

Wednesday, December 18, 1878

ABSTRACT OF THE PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWs AND REGULATIONS.

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ABSTRACT OF THE PROCEEDINGS
OF THE
Council of the Governor General of India,
ASSEMBLED FOR THE PURPOSE OF MAKING
LAWS AND REGULATIONS.

1878.

WITH INDEX.

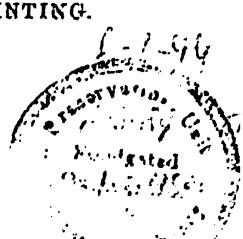
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*Abstract of the Proceedings of the Council of the Governor General of India,
assembled for the purpose of making Laws and Regulations under the
provisions of the Act of Parliament 24 & 25 Vic., cap. 67.*

The Council met at Government House on Wednesday, the 18th December 1878.

PRESENT:

The Hon'ble Sir A. J. Arbuthnot, K.C.S.I., Senior Member of the Council of the Governor General, presiding.
His Honour the Lieutenant-Governor of Bengal.
The Hon'ble Whitley Stokes, C.S.I.
The Hon'ble Rivers Thompson, C.S.I.
The Hon'ble B. W. Colvin.
The Hon'ble Mahárájá Jotíndra Mohan Tagore.
The Hon'ble T. H. Thornton