

(1) Number of pages _____

(2) Date of receipt _____

(3) Initials of the Referencer _____ *g*

MADRAS RECORD OFFICE.

Government of Madras.

Finance DEPARTMENT.

G.O. No. 339

Press
Mis.

Dated

18 6/7.

5-6 *6/7*
Not to be folded or roughly handled

*Proceedings of the Madras Government, Financial Department,
4th September 1866.*

Read the following :—

La. 5. Letter from the Acting Under Secretary to the Government of Bombay, to the Secretary to the Government of India, Home Department, Simla; dated Bombay Castle, the 4th July 1866, No. 7115.

I am directed to transmit, for the information of the Government of India, the accompanying copy of a letter from the Acting Registrar of Joint Stock Companies in Bombay, reporting the result of proceedings instituted by him in regard to certain Joint Stock Companies, and to state that the Honorable the Governor in Council fully approves of the proceedings and proposals thereinafter mentioned by Mr. Peile.

From J. B. PEILE, Esq., Acting Registrar, Joint Stock Companies, to C. GONNE, Esq., Secretary to the Government of Bombay; dated 9th June 1866, No. 80.

I have the honor to report that, as the result of proceedings instituted by me, in communication with the Government Solicitor, under the instructions conveyed in Government Resolution,

India Financial Association, Limited Rs. 100 Mutual Financial Association, ... 100 Directors of the Union Bank of Bombay, Ltd.— each, each Rs. 100 100 India Financial Association, Limited 100 Total .. 1100	No. 1375, of 27th April last, certain Joint Stock Companies were, on the 4th instant, fined by the Acting Senior Magistrate of Police, to the amounts shown severally opposite their names in the margin, for various defaults in complying with the provisions of the Indian Companies' Act or Acts which it partially repeals.
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2. I have further to report that, on the 5th instant, summonses were obtained against twenty-three Companies, for having neglected to give notice of the situation of their registered Offices, as required by the Act. One Company only was not convicted, on the ground

* Except two dismissed, (signed) J. B. P.

that the situation of the Office was stated in the Memorandum of Association. In all the other cases,* the Companies were convicted; but as all but one expressed their readiness to put themselves right forthwith, we did not press for penalties.

Guarantee Trust Company, Limited Rs. 100	The remaining Company resisted the requirement of notice, and was fined as stated in the margin.
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3. On the 5th instant, Mr. G. W. Pereira, Manager of the Union Bank of Bombay, sent a Poen with a note to my Assistant, Mr. Byramjee Dadabhai. The note contained Bank Notes to the value of Rs. 20, and a request that Mr. Byramjee would accept them. Mr. Byramjee had the previous day, by my instructions, visited the Union Bank, and found it in default, in not having a statement, as required by Act VII of 1860, put up in a conspicuous place. Mr. Byramjee was instructed to report such default to me, and the intent to corrupt him was so obvious, and so evil a precedent at the present time, that I at once determined to prosecute Mr. Pereira for the offence, and I trust that my proceedings will be approved.

4. Government will readily believe that there has been much laxity in the management of the system of Companies which have been formed in the last four years, but I may, perhaps, be allowed to prove, by a short statement of facts drawn from the record of the Registrar of Joint Stock Companies, that the proceedings now reported, and those which I propose to institute, are not more than sufficient to stimulate defaulters into activity, and produce a salutary alarm.

5. The Indian Companies' Act X of 1860 (which is almost identical with the English Acts 25 and 26 Vic., Cap. 89) enacts several penalties for defaults which were also in the previous Acts XIX of 1857 and VII of 1860, and also assigns penalties for one or two defaults which were not hitherto punishable by law. These penalties are for not holding meetings and not preparing and registering lists of members, balance sheets, special resolutions, and other documents, which are all necessary to insure a proper publicity to the proceedings of Companies, and full information to shareholders.

*Proceedings of the Madras Government, Financial Department,
4th September 1866.*

6. In England, Companies have, in numerous instances, been prosecuted for defaults by their own shareholders, but I do not find that this has been the custom in any part of India. In Calcutta, proceedings are instituted by the Registrar, and in Bombay, before the recent Revolution of Government, I am not aware that proceedings have been instituted by any one whatsoever.

