took the chair, which otherwise would have been taken by the Senior Fellow present—Sir Pherozechah Mehta—and flouting the ruling of the Vice-Chancellor of the previous day, ruled a motion for adjournment out of order, and after a majority of the members present had left the meeting under protest, got the remaining five, including himself, to elect the two representatives for Law. These high-handed proceedings left no option to those who saw the illegality and declined to be a party to it but to go to the High Court. And, on this being done, the University authorities have come to the Supreme Government with an appeal to shield them and save their prestige by means of a validating measure. My Lord, to use the powers of the Legislature for validating what has taken place in Bombay is to abuse those powers. For it means validating illegalities committed in the light of day and in spite of warnings and protests. It means validating high-handedness. It means interfering with a pending suit, which on the part of private individuals is regarded as contempt of Court. It means coming between the aggrieved party and the protection which it has a right to look for at the hands of the High Court. It means securing for the wrong-doer the fruits of his wrong-doing. Finally it means penalizing those who have declined to be a party to an illegal proceeding and have done their best to have it set right; for, as I pointed out last time, these men did not take any part in the elections—they did not allow themselves to be nominated as candidates, and they did not vote, fully believing that the illegal elections could not be upheld and would have to be set aside; and to uphold the elections now by means of legislation is to disfranchise them. Then, my Lord, there is the question of costs. These men have had to spend money in taking the course they were compelled to take. Counsel do not give their opinion for nothing, neither do they appear to argue a case for nothing, and if the matter had been left to be decided by the High Court, their costs would probably have been awarded to them, if the decision had been in their favour. My Lord, does the Legislature exist for the perpetration of what may be called legislative injustice? Was no other course open to the Government? In Bom-

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bay, at any rate, there is no question of the Senate having to be reconstituted. The only thing needed is to withdraw the notification about the election of the Syndicate and substitute another in its place in accordance with law. This could be done at once and the new elections might take place in a week's time after that. Surely the University of Bombay can exist for a week without a Syndicate, and even the Hon'ble Member in charge of the Bill will have to admit that, when it is remembered that from 8th December, when the notification about the new Senate appeared, to 17th January, when the Provisional Syndicate was formed—*i.e.*, for more than five weeks—there was no Syndicate in Bombay, and the Vice-Chancellor and the Registrar carried on the executive business of the University without any hitch. There is thus no reasonable ground for undertaking the present legislation for Bombay, while there are several most important considerations against the course adopted by the Government. I therefore beg to move that the Bombay University be excluded from the scope of the Bill."

THE HON'BLE MR. RICHARDS said:—"My Lord, I have to ask the Council to reject the amendment which the Hon'ble Member has just put forward. My Lord, that amendment was based on the ground that a special grievance exists in the case of Bombay, and that owing to the withdrawal of certain gentlemen from the elections held by the Faculties of that University proper representatives have not been elected. In his speech last week the Hon'ble Member said that the elections were by a handful of men in each group. He said that the effect of that had been to disfranchise a large number of Fellows, and he left us to conclude that in consequence of these gentlemen having abstained from taking part in the election after obtaining the opinion of lawyers to the effect that these proceedings were illegal, the members of the Provisional Syndicate then elected were not properly representative of the Faculties.

"My Lord, I was struck with what the Hon'ble Member said, and I have gone into the question of how these members of that Provisional Syndicate were elected. I have taken my facts from the plaint lodged by the plaintiffs in the recent proceedings in Bombay, and I think I may presume that they are there stated as favourably as possible for those who are opposed to this Bill. Now, the facts are these, as stated in the plaint. There were to be ten members elected by the Faculties; four were to be elected by the Faculty of Arts, two by the Faculty of Engineering, two by the Faculty of Medicine, and two by the Faculty of Law. The Faculty of Arts consisted of forty-five members who had to elect four Syndicates. Of these forty-five one protested and withdrew. It cannot reasonably be said that the abstention or withdrawal of that

