G.R.O.—1—77,000—9-6-37.

(1) Number of pages 8

(2) Date of repair 2

3 Initials of the Reference 7

MADRAS RECORD OFFICE.

Government of Madras.

for Chief Secy. **DEPARTMENT.**

Cons. 15-4-37

G.O. No. 577 Press Mis.

Dated 15-4- 1837.

Not to be folded or roughly handled

No. 1. Read the following Extract from the Minutes of Consultation in the Judicial Department, dated 4th April 1859, No. 446.

Communicating the opinion of the Advocate General of Calcutta on the subject of the execution of Deeds and the making of Contracts by the several Governments in India. } (Vide Judicial Consultation, 5th April 1859, Nos. 6-7.)

No. 2. ORDER THEREON, No. 871; dated 13th April 1859.

Ordered to be communicated to the Chief Engineer.

(Signed) W. C. SIM,
Ag. Dy. Secretary to Government.

OPINION.

1. I THINK it of importance that in order to meet the doubts that have arisen at Bombay and Madras, as well as in Calcutta, an Act of Parliament should be passed during the next Session, expressly empowering the several Governments in India (including the Lieutenant Governor's), and such officers as may, from time to time, be authorized by those Governments to sell, dispose of, lease, or assign all real and personal estate within their respective Governments, vested in Her Majesty, under the Act 21 and 22 Vic. Cap. 106, as may be thought fit, and to make the proper assurances for that purpose either in the name and under the Seal of the Secretary of State in Council, or in such other name and form as the Government shall, from time to time direct, without previous reference to the Secretary of State in Council in England.

2. I think that as many conveyances have doubtless been executed in India, and particularly in the North-Western Provinces since the Act came into operation, it is very desirable that this provision should take a declaratory form, and should have a retrospective effect given to it, so that it may operate in the several Presidencies from the time of the Proclamation of the Act.

3. Although I fully concur with the law officers at Bombay and Madras in thinking an Act of this description desirable, I do not quite agree in the view taken by them of the difficulties arising under the 40th Section of the Act. I do not think that that provision can be treated as excluding the power of the Indian Governments to dispose of property, real and personal, in India, without previously obtaining from England the express authority of the Secretary of State in Council, but as pointing out the mode by which the Secretary of State in Council may deal with property which it may be determined by the Home Government to deal with in England.

The property so dealt with may be situated either in England or India, but practically the mode thus provided would be generally applicable to property in England, and not to property in India, save in exceptional cases.

If this be not so, and if the 40th Section be imperative and exclusive, it would follow that in no case could the Government of India legally sell any old stores or buy any new ones, or grant a pottah or enter into the most trifling contract (all of which acts fall as much within the provision of the 48th Section as the sale or mortgage of real estate does) without the previous sanction of the Secretary of State in Council, with the concurrence of a majority of votes at a meeting, which of course could not have been the intention of Parliament.

4. My impression is, that it was intended by the Act to leave all contracts, conveyances, and assurances entered into or made in India with reference to property there on the same footing as before the Act, without disturbing the power previously committed to the Government of India to act in such cases without previous reference to the Home Government; and that it was further intended that wherever the name of the East India Company could have been properly used in contracts or deeds by the Government of India before the passing of the Act, the name of the Secretary of State in Council might be used under the Act; while in cases wherein, according to usage or local law, the name of a Government officer was formerly used on behalf of Government, and not that of the East India Company, no change would be necessary. No difficulty according to this view would exist in sales or other dispositions of personal property, or in the grant of pottahs or other assurances of such property, which according to recognised custom ran in the name of the Collector or Commissioner, and not in that of the East India Company. But a practical difficulty would arise even according to this view in the execution of such assurances of real estate as used before the late Act to run in the name of the East India Company, as for instance in the sale of lands in the Presidency Towns or in leases or sales of property in the interior to Europeans, these can no longer be executed in India under the Corporate Seal of the grantors, as the Secretary of State in Council, though invested with the power of sueing and being sued as a Body Corporate is not a corporation for all purposes, and has no Corporate Seal.