7. Many, but not all, of the penalties are incurred by defaults in registering the documents required to be kept by Companies. On the first of this month, the position of the registered Joint Stock Companies in Bombay, with reference to their duty of registering documents, was as follows:—

There were 172 Companies on the Register:—

(a.)—Of these, seventy-one were in default by not having submitted a list of members and summary of capital; and the Companies, and also every Manager and Director, knowingly and wilfully authorizing and permitting the default, were liable to a penalty, not exceeding Rupees 50 per diem, from the day the default began.

(b.)—Sixty-six Companies were in default by not having submitted balance sheets, whereby every Director and Manager knowingly and wilfully permitting the default is liable, under the new Act, to a fine of Rupees 1000.

(c.)—Sixty-two Companies were in default by not having given notice to the Registrar of the situation of their registered office, and were liable to a fine, not exceeding Rupees 50, for every day during which business was carried on under such default.

8. There are other requirements of the Act, default in which cannot be ascertained merely by inspecting the Registrar's records. But of the whole number, only nineteen Companies appear to have filed their periodical documents within the proper dates, and thirteen appear to have filed all the required documents, but after the proper dates.

9. There are many Companies which have never sent in a single document since the day when they were incorporated; yet all these have probably called up capital, and it is more than probable that the capital has been raised, while no accounts whatsoever have been published, and the Company has never even provided itself with an office, where applications for information might find an Agent.

10. I think, from what I have observed, that the evils incidental to "limited liability" have been exaggerated in Bombay by possibilities in native character. The money is generally diffused after the Russian war, and in a much greater degree during the American war, naturally collected itself into joint stock concerns with limited liability. There was no possible means of employing lawfully the enormous sum of capital thus collected, and there came to be a competition among the Companies as to who should lead on the worst security. It is doubtful if the extreme prodigal and careless could have preserved a healthy tone in business. But the mass of native shareholders, profoundly ignorant, and placing blind confidence in the new discovery in "limited liability," placed no check whatever on their Directors and Managers. The latter only wanted to profit by the sale of shares, and cared nothing for the regular transaction of business. The shareholders have now changed the blindness of confidence for the blindness of terror, and it appears that they are generally quite ready to get out of the concern at any cost, without calling the responsible parties to account.

11. Beyond one or two anonymous letters, I have received no assistance from shareholders in my present proceedings, and they appear to manifest no business to undertake any course of modifying their affairs.

12. I have indeed been more than once assisted by the Officers of Companies, that they have been delayed in preparing the documents required of them, solely by the impossibility of inducing the shareholders to attend a general Meeting, and I am not inclined to doubt the substantial truth of this statement.

13. I think, however, that, although the shareholders may be wanting in the performance of their duty to themselves, I am bound to pursue aggressive measures so long as default is the rule and not the exception. The principal benefit to be obtained by applying penalties, will be that numerous Companies, which are now doing no business, will be compelled to wind up, and in such

*Proceedings of the Madras Government, Financial Department,
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cases it is possible that some part of the capital may be secured to the shareholders, which, in the present state of general neglect, may be grossly misapplied.

14. In the same way, unless the Registry Office does its duty, those who may wish to protect themselves against improper proceedings by Officers of Companies, are placed at a great disadvantage. For instance, a Solicitor may find that some act has been done by three Directors of a Company, which should, according to the Article, be done by not less than five. He proceeds against the Company, and it is not by a resolution passed at some general meeting, but never registered, which allows the act to be done by three.

15. Besides the registered Companies, I am aware of several Companies which have neglected to register, and which, under Sections 223, 224 of the Act, are liable to very serious penalties and disabilities since the 1st instant. It will probably be necessary to proceed against some of these, but I believe they will not put themselves right.

16. There is a set of Articles before me; they are such Companies as are formed by deed of copartnership, required to register, but not registered since January 1st, 1857. The English Act of 1856 (19 Vic. Cap. 11) appears to treat them as if they were Companies, but as it was supposed that the 1857 (21 Vic. Cap. 11) Act made such Companies illegal, by Art. of 1862, therefore, regarded as illegal, and the Indian Act, being 2 of Act XIX had never been made legal.

17. Under these circumstances, Section 223, Act X, can be made of no use, as it is not in force. I request the favor of instructions whether the Solicitor, and that a portion of the fines might be assigned to him.