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gentleman affected in any way the choice of the members for the Faculty of Arts. We, therefore, get four out of ten without possible criticism. In the Engineering Faculty there was no protest and no withdrawal. In the Faculty of Medicine there were twenty-two electors, of whom two did not vote. There were two Syndics elected by that Faculty, and it can hardly be said that the withdrawal of two of the electors has caused any serious grievance. In Law there were twenty-five electors to elect two Syndics, there were six withdrawals, and no doubt it is quite fair to say that six withdrawals may have affected the results of the election. But have the results of the election been improper or other than could have been desired? The two Syndics elected were a very eminent Judge of the High Court, the Hon'ble Mr. Chandavarkar, and Mr. Ganput S. Rao, Principal of the Government Law School and Perry Professor of Jurisprudence in Bombay. Those gentlemen were the only gentlemen nominated, and they were elected without opposition, and I suppose there is nobody who knows those gentlemen who can imagine two more fit persons to represent the Faculty of Law.

"My Lord, there is no grievance at all here of substance. The withdrawals have not affected the representation except in one case. In that case they might have done so, but the result there was that two gentlemen were elected who are eminently fitted for the position. Therefore, I submit that there are no special reasons for the exclusion of Bombay from this Bill, and I ask the Council to reject the amendment that has been moved."

The Hon'ble MR. GOKHALE said:—"My Lord, the Hon'ble Member seems to be labouring under a strange misapprehension about the numbers that he has given us. He has given us the total numbers in the various groups, not the numbers actually present. When this Bill was introduced here, I wrote to Bombay asking for the figures of those actually present. I have got them, but I did not care to trouble the Council with them. However, as the Hon'ble Member has mentioned the matter, let me explain what actually happened. In the Faculty of Law there were 11 members present. Of these 6 withdrew. It is quite true that the total Faculty of Law consists of 22, but when this question of legality was raised, many thought the proceedings were illegal and did not care to attend, so that only 11 attended, and out of these 6 withdrew. It is absolutely clear that if the 6 had remained they would have elected such persons as they might have cared to do. In the same manner the Faculty of Arts consisted of 45 members, but I understand that only about 20 members were present. The rest did not care to attend, owing to the question of legality that was raised. In fact, those who were in favour of the new order of things attended while those who were against the new order of things abstained.

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Therefore, it cannot be said that only one man was against the election of those 4 members.

“In the Faculty of Engineering, the Faculty consisted almost entirely of Government officers, to whom we do not look for independent action.

“In the Faculty of Medicine too the actual voting was confined to a very small number. Therefore, it is no use giving the total numbers of the different groups and making deductions only of those who openly seceded, which leaves it to be inferred that the rest were in favour of these elections.

“Then as regards the question that the members who have been elected are all right and are fully representative of all interests. I deliberately did not care to raise that question, because it involves a discussion about the qualifications and disqualifications of individuals. As the Hon'ble Member has, however, done it, I must to a certain extent follow his example. It is quite true that the Hon'ble Mr. Chandarvarkar has been elected in the Faculty of Law, but the fact that Mr. Chandarvarkar did not care to defend the suit that was brought against the new Syndicate shows what importance he attaches to the proceedings. Moreover, my Lord, the question is whether the different groups were so formed as to provide for the inclusion in the Syndicate of what may be called independent Indian gentlemen, that is, Indian gentlemen who are not Government servants, and from this standpoint, the composition of the Syndicate is far from satisfactory.

“Now take the Faculty of Arts. All the four men who represent the Faculty of Arts are professors. Now when this Council provided last year that at least half the members of each Faculty should belong to the teaching profession, surely nobody in this Council contemplated that all the seats that were reserved for any Faculty should be appropriated by the teaching element. All four of the men who represent the Faculty are professors, and the Faculty itself has been so composed as to have a very large preponderance of professors.

“Thus the Council will see that there are good reasons to be dissatisfied with the constitution of the Syndicate.

“But whether the *personnel* is satisfactory or not, the point is that the election was proceeded with in spite of illegalities which were pointed out. And my contention is that if there was even one man unjustly disfranchised, the Legislature is not justified in setting aside the legal claims of that one man, no matter what inconvenience might result.”