Therefore, in order to pass the legal estate in real property thus situated and subject to English law, where by that law a conveyance under seal is required, it would be necessary that such conveyance should be executed in England by the Secretary of State in Council under Section 40, or under a special power of attorney under seal from the Secretary in Council. In such cases, however, the beneficial interest in the land would, if my view be correct, be bound by

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the contract for the sale or disposal of it, entered into by the Government of India, and the Government would be entitled in the name of the Secretary of State in Council to sue upon all express covenants contained in the conveyance, though not executed on the part of the Secretary of State in the mode prescribed by Section 40.

5. With respect to the acquisition of real property by purchase or grant, I do not myself feel the difficulties pointed out by Mr. Boyson. As before observed, I do not think the power of contracting for the purchase of such land is taken away from the Government of India by the new Act, and if the legal estate in any land thus contracted for be conveyed to the Secretary of State in Council, or to any of the Indian Governments by name of office, I doubt not that the property in such lands would become vested in Her Majesty for the service of the Government of India, although the purchase may have been made without the direct authority of the Secretary of State in Council at a meeting of Council as prescribed by Section 40.

See further on this point a memorandum dated the 16th November 1858, sent by me to the Government of India, Public Works Department, upon the execution of a mining lease to Messrs. Rees Davis and Co.

6. Even however if the view above taken by me be the correct one, the doubts that have arisen on the subject, and other doubts that may reasonably arise as to the effect of those portions of the Act, as well as the real difficulty which exists as to passing the legal estate in cases where English law applies, renders it very desirable, I think, that an Act of Parliament, of the nature above pointed out, should be passed as speedily as possible.

7. The powers given should extend to the acquiring of land, as well as to disposing of it; and the name in which conveyances should be executed or taken, *i. e.* whether that of the Crown or of the Secretary of State in Council should be defined, considering that nearly all such conveyances contain covenants upon which the Secretary of State in Council may have to sue or to be sued, it seems more convenient that the latter name should be used than that of Her Majesty.

8. The power given should not I think be limited to the Governor General, or Governors in Council, but should extend to all officers properly authorized in that behalf by the several Governments, for extreme inconvenience would result from the necessity of sending every conveyance that required execution to the seat of Government for execution.

9. With respect to contracts I do not take the same view that Mr. Lewis takes of the difficulties occasioned by the present Act. On the contrary, I think that in some respects greater facilities are given to entering into contracts in India on behalf of the Government than existed before the Act; where a contract was entered into with the East India Company and duly executed under the Corporate Seal, no difficulty could arise so far as the form of execution was concerned; and wherever conveniently it was practicable, this mode of execution was adopted. But numerous cases arose especially as to contracts executed out of the Presidency Towns, as to which it was impossible to consult the law officers, or to procure the execution of a regular deed under the Company's Seal. In these cases great uncertainty often existed as to whether the contract, however binding in other respects was binding on the East India Company as being a Corporation, which in ordinary cases could only be bound under its Corporate Seal or upon the other contracting party who according to English law, was not bound by an executory contract with a corporation, unless the corporation was itself bound. The result was that although the objection of the want of a Corporate Seal was never set up as a defence by the Government, to the performance of a contract on its part, the objection though waived by it was one to which it was frequently exposed; and thus contracts complete in all respects, save that they did not admit of execution under the Company's seal: *e. g.* contracts entered into in the name of an officer expressly on behalf of the East India Company have been defeated.

10. This objection I apprehend will no longer prevail under the present Act, where the contract has been entered into with the authority of Government in India. For assuming the Government here to have authority to enter into such a contract so as to render the Secretary of State in Council liable upon it, no technical rule as to the necessity of the contract being under the Corporate Seal can now arise. The Secretary of State in Council not being a Corporation, and if I am right in thinking that the Indian Governments have the power to bind the Secretary of State in Council by contracts entered into, and to be performed in India, it follows that both parties to such a contract would be bound, whether it were under seal or technically in the name of the Secretary of State in Council, or not, provided it were in other respects concluded as a contract with the Government.