18. It is not specified in the Act, fines collected in the Police Courts under the provisions of the Act, whether the Solicitor, and that a portion of the fines might be assigned to him.

19. The receipt of documents for registration has immensely increased since the 1st instant, and will probably continue to do so. The Office has been performed by the establishment of the General Registry Office of the Government of India for the employment of a clerk on Rupees 75 in the month. As the fees now are not less than Rupees 100 per diem, I submit that permission may be granted to employ the clerk in anticipation of reaction. I think that one year is also a sufficient period.

20. The records have been taken over in an unsatisfactory state, and much time is spent in putting them in order. I am bound to mention, however, that neither Mr. Compton appears to be responsible—the neglect being of earlier date, when speculation was daily extending its flight, and the healthy restraint of the Act would have been of incalculable importance to Bombay.

No. 3316.

Copy forwarded to the Government of Fort Saint George, for information.

(By Order.)

H. H. DAVANUM,
Secy.,
2nd August 1866.

(Signed) A. F. HOWELL,
Under Secy. to the Govt. of India.

Proceedings of the Madras Government, Financial Department
4th September 1866.

No. 6.

Order received, 4th September 1866, No. 229.

To be enclosed.
(True Extract).

J. D. SIM,
Secretary to Government.

From the Acting Under-Secretary to the Government of Bombay, to the Secretary to the Government of India, Home Department, Simla,—(No. 2115, dated Bombay Castle, the 6th July 1866).

I AM directed to transmit for the information of the Government of India the accompanying copy of a letter from the Acting Registrar of Joint Stock Companies in Bombay, reporting the result of proceedings instituted by him in regard to certain Joint Stock Companies, and to state that the Hon'ble the Governor in Council fully approves of the proceedings and proposals therein reported by Mr. Peile.

From J. B. Peile, Esq., Acting Registrar, Joint Stock Companies, to C. GORKE, Esq., Secretary to the Government, Bombay,—(No. 80, dated the 9th June 1866).

I HAVE the honor to report that, as the result of proceedings instituted by me in communication with the Government Solicitor under the instructions conveyed in Government Resolution No. 1375 of 27th April last, certain Joint Stock Companies were on the 4th instant fined by the Acting Senior Magistrate of Police to the amounts shown severally opposite their names in the margin, for various defaults in complying with the provisions of the

Bank Financial Association, Limited	Rs.	500
Central Financial Association, Limited	"	500
A Division of the Union Bank of Bombay, Limited, with Rs. 120	"	500
Central Finance Association, Limited	"	500
Total Rs.	"	2,000

Indian Companies' Act or Acts which it partially repeals.

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* Except two divisions of association. In all the other cases* the Companies were convicted; but as all but one expressed their readiness to put themselves right forthwith, we did not press for penalties. The remaining Company resisted the requirement of notice, and was fined as stated in the margin.

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4. Government will readily believe that there has been much laxity in the management of the swarm of Companies which have been formed in the last four years, but I may perhaps be allowed to prove by a short statement of facts drawn from the record of the Registrar of Joint Stock Companies, that the proceedings now reported and those which I propose to institute are not more than sufficient to stimulate defaulters into activity and produce a salutary alarm.

5. The Indian Companies' Act X. of 1856 (which is almost identical with the English Acts 25 and 26 Vic., Cap. 89) re-enacts several penalties for defaults which were also in the previous Act XIX. of 1857 and VII. of 1860, and also assigns penalties for one or two defaults which were not hitherto punishable by fine. These penalties are for not holding meetings and not preparing and registering lists of members, balance sheets, special resolutions, and other documents which are all necessary to ensure a proper publicity to the proceedings of Companies and full information to shareholders.

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(b)—Sixty-six Companies were in default by not having submitted balance sheets, whereby every Director and Manager knowingly and wilfully permitting the default is liable, under the new Act, to a fine of Rs. 1,000.

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9. There are many Companies which have never sent in a single document since the day when they were incorporated, yet all these have probably called up capital, and it is more than probable that the capital has disappeared while no accounts whatever have been published, and the Company has never even provided itself with an Office where applicants for information might find its Agents.

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they are generally quite ready to get out of the concern at any cost without calling the responsible parties to account.

11. Beyond one or two anonymous letters, I have received no assistance from shareholders in my present proceedings, and they appear to consider it my business to undertake the entire duty of rectifying their affairs.