[*Mr. Richards ; Rai Sri Ram Bahadur.*] [10TH FEBRUARY, 1905.]

The Council divided :—

Ayes—5.

The Hon'ble Nawab Fateh Ali Khan.
The Hon'ble Rai Sri Ram Bahadur.
The Hon'ble Rai Bahadur B. K. Bose.
The Hon'ble Nawab Saiyid Muhammad.
The Hon'ble Mr. Gopal Krishna Gokhale.

Noes—14.

The Hon'ble Mr. H. A. Sim.
The Hon'ble Mr. L. Hare.
The Hon'ble Mr. A. D. Younghusband.
The Hon'ble Mr. L. A. S. Porter.
The Hon'ble Mr. H. Adamson.
The Hon'ble Mr. E. Cable.
The Hon'ble Mr. E. N. Baker.
The Hon'ble Mr. J. P. Hewett.
The Hon'ble Mr. H. Erle Richards.
The Hon'ble Sir Denzil Ibbetson.
The Hon'ble Sir A. T. Arundel.
The Hon'ble Major General Sir E. R. Elles.
His Excellency the Commander-in-Chief.
His Honour the Lieutenant-Governor.

So the motion was negatived.

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

The Hon'ble RAI SRI RAM BAHADUR said :—"My Lord, with regard to the motion before the Council I have to say a few words. As has already been pointed out by my friend the Hon'ble Mr. Gokhale, Government ought to have adopted the more proper and the more constitutional method of cancelling the notifications issued and orders and appointments made under the provisions of the Indian Universities Act, the legality of which has been challenged, and ought to have proceeded afresh according to law. The introduction of the Bill now before us shows that the doubts raised against the legality of the action taken under those provisions are not groundless.

"It is a unique procedure for the Government—and for which no emergency has been shown to have arisen—to resort to legislation in order to validate the actions of the Executive which are illegal or at least of doubtful legality. This will create a precedent which is not called for by the exigencies of the case.

"I therefore vote against the passing of the Bill."

[10TH FEBRUARY, 1905.] [*Nawab Saiyid Muhammad.*]

The Hon'ble NAWAB SAIYID MUHAMMAD SAHIB BAHADUR said:—"My Lord, I cannot help regretting at the outset that this measure should have been brought forward before the Council. The function of the Legislature is to frame laws, and it is for the duly constituted Courts of Justice to interpret them. If fresh legislation were resorted to whenever the interpretation of any provision of the law was in doubt, there would be no finality as regards any measure passed by the Legislature of the country. It is less than a year that the Indian Universities Act was passed, and the arrangements now made for carrying on the affairs of the different Universities are all temporary and provisional. But the Act as it stands is binding upon all. The Bill before us merely seeks to validate action already taken under the Act of 1904 to constitute the Faculties and the Syndicates. The Hon'ble the Law Member, in the course of his remarks at the last meeting of the Council, said 'this Council cannot decide on the legality or illegality of the action of the Chancellors.' I quite admit the soundness of this view. But the real point is whether the action of the Chancellors is legal or illegal, and this very issue has been brought before a competent Court of Justice, and it seems to me that a measure of this kind can only follow an authoritative ruling on the interpretation of the present law but ought not to anticipate it.

"I regret I cannot concur in the view that the present state of suspense is likely to paralyse the business of the Universities. That is an argument that applies to every law when it is in dispute, and I venture to think that the Legislature is not invited to step in and to interpret the law by a piece of fresh legislation.

"My Lord, the entire question is one of interpretation of the existing law. The Chancellors have placed upon it a certain interpretation and have acted accordingly. That interpretation, according to other eminent persons, is not in accordance with the law. It is for the Courts of Justice to decide which view is correct, and I submit it is not for the Legislature to appropriate to itself the function of the Law Courts. My Lord, this measure also seeks to restrict the constitutions of the Universities themselves. It is a question of vital importance whether the right of electing the Syndicate should rest with the Senate as a body, or be relegated to the Faculties, in the election of which the Senate has no share. The contention is that the Act of 1904 gives this right to the Senate while the measure before us seeks to deprive that body of the right. As a matter of fact, no opportunity has been given to the Senates to exercise that right or even to establish it."