No.

FROM

C. BEADON, ESQUIRE,
Secy. to the Govt. of India,

To

SIR,

Dated Fort William, the 28th February 1859.

HOME DEPT. I AM directed to transmit for information and guidance the accompanying copy of the opinion of Mr. Advocate General Ritchie, on the subject of the execution of deeds and the making of contracts by the several Governments in India.

2. Mr. Ritchie's opinion of course has reference only to documents which may be brought into the Presidency Courts where English Law prevails. But in the Mofussil the practice of executing deeds and making contracts in the name of the Government (Sirkar) which has always existed may continue as heretofore.

3. A copy of Mr. Ritchie's opinion will be forwarded to the Right Honorable the Secretary of State by the next Mail, in order that, as suggested by Mr. Ritchie, an Act may be passed by Parliament to remove all doubts as to the power of the Governor General in Council, or the local Governments, or any officer of the Government authorized on that behalf, to execute deeds and enter into contracts which shall be binding on the Government.

4. I am directed to add that the Right Hon'ble the Secretary of State will be requested, in the event of an Act of the nature suggested by Mr. Ritchie being passed by Parliament, to have six seals engraved in England, with a suitable device, and sent out for the use of the Governments named on the margin.

I have the honor to be,
SIR,
Your most obedient servant,

Secy. to the Govt. of India.

Two for Govt. of India, (Home and Foreign Depts.)
One Do. Fort St. George.
One Do. Bombay.
One Do. Bengal.
One Do. Straits' Settlements.

11. I do not therefore think that in respect of contracts any alteration in the Act is required. But the opinions expressed on the subject at Bombay are entitled to much weight, and in the doubt that exists as to the correctness of my view, I think it will be preferable if the Act be amended as to conveyances, to introduce an express declaratory provision as to contracts also. But if any alteration be made, I would respectfully suggest that it be made in terms sufficiently large to give validity to all contracts whether under seal or not, and whether in the name of the Secretary of State in Council, or in any other name entered into with the authority direct or indirect of any of the Indian Governments by any officer of the Government. The power given should be sufficient to comprehend a contract by correspondence between a Government officer acting within the scope of his authority, and a third person, which would be binding as against the Government if it were a private person and the principal of such officer, but which the other contracting party might, when the Government represented the East India Company, have repudiated on the ground that the officer did not contract, and was not liable individually, being a Government officer acting within the scope of his duty, and that his principals had not contracted, and were not liable for the want of their corporate seal.

12. I think it will be desirable also to call to the attention of the Secretary of State, the question as to the mode in which the purchase of ships in this country by the Indian Governments should be effected, such ships undoubtedly become the property of Her Majesty. But it seems advisable to show on the face of the Bill of Sale, that they are acquired for the purpose of the Government of India, in order to distinguish those from other ships, belonging to Her Majesty. This may be done by making the Bill of Sale run either in the name of Her Majesty expressly for the purposes of the Government of India, or in the name of the Secretary of State in Council of India, on account of Her Majesty, which in some respects, may be more convenient. No legislative provision is required for this purpose—and the sale of such ships if re-sold, will follow the general law as to the sale of personal property by the Government of India which I have already discussed.

13. Another question of minor importance has been brought to my attention by the Government Solicitor, (Mr. Sandes) and may be here conveniently noticed, *viz.* as to the mode of filing an answer to a Bill of Equity in the Supreme Courts in India. The Secretary of State in Council is empowered to sue, and be sued — Body Corporate.

The usual mode of answering on behalf of a corporation is by answer under the corporate seal, and in London there would be no difficulty probably in filing an answer under the hand and seal of the Secretary of State affixed in Council.

But in this country a litigious plaintiff might object to accept the authentication under the hand or seal of any Government official in this country, and might insist on its being signed and sealed in England. It is not probable that any such difficulty will arise, as if raised it will only delay the plaintiff. I apprehend that practically a Power of Attorney, or even a letter from the Secretary of State in Council to the Governor General in Council, or to the Government Solicitor in Calcutta, will suffice to authorise the filing an answer which shall be virtually binding.