12. I have indeed been more than once assured by the Officers of Companies, that they have been delayed in preparing the documents required of them solely by the impossibility of inducing the shareholders to attend a general meeting, and I am not inclined to doubt the substantial truth of this statement.

13. I think, however, that although the shareholders may be wanting in the performance of their duty to themselves, I am bound to pursue aggressive measures so long as default is the rule and not the exception. The principal benefit to be attained by applying pressure, will be that numerous Companies which are now doing no business will be compelled to wind up, and in such cases it is possible that some part of the capital may be secured to the shareholders which, in the present state of general neglect, may be grossly misapplied.

14. In the same way, unless the Registry Office does its duty, those who may wish to protect themselves against improper proceedings by Officers of Companies, will be placed at a great disadvantage. For instance, a Solicitor may find that some act has been done by three Directors of a Company, which should, according to the Articles, be done by not less than five. He proceeds against the Company, and is met by a resolution passed at some general meeting, but never registered, which allows the act to be done by three.

15. Besides the registered Companies, I am aware of several Companies which have neglected to register, and which, under Sections 223, 224 of the Act, are liable to very serious penalties and disabilities since the 1st instant. It will probably be necessary to proceed against some of these, but I believe that most of them are taking steps to put themselves right.

16. There is a serious difficulty about these Companies; they are such Companies as were formed by deed of partnership or memorandum, and Articles before 1st May 1856, and required to register, but not registered. Section 2 of Act XIX. of 1857 appears to make them illegal since January 1st, 1858, whereas the last clause of Section 224 of Act X. of 1866 appears to treat them as not illegal. The reason of this discrepancy appears to be as follows:—The English Act of 1856 (20 Vic., Cap. 47) had a Section similar to Section 2 of Act XIX., but as it was supposed that this Section made Companies not complying with it illegal, an Act of 1857 (21 Vic., Cap. 14) repealed the said Section, and enacted in its place a Section which did not make such Companies illegal, but on the contrary recognized their continued existence. The English Act of 1862, therefore, regarded "Companies required by any Act hereby repealed to register" as legal, and the Indian Act, being an exact copy of the English one, does so also, although Section 2 of Act XIX. had never been repealed by an Act similar to the English Act of 1857.

17. Under these circumstances it becomes uncertain whether the Companies mentioned in Section 223, Act X., can be regarded as "Companies existing all the time of the commencement of Act X.," so as to be registered under Part VII. of the Act. I propose to consult the Honorable the Advocate General on the course which should be followed.

18. It is not specified in the Act in what manner the fines are to be disposed of. I find that fines collected in the Police Courts under certain Acts are placed to the credit of the Municipality. I request the favor of instructions whether fines under Act X. should be so disposed of, and only venture to remark that these prosecutions take up a great deal of the time of the Government Solicitor, and that a portion of the fines might be assigned to him.

19. The receipt of documents for registration has immensely increased since the first proceedings were instituted, and will probably continue to do so. The heavy duties of the Registrar's Office have been performed by the establishment of the General Registry Office, as the sanction of the Government of India for the employment of a clerk on Rupees 75 has not been received. As the fees now are not less than Rupees 100 per diem, I submit that permission might be accorded to employ the clerk in anticipation of sanction. I think that one peon is also required for the collection of fees.

20. The records have been taken over in an unsatisfactory state, and much time must be spent in putting them in order. I am bound to mention, however, that neither Mr. Orr, nor the late Mr. Compton, appears to be responsible—the neglect being of earlier date when speculation was daily extending its flight, and the healthy restraint of the Act would have been of incalculable importance to Bombay.

No. 3316

Copy forwarded to the *Government of Port*
Saint George for information.

By Order,

Arthur B. Smith
Under-Secy. to the Govt. of India.

HOME DEPARTMENT,
SIX L.
The 2nd August 1865.

Supp. Revenue 1866. (W)

W. 2838.

From the Vesty
to the Govt. of
India

Ofsted 22. 3 Aug
Receive 228. 1866.

W. 3316.

N. 33

Forwarding for infor-
mation, copy of letter from
Govt. of Bombay reporting
result of proceedings in-
stituted by Ag. Registrar
of Joint Stock Companies
in Bombay in regard to
certain Joint Stock Com-
panies.

16 Sept. 1866 W. 329.

W. 329

5.6.