The Hon'ble MR. GOKHALE said :—" My Lord, I have already spoken thrice on this Bill, but I cannot let it pass without a final word of protest. My Lord, British rule in this country has hitherto been described—and on the whole, with good reason—as the reign of law. A few more measures, however, like the present, and that description will have to be abandoned and another substituted for it, namely, reign of Executive irresponsibility and validating legislation. My Lord, the Government are paying too great a price for what is undoubtedly an attempt to save the prestige of its officers. But is prestige ever so saved? On the other hand, an occasional admission of fallibility is not bad—especially for a strong Government-like the British Government. It introduces a touch of the human into what ordinarily moves with machine-like rigidity. It enhances the respect of the people for law, because they are enabled to realize that even the Government respects it. And it strengthens the hold of the Government on the people, because they see that, in spite of its strength, it has a tender and scrupulous regard for the limitations imposed by the Legislature upon it. My Lord, may I, in this connection, without impertinence, say one word about Your Lordship personally? Whatever differences of opinion there may be in the country about some of the measures of Your Lordship's administration, the impression hitherto has been general that during your time the Local Governments and Administrations have had to realize more fully than before that there is a controlling and vigilant authority over them at the head and that this authority will tolerate no irregularities on their part. It is a matter of disappointment that this impression should not have been justified in the present instance. My Lord, public opinion in this country being as feeble as it is, the only two bodies that control the exercise of absolute power by the Executive are the Legislature which lays down the law, and the High Courts which see that the law is obeyed. If now the Government is to destroy the protection which the High Courts afford by means of validating legislation, and if the Legislature is to be reduced to the position of a mere handmaid of the Executive, to be utilized for passing such legislation, what is there left to stand between the people and the irresponsible will of the Executive? My Lord, I feel keenly this humiliation of my country's Legislature; for though we, Indian Members, have at present a very minor and almost insignificant part in its deliberations, it is after all our country's Legislature. Moreover, I have a feeling of faith that in the fulness of time our position in it will be much more satisfactory than at present, and anything that lowers it in the eyes of my countrymen cannot but be regarded with profound regret. My Lord, I will vote against the passing of this Bill."

[10TH FEBRUARY, 1905.] [*The Lieutenant-Governor.*]

His Honour THE LIEUTENANT-GOVERNOR said:—"My Lord, I desire in regard to my own personal opinion to state that I thoroughly agree with the Hon'ble Sir Denzil Ibbetson as to the reasonableness of the action which has been taken by the Chancellors of the Universities in regard to the constitution of the Senates and Syndicates. I also agree with him that the action taken has been undoubtedly in accordance with the spirit of the Universities Act and with the intention of the Legislature in regard to what are called the 'transitory provisions' of that Act. I shall not trouble the Council with any remarks in this connection.

"I shall only detain Hon'ble Members for a few minutes with a view of indicating what action has been taken in the Senate of the University of Calcutta in connection with this matter. Although I may not be able to agree with all that has been said or done in the Senate, and may regret that time has, to some extent, been wasted, yet on the whole I think that the action taken has been, in all the circumstances, reasonable, and has not been characterised on the part of either section of the Senate by a desire to obstruct the business of the University.

"No doubt seems to have suggested itself to the minds of the members of the Calcutta Senate as to the legality of the notifications issued by His Excellency the Chancellor in regard to the formation of Faculties, the election of the members who require to be elected by Faculties, and the election of the Syndicate, until they heard what had taken place in Bombay. There was undoubtedly some dissatisfaction with the constitution of the Syndicate in regard to the exclusion of one or two names; but this was attributable to the particular manner in which certain members of the Senate exercised their votes and not to the directions contained in the notifications. When, however, doubts were thrown in Bombay on the legality of the notifications and the validity of the election of the Syndicate, the minds of certain members of the Calcutta Senate became disturbed. On Friday, the 27th ultimo, my friend Sir Gooroodas Banerji proposed a motion accepting the alleged illegality as a fact and declining to deal with the recommendations which the Syndicate had submitted to the Senate. He has since informed me that he intended to follow up that motion, if it was carried, with a proposal to continue the business of the day by taking up the substance of the Syndicate's recommendations as though they had arisen on the spot instead of having come from the Syndicate. Unfortunately he had given no notice of this second motion; and his first motion was resisted and defeated after the loss of a great deal of time; and the discussion of the amendment, which had become the substantive motion, was adjourned until Friday last. On that date Mr. Sinha was to