14. In these remarks I have assumed, that the Secretary of State in Council is not invested with the general powers of a corporation. I do not think the capacity to sue, and be sued as a corporate body, which is conferred on the Secretary of State in Council, constitutes him a body corporate for general purposes; a doubt, however, may possibly be raised on this point from the words of Section 44, which preserves in force and makes applicable to the Secretary of State in Council, in place of the East India Company, all Acts or provisions then in force under charter or otherwise concerning India—as the East India Company is incorporated by character, and as nearly all the privileges secured to the East India Company by Charter alone, had been before the passing of the last Act either annulled by, or merged into provisions by Act of Parliament, except the privileges of a corporation conferred by the Charter of 1698, it may perhaps be thought that among the provisions thus made applicable by the late Act to the Secretary of State in Council, are those which incorporated the East India Company and gave it perpetual succession and a common seal. I do not think however that the clause can have this effect, because the provisions thus rendered applicable to the Secretary of State in Council, are those in force under charter or otherwise concerning India, and are applied to the Secretary of State in Council in the place of the Company, and the Court of Directors, &c. As the provision in the Charter incorporating the Company is not a provision specially concerning India, and as the East India Company itself, is left by the Act

in existence as a corporation, it is clear I think that that provision cannot be held to apply to the Secratary of State in Council in substitution for the East India Company.

It is desirable however that it should be ascertained upon the reference now about to be made to the Secretary in Council, whether my view as above stated is right, and if not, that it should be corrected.

15. It may perhaps be thought that the simplest mode of meeting the difficulty as to the transfer of property in India, is by expressly incorporating the Secretary of State in Council. Some convenience would no doubt attend that course; but it would I think be outweighed by the inconvenience arising from it in this country, unless the Act clothing the Secretary in Council with a full corporate character provided expressly for the execution of assurances and contracts in India, in a mode similar to that already pointed out as advisable. In England actions against the East India Company for pensions, &c., which it would have been extremely inconvenient to entertain in the ordinary Courts of Justice, have been defeated upon the simple ground that the defendants were a corporation, and that the contract sued on was not under the corporate seal.* Probably those actions might have been defeated upon other grounds. But the objections founded, or the corporate character of the defendants afforded a convenient check upon the maintenance of actions of a harassing nature, respecting matters not properly within the cognizance of a Court of Justice. In this country, however, as already stated, the objection arising from the corporate character of the East India Company, generally operated unjustly, and even the balance of convenience was against it. If therefore the Secretary in Council be invested with a corporate character, I think a provision as to the execution of deeds and contracts in India should still be introduced.

* See Gibson *versus* the East India Company, by Brig. N. C. 262.
Innes *versus* the East India Company, 17 Common Bench, Report 351.

16. Even in the case of deeds executed under the seal of the East India Company in India, before the late Act, an anomaly existed, which distinguished such deeds from those executed by other corporations. Generally speaking a corporation has but one seal which alone gives validity to deeds executed in the corporate name. The Charter of 1698 accordingly provides for the use of a single seal by the East India Company, and I cannot find that any Charter or Act of Parliament relating to the Company [illegible] has ever provided for the use of a second. The authorised seal is of course that kept at the India House. But a separate seal called the seal of the East India Company, has, I believe, since the time of Warren Hastings been kept by the Governor General in Council, and by the Governors in Council of the several Presidencies, under which all deeds requiring the corporate seal have been executed in India, and which seal has always been treated by the Courts in India as the corporate seal of the Company.

I have not been able to trace the legal origin of these separate seals, but it will probably be difficult to assign any other than the necessity of the case, and the recognition of the use of such seals by the East India Company, both in India and at Home.

Should the Secretary of State in Council be incorporated, I think express provision should be made for the use of separate corporate seals by the Governments of India, and of the several Presidencies.

(Signed) W. RITCHIE,
Advocate General.

8*th February* 1859.

No. 446.

Extract from the Minutes of Consultation under date the 4th April 1859.

Read the following letter from C. BEADON, Esq., Secretary to the Government of India; to the Secretary to the Government of Fort St. George, dated Fort William, the 28th February 1859, No. 388.

Home Department.

SIR,

With reference to your letter No. 63, dated the 18th January last, I am directed to transmit for information and guidance the accompanying copy of the opinion of Mr. Advocate General Ritchie, on the subject of the execution of deeds and the making of contracts by the several Governments in India.

2. Mr. Ritchie's opinion of course has reference only to documents which may be brought into the Presidency Courts where English Law prevails. But in the Mofussil the practice of executing deeds and making contracts in the name of the Government (Sirkar) which has always existed may continue as heretofore.

3. A copy of Mr. Ritchie's opinion will be forwarded to the Right Honorable the Secretary of State by the next Mail, in order that, as suggested by Mr. Ritchie, an Act may be passed by Parliament to remove all doubts as to the power of the Governor General in Council, or the local Governments, or any officer of the Government authorized on that behalf, to execute deeds and enter into contracts which shall be binding on the Government.

4. I am directed to add that the Right Honorable the Secretary of State will be requested, in the event of an Act of the nature suggested by Mr. Ritchie being passed by Parliament, to have six seals engraved in England, with a suitable device, and sent out for the use of the Governments named on the margin.

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One do. Fort St. George.
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OPINION.

1. I think it of importance that in order to meet the doubts that have arisen at Bombay and Madras, as well as in Calcutta, an Act of Parliament should be passed during the next Session, expressly empowering the several Governments in India (including the Lieutenant Governor's), and such officers as may, from time to time, be authorized by those Governments to sell, dispose of, lease, or assign all real and personal estate within their respective Governments, vested in Her Majesty, under the Act 21 and 22 Vic. Cap. 106, as may be thought fit, and to make the proper assurances for that purpose either in the name and under the Seal of the Secretary of State in Council, or in such other name and form as the Government shall, from time to time direct, without previous reference to the Secretary of State in Council in England.

2. I think that as many conveyances have doubtless been executed in India, and particularly in the Noth-Western Provinces since the Act came into operation, it is very desirable that this provision should take a declaratory form, and should have a retrospective effect given to it, so that it may operate in the several Presidencies from the time of the Proclamation of the Act.

3. Although I fully concur with the law Officers at Bombay and Madras in thinking an Act of this description desirable, I do not quite agree in the view taken by them of the difficulties arising under the 40th Section of the Act. I do not think that that provision can be treated as excluding the power of the Indian Governments to dispose of property, real and personal, in India, without previously obtaining from England the express authority of the Secretary of State in Council, but as pointing out the mode by which the Secretary of State in Council may deal with property which it may be determined by the Home Government to deal with in England.

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If this be not so, and if the 40th Section be imperative and exclusive, it would follow that in no case could the Government of India legally sell any old stores or buy any new ones, or

grant a pottah or enter into the most trifling contract (all of which acts fall as much within the provision of the 48th Section as the sale or mortgage of real estates does) without the previous sanction of the Secretary of State in Council, with the concurrence of a majority of votes at a meeting, which of course could not have been the intention of Parliament.

4. My impression is, that it was intended by the Act to leave all contracts, conveyances, and assurances entered into or made in India with reference to property there on the same footing as before the Act, without disturbing the power previously committed to the Government of India to act in such cases without previous reference to the Home Government; and that it was further intended that wherever the name of the East India Company could have been properly used in contracts or deeds by the Government of India before the passing of the Act, the name of the Secretary of State in Council might be used under the Act; while in cases wherein, according to usage or local law, the name of a Government Officer was formerly used on behalf of Government, and not that of the East India Company, no change would be necessary. No difficulty according to this view would exist in sales or other dispositions of personal property, or in the grant of pottahs or other assurances of such property, which according to recognised custom ran in the name of the Collector or Commissioner, and not in that of the East India Company. But a practical difficulty would arise even according to this view in the execution of such assurances of real estate as used before the late Act to run in the name of the East India Company, as for instance in the sale of lands in the Presidency Towns or in leases or sales of property in the interior to Europeans, these can no longer be executed in India under the Corporate Seal of the grantors, as the Secretary of State in Council, though invested with the power of sueing and being sued as a body corporate is not a corporation for all purposes, and has no Corporate Seal.