[*The Lieutenant-Governor.*] [10TH FEBRUARY, 1905.]

have moved the following motion, 'As doubts have been raised regarding the validity of the appointment of the Provisional Syndicate, the Senate request His Excellency the Chancellor to take such steps in the matter as may be deemed necessary; and in the meanwhile the Senate do proceed with the current business of the University.' I have quoted the terms of this motion, which I have no doubt would have been adopted by the Senate, because I consider that it is under the circumstances a very reasonable motion, enabling the Senate to go on with the business of the University and leave the question of legality to be settled elsewhere. The motion, however, was withdrawn because of a letter which I had written as Rector of the University to the Vice-Chancellor from this Council Chamber in the morning, informing him of the introduction of this Bill and expressing a hope that the Senate might now go on with its business. That letter was read to the Senate by the Vice-Chancellor; and the Senate, feeling that the reasonable suggestion of Mr. Sinha had been already anticipated by His Excellency the Chancellor, went on to the business of the day. I may remark that the Revd. Father Lafont had given notice of another motion for the meeting of Wednesday last, questioning the legality of the position of two members of the Syndicate, and proposing that the Senate should take the necessary steps for a valid election of the members to represent the Faculty of Science. His fear was that, as the Faculty of Science does not exist at present under the regulations, the position of these members might be impugned. Finding, however, that the Bill now before this Council would validate the constitution of the Syndicate as it exists, he withdrew his motion. This indicates the *bonâ fides* of his doubts and his desire not unnecessarily to impede the work of the University.

"Another point in the procedure of the Calcutta Senate to which I wish to draw special attention is, that the Senate have fully recognised that the separation of the members of the Senate into Faculties by His Excellency the Chancellor was effected (as the notifications show) for two specific purposes only, namely, firstly, for the election of Fellows who require to be elected by the Faculties under section 6 (b) in accordance with the provisions of section 12 (c), and, secondly, for the election of the Provisional Syndicate under section 12 (p). The Senate have therefore since gone on to constitute Provisional Faculties for all other purposes, under the powers conferred on them by section 12 (q). They have not conceived the notion that the notifications of the Chancellor were intended to supersede the powers given to them by section 12 (q), but have realised that these notifications were issued for the specific purposes indicated therein.

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“The third point which I wish to emphasise in the action of the Senate of the Calcutta University is, that they have gone on to elect Committees under section 12 (g), as proposed by the Syndicate, the two sections of the Senate consulting together as to the membership of these Committees, the constitution of which has accordingly been unanimously approved. This course of procedure seems to me to be admirably adapted to the furtherance of University business. The only exception was in the case of a recommendation by the Syndicate that the Syndicate itself should formulate regulations on some more important subjects. The Senate by a small majority decided rather to appoint a Committee of thirteen. There is no doubt that this motion was carried mainly on account of the dissatisfaction to which I have already referred as existing in the minds of some members of the Senate with the membership of the Syndicate. The Syndicate consists of ten members and the Vice-Chancellor. The Registrar also sits on the Syndicate though not as a member of their body. In the Committee of thirteen that was formed by the Senate, every member being ballotted for there were retained the Vice-Chancellor, the Registrar and seven out of ten members of the Syndicate. Three members of the Syndicate had, in consequence of the vote, to give place on the Committee to three others. In one case Surgeon-General Boniford took the place of Lieutenant-Colonel Harris of the Indian Medical Service, it being reasonable that the former should be on this temporary Committee, though he could hardly be on the Syndicate, being so little in Calcutta. In another case an officer, Mr. Russell, who is going on leave, was not selected; but Mr. P. K. Roy was selected in his place for this work. The third case was the substitution of Mr. Percival for Mr. Wheeler. The only additional name may be regarded as that of the Revd. Father Lafont. The mere statement of the facts shows that the method of election by Faculties produced substantially the same result which would have arisen by the method of election by the whole Senate, and the method adopted of bringing in a name which was omitted more by accident than by design was a reasonable and proper method.

“My Lord, I have mentioned these facts to show that although the business of the Senate of the University of Calcutta might have been a little more promptly disposed of but for the doubts which have arisen in Bombay, yet there has been little manifestation of the spirit of obstruction; and I am glad to say that the preliminary business has been completely disposed of. It seems to me that the work of the Universities will never go on, as surely all of us desire that it should, without something of give and take and courteous consultation among the members of the Senate, and an earnest desire not to

[*The Lieutenant-Governor; the President.*] [10TH FEBRUARY, 1905.]

waste time but to get work done. It is because this Bill secures most easily and effectively the carrying on of the work of the University that I strongly support it. I cannot sympathize with what has fallen from the Hon'ble Mr. Gokhale as to the trifling importance of the loss of precious time and of valuable work in connection with the University; and I cannot believe that when Mr. Gokhale looks at this matter more carefully and dispassionately he will be prepared to state such a view as strongly as he has done. He has spoken of the fact that we are accustomed to see the work of the Universities interrupted by such calamities as plague; and he thinks that this fact ought to lead us to believe that the work of the Universities should be interrupted by these doubts regarding the validity of the constitution of the Provisional Syndicate. If we could remove plague as easily as we can solve these doubts, we should be inexcusable for allowing the work of the Universities to be interrupted by plague. It is because I think that it is the duty of this Council to remove these doubts, to prevent the waste of money and of time in litigation, and to facilitate the work of the Universities in its preliminary stages, in accordance with the intention of the Legislature in passing the transitory provisions in the Act last year, that I support the Bill now before the Council."

† His Excellency THE PRESIDENT said:—"In spite of the heroics in which the Hon'ble Mr. Gokhale indulged in his concluding speech just now, I venture to think that the truest remark that has been made this morning fell from my Hon'ble Colleague sitting upon my left, when he said that the importance of this matter has been gravely exaggerated. As I understand the case, the question before us is essentially a small one. When we passed our Universities Bill last year, it became necessary to provide for a transitional period before the new constitution came into final operation. For this purpose what are called the transitory provisions were inserted in section 12 of the Act. I confess that I was never very much enamoured of those provisions myself. They contain a number of conundrums almost unintelligible to the mind of the average layman, and certainly unintelligible to myself. But I would remind the Council that they were no part of the original Bill. We owe those transitory provisions in the main to the ingenuity of a learned Judge of the High Court of Calcutta, a Member of this Council a year ago, a member of the Select Committee that was responsible for turning the Bill into its present shape, and one of the most consistent allies of the Hon'ble Mr. Gokhale himself. Mr. Gokhale in one of his speeches said he wondered what Sir Thomas Raleigh would think of our procedure today. I earnestly hope that Sir Thomas Raleigh in his peaceful retreat in England will not bother himself about

[10TH FEBRUARY, 1905.] [*The President.*]

anything so essentially trivial. But if he is in anxiety about the views of Sir Thomas Raleigh, what must be the mental position of the learned Judge?