Therefore, in order to pass the legal estate in real property thus situated and subject to English law, where by that law a conveyance under seal is required, it would be necessary that such conveyance should be executed in England by the Secretary of State in Council under Section 40, or under a special power of attorney under seal from the Secretary in Council. In such cases, however, the beneficial interest in the land would, if my view be correct, be bound by the contract for the sale or disposal of it, entered into by the Government of India, and the Government would be entitled in the name of the Secretary of State in Council to sue upon all express covenants contained in the conveyance, though not executed on the part of the Secretary of State in the mode prescribed by Section 40.

5. With respect to the acquisition of real property by purchase or grant, I do not myself feel the difficulties pointed out by Mr. Boyson. As before observed, I do not think the power of contracting for the purchase of such land is taken away from the Government of India by the new Act, and if the legal estate in any land thus contracted for be conveyed to the Secretary of State in Council, or to any of the Indian Governments by name of office, I doubt not that the property in such lands would become vested in Her Majesty for the service of the Government of India, although the purchase may have been made without the direct authority of the Secretary of State in Council at a meeting of Council as prescribed by Section 40.

See further on this point a memorandum dated the 16th November 1858, sent by me to the Government of India, Public Works Department, upon the execution of a mining lease to Messrs. Rees, Davis and Co.

6. Even however if the view above taken by me be the correct one, the doubts that have arisen on the subject, and other doubts that may reasonably arise as to the effect of those portions of the Act, as well as the real difficulty which exists as to passing the legal estate in cases where English law applies, renders it very desirable, I think, that an Act of Parliament, of the nature above pointed out, should be passed as speedily as possible.

7. The powers given should extend to the acquiring of land, as well as to disposing of it; and the name in which conveyances should be executed or taken, *i. e.* whether that of the Crown or of the Secretary of State in Council should be defined, considering that nearly all such conveyances contain covenants upon which the Secretary of State in Council may have to sue or to be sued, it seems more convenient that the latter name should be used than that of Her Majesty.

8. The power given should not I think be limited to the Governor General, or Governor in Council, but should extend to all officers properly authorized in that behalf by the several Governments, for extreme inconvenience would result from the necessity of sending every conveyance that required execution to the seat of Government for execution.

cuted by other Corporations. Generally speaking a Corporation has but one seal which alone gives validity to deeds executed in the corporate name. The Charter of 1698 accordingly provides for the use of a single seal by the East India Company, and I cannot find that any Charter or Act of Parliament relating to the Company, ever authorised the use of a second. The authorised seal is of course that kept at the India House. But a separate seal called the seal of the East India Company, has, I believe, since the time of Warren Hastings been kept by the Governor General in Council, and by the Governors in Council of the several Presidencies, under which all deeds requiring the corporate seal have been executed in India, and which seal has always been treated by the Courts in India as the corporate seal of the Company.

I have not been able to trace the legal origin of these separate seals, but it will probably be difficult to assign any other than the necessity of the case, and the recognition of the use of such seals by the East India Company, both in India and at Home.

Should the Secretary of State in Council be incorporated, I think express provision should be made for the use of separate corporate seals by the Governments of India, and of the several Presidencies.

(Signed) W. RITCHIE,
Advocate General.

8th February 1859.

(True Copy.)
(Signed) R. B. CHAPMAN,
Under Secretary to the Government of India.

Order.—Ordered to be communicated to the Court of Sudder Udalut, to the Board of Revenue, through the Revenue Department, to the Government Solicitor in reference to Extract Minutes Consultation, dated 18th January last, No. 62, and also to the Military and Public Works Departments, and to the Government Pleader.