“Under one of the sub-sections of this section 12 a Provisional Syndicate was to be appointed to carry on the business of the University and to frame the necessary regulations in the interval before the permanent Syndicate was appointed later on. The Provisional Syndicate was to be appointed by the Senate in such a manner as the Chancellor might direct. Upon this authority the various Chancellors in the various Universities proceeded to act, and the various Provisional Syndicates were elected, not always in the same way. I know nothing of the proceedings that took place at the other Universities, because I was absent from India at the time: neither had I anything to do with the constitution of the Provisional Syndicate here, beyond indicating the method of procedure for the election, as I was by the terms of the Statute bound to do. The Hon'ble Mr. Gokhale is good enough to tell me that my action was irregular throughout. With all respect I must decline to take him as an authority upon a matter of law. I have other legal advisers whose opinions are perhaps equal to his own and whose views do not coincide with his. I knew nothing of the Provisional Faculties or of the elections that they made. The first I heard of it was when I saw their names in the newspapers. Any suspicion, therefore, that the Government at large, or the Chancellor of the Calcutta University in particular, were trying to arrange matters in accordance with their views is absolutely groundless. We have not any certain knowledge whether our action was even illegal. Reading the Act as a layman I should be very much inclined to say that the action, in Calcutta at any rate, was strictly legal, and such, I believe, is the opinion of the Hon'ble Member who sits upon my left. But even if it was illegal, it is surely quite clear that the illegality was of the most petty description and was due to an ambiguity in the wording of the Act for which the Government were not mainly responsible.

“Now what has happened? The question of legality has been raised, not here, but in Bombay. There the matter seems, I agree with the Hon'ble Member in that respect, to be rather more open to doubt, though, while agreeing with him on that point, I must state that he had no right whatever to say in his speech the other day, and to repeat in one of his speeches today, that the Government by their action had admitted the illegality themselves. That is far from being our position. On the contrary, it was disputed by Mr. Richards throughout.

[10TH FEBRUARY, 1905.] [*The President.*]

“Anyhow, the matter was raised in Bombay and was brought before the High Court there. It might equally have been raised here; we had reason to believe that the friends of the Hon'ble Member in this city were waiting to see what happened at Bombay in order to raise the question here. An era of litigation appeared therefore to threaten. And what did litigation mean? It meant not only the sometimes dilatory process before the Courts of Law with which we are familiar in this country, but also suspension of the work of the Universities until the point was settled, perhaps months later on. I quite agree with what has just fallen from His Honour the Lieutenant-Governor on this point. I was surprised to hear the Hon'ble Mr. Gokhale say last week that this did not much matter, that he was even willing that months should be wasted before this question was settled. That phrase would come naturally enough from the lips of a professed enemy of the Government, but it does not come so well from the mouth of a sincere friend of education, which is the light in which we always prefer to regard the Hon'ble Member and in which he always depicts himself in this Chamber. This is the situation that the Government by the ordinary and obvious means placed at their disposal intervened to stop. Thereupon the Hon'ble Member tells us that our action is arbitrary, that we have assumed a position of practical irresponsibility which has produced a most deplorable effect, and just now, in a moving peroration, he even indicated that the reign of law was coming to an end in India, and I am not quite certain that he did not set it down to my discredit that I was to be the Viceroy under whom this disastrous state of affairs was about for the first time to arise.

“Now I need hardly tell Hon'ble Members that when the Hon'ble Mr. Gokhale made these remarks, he made them not for this assembly but for the benefit of his friends outside. The Government, in introducing a validating Bill, to resolve the doubts that have arisen, are not doing anything that they have not done before; there is no novelty in their action; they are not intervening to secure anything for Government which we want and which we ought not to seek. All that we are doing is to intervene to prevent the unfortunate consequences that have already in part resulted, and that might result in an even greater degree, from an ambiguity in the wording of the Bill; and as for the deplorable effect that is alleged to have been produced, I think a much more deplorable effect would have ensued had the Government not interfered, and had they allowed this state of suspended animation, of interrupted work, on the part of the bodies that we spent so much time in constituting last year, to continue.

[10TH FEBRUARY, 1905.] [The President.]

“Of course the Hon'ble Member sees in our action much more. In his eyes I am afraid that the Government are always guilty of dark deeds, which it is his duty to discover and lay bare. He said, for instance, this morning that what had already happened showed how true were the prophecies of himself and his friends a year ago. He remarked that some of their fears had been more or less realized. Well, I was waiting to discover what those fears were; but he then passed away from the subject. I think it was prudent on his part to introduce these qualifications for this reason. The particular fear in which the Hon'ble Member habitually indulged last year, and which figured in almost all his speeches, was that the Government was going to pack the Senates of the new Universities. He wrote in his Note of Dissent that ‘the net result of the constitutional provisions of the Bill will be to place the Indian element in’ so hopeless a minority as to dissociate it for all practical purposes from the government of the Universities. This much is clear, the rest is doubtful.’ Then in one of his speeches later on, which I remember rebuking at the time, he said that the Senates of the future would be dominantly European with only a slight sprinkling of Indians just to keep up appearances. Now let us see how the fears of the Hon'ble Member have been more or less realized. In the Senate of the Calcutta University, for which I am in the main responsible, the Indians are in a majority over the Europeans of 3; in the Bombay University, which the Hon'ble Member knows so well, the Natives have a majority of 14. In other words, 57 out of 100 is what he described by anticipation as a slight sprinkling of Natives. In Lahore the Natives are in a majority of 3. In fact, the Universities of Madras and Allahabad are the only two Universities upon the Senates of which the Europeans are in the majority; and their majority in Madras is only 4 and in Allahabad only 5.

“The Hon'ble Member has been very eloquent today about the attitude of Government, and I have ventured, I hope without offence, to reply to him. May I suggest to him that he should turn his attention for a moment to the attitude of his own friends? Is he quite sure that a disinterested love of education has been at the bottom of their action in this matter? It is difficult, I think, to believe it of all of them. To do them justice there is a certain class of opponents of Government who have never pretended it for a moment. The object of that class is quite clear and it has been stated in their organs. They desire, in the first place, to discredit the Universities which the Government created last year and to bring their work to a standstill, and, in the second place, they wish to bring about an election of new Provisional Syndicates who would be more in sympathy with the views of the enemies of the Act than those who have been elected, and who might help them in practice to break it down. That, as we all know, is the scheme that has been devised in certain quarters, and it is now about to fail.

[*The President.*] [10TH FEBRUARY, 1905.]

"I could not help being a little amused last week when the Hon'ble Member called us to witness that he had been greatly moved by an appeal made by the Lieutenant-Governor last year, that since then he had been exercising all his energies to make our Bill a success, but that he had been diverted from this excellent enterprise by the arbitrary conduct of Government in once again bringing the matter into the arena of controversy. Considering that the whole matter that we are sitting here today to discuss is in consequence of action not taken by the Government but taken by the friends of the Hon'ble Member, this seems to me rather strong.

"Now, however, that this move has failed, I hope that the Hon'ble Member and those who act with him will return to the rôle of true friends of education in this country, and that we may expect his co-operation in future in defeating any further attempts to impair the success of the Act, which I really believe that, equally with ourselves, he has at heart."

The Council divided :—

Ayes—15.

The Hon'ble Nawab Fateh Ali Khan.
 The Hon'ble Mr. H. A. Sim.
 The Hon'ble Mr. L. Hare.
 The Hon'ble Mr. A. D. Younghus-
 band.
 The Hon'ble Mr. L. A. S. Porter.
 The Hon'ble Mr. H. Adamson.
 The Hon'ble Mr. E. Cable.
 The Hon'ble Mr. E. N. Baker.
 The Hon'ble Mr. J. P. Hewett.
 The Hon'ble Mr. H. Erle Richards.
 The Hon'ble Sir Denzil Ibbetson.
 The Hon'ble Sir A. T. Arundel.
 The Hon'ble Major-General Sir E. R.
 Elles.
 His Excellency the Commander-in-
 Chief.
 His Honour the Lieutenant-Governor.

Noes—4.

The Hon'ble Rai Sri Ram Bahadur.
 The Hon'ble Rai Bahadur B. K.
 Bose.
 The Hon'ble Nawab Saiyid Muham-
 mad.
 The Hon'ble Mr. Gopal Krishna
 Gokhale.

So the motion was agreed to.

The Council adjourned to Friday, the 24th February, 1905.

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

CALCUTTA ;
 The 13th February, 1905. }