(True Extract and Copies.)

Chief Secretary.

To the Judges of the Court of Sudder Udalut.
" Revenue Department.
" Government Solicitor.
" Military Department.
" Public Works Department.
" Government Pleader.

Exd. F. Cartledge.

9. With respect to contracts I do not take the same view that Mr. Lewis takes of the difficulties occasioned by the present Act. On the contrary, I think that in some respects greater facilities are given to entering into contracts in India on behalf of the Government than existed before the Act; where a contract was entered into with the East India Company and duly executed under the Corporate Seal, no difficulty could arise so far as the form of execution was concerned; and wherever conveniently it was practicable, this mode of execution was adopted. But numerous cases arose especially as to contracts executed out of the Presidency Towns, as to which it was impossible to consult the law officers, or to procure the execution of a regular deed under the Company's Seal. In these cases great uncertainty often existed as to whether the contract, however binding in other respects was binding on the East India Company as being a Corporation, which in ordinary cases could only be bound under its Corporate Seal or upon the other contracting party who according to English law, was not bound by an executory contract with a Corporation, unless the Corporation was itself bound. The result was that although the objection of the want of a Corporate Seal was never set up as a defence by the Government, to the performance of a contract on its part, the objection though waived by it was one to which it was frequently exposed; and thus contracts complete in all respects, save that they did not admit of execution under the Company's seal: *e. g.* contracts entered into in the name of an officer expressly on behalf of the East India Company have been defeated.

10. This objection I apprehend will no longer prevail under the present Act, where the contract has been entered into with the authority of Government in India. For assuming the Government here to have authority to enter into such a contract so as to render the Secretary of State in Council liable upon it, no technical rule as to the necessity of the contract being under the Corporate Seal can now arise. The Secretary of State in Council not being a Corporation, and if I am right in thinking that the Indian Governments have the power to bind the Secretary of State in Council by contracts entered into, and to be performed in India, it follows that both parties to such a contract would be bound, whether it were under seal or technically in the name of the Secretary of State in Council, or not, provided it were in other respects concluded as a contract with the Government.

11. I do not therefore think that in respect of contracts any alteration in the Act is required. But the opinions expressed on the subject at Bombay are entitled to much weight, and in the doubt that exists as to the correctness of my view, I think it will be preferable if the Act be amended as to conveyances, to introduce an express declaratory provision as to contracts also. But if any alteration be made, I would respectfully suggest that it be made in terms sufficiently large to give validity to all contracts whether under seal or not, and whether in the name of the Secretary of State in Council, or in any other name entered into with the authority direct or indirect of any of the Indian Governments by any officer of the Government. The power given should be sufficient to comprehend a contract by correspondence between a Government officer acting within the scope of his authority, and a third person, which would be binding as against the Government if it were a private person and the principal of such officer, but which the other contracting party might, when the Government represented the East India Company, have repudiated on the ground that the officer did not contract, and was not liable individually, being a Government officer acting within the scope of his duty, and that his principals had not contracted, and were not liable for the want of their Corporate Seal.

12. I think it will be desirable also to call to the attention of the Secretary of State, the question as to the mode in which the purchase of ships in this country by the Indian Governments should be effected, such ships undoubtedly become the property of Her Majesty. But it seems advisable to show on the face of the Bill of Sale, that they are acquired for the purpose of the Government of India, in order to distinguish those from other ships belonging to Her Majesty. This may be done by making the Bill of Sale run either in the name of Her Majesty expressly for the purposes of the Government of India, or in the name of the Secretary of State in Council of India, on account of Her Majesty, which in some respects, may be more convenient. No legislative provision is required for this purpose—and the sale of such ships if re-sold, will follow the general law as to the sale of personal property by the Government of India which I have already discussed.

13. Another question of minor importance has been brought to my attention by the Government Solicitor, (Mr. Sandes) and may be here conveniently noticed, *viz.* as to the mode of

filing an answer to a Bill of Equity in the Supreme Courts in India. The Secretary of Sta Council is empowered to sue, and be sued as a Body Corporate.

The usual mode of answering on behalf of a Corporation is by answer under the Corp Seal, and in London there would be no difficulty probably in filing an answer under the and seal of the Secretary of State affixed in Council.

But in this country a litigious plaintiff might object to accept the authentication unde hand or seal of any Government official in this country, and might insist on its being signe sealed in England. It is not probable that any such difficulties will arise, as if raised i only delay the plaintiff. I apprehend that practically a Power of Attorney, or even a from the Secretary of State in Council to the Governor General in Council, or to th vernment Solicitor in Calcutta, will suffice to authorise the filing an answer which sh virtually binding.

14. In these remarks I have assumed, that the Secretary of State in Council is i vested with the general powers of a Corporation. I do not think the capacity to sue, a sued as a corporate body, which is conferred on the Secretary of State in Council, cons him a body corporate for general purposes; a doubt, however, may possibly be raised point from the words of Section 44, which preserves in force and makes applicable to the tary of State in Council, in place of the East India Company, all Acts or provisions i force under Charter or otherwise concerning India—as the East India Company is incor by character, and as nearly all the privileges secured to the East India Company by alone, had been before the passing of the last Act either annulled by, or merged into pr by Act of Parliament, except the privileges of a Corporation conferred by the Charter it may perhaps be thought that among the provisions thus made applicable by the lat the Secretary of State in Council, are those which incorporated the East India Comp gave it perpetual succession and a common seal. I do not think however that the cl have this effect, because the provisions thus rendered applicable to the Secretary of Council, are those in force under Charter or otherwise concerning India, and are applie Secretary of State in Council in the place of the Company, and the Court of Directors, the provision in the Charter incorporating the Company is not a provision specially co India, and as the East India Company itself, is left by the Act in existence as a Corpo is clear I think that that provision cannot be held to apply to the Secretary of State in in substitution for the East India Company.

It is desirable however that it should be ascertained upon the reference now ab made to the Secretary in Council, whether my view as above stated is right, and if n should be corrected.

15. It may perhaps be thought that the simplest mode of meeting the difficulty transfer of property in India, is by expressly incorporating the Secretary of State in Some convenience would not doubt attend that course; but it would I think be out-w the inconvenience arising from it in this country, unless the Act clothing the Sec Council with a full corporate character provided expressly for the execution of assu contracts in India, in a mode similar to that already pointed out as advisable. In E tions against the East India Company for pensions, &c., which it would have been inconvenient to entertain in the ordinary Courts of Justice, have been defeated upon ground that the defendants were a C and that the contract sued on was the corporate seal.* Probably the might have been defeated upon othe But the objections founded, or the corporate character of the defendants afforded a check upon the maintenance of actions of a harassing nature, respecting matters no within the cognizance of a Court of Justice. In this country, however, as already objection arising from the corporate character of the East India Company, general unjustly, and even the balance of convenience was against it. If therefore the S Council be invested with a corporate character, I think a provision as to the executi and contracts in India should still be introduced.

16. Even in the case of deeds executed under the seal of the East India C India, before the late Act, an anomaly existed, which distinguished such deeds from

* See Gibson *versus* the East India Company, by Brig. N. C. 262
Innes *versus* the East India Company, 17 Common Bench, Report 351.

P. Works 1859 Despatch
Dd to Govt 19 April
No. 834.

Extract Minutes Consn
in the Judicial
Despatch

Dated 4th
Recvd 7th } Apl. 1859.
From Dr. & G. Govt Sct. C. No
2928. No. 446.
Encls 1

Communicating the opinion of the Advocate General of Calcutta on the subject of the Execution of decds & the Making of Contracts by the several Govts in India.

No. 871. 15th April 1859.
With an order

No 142.

No. 871

Ordered to be communicated to the Chief Engineer.

W. Morgan

From A. A. George Esq.
13th Apl 1859

10 Copies to the Chief Engr
Dd Dept 14th
with E. M. P. B. 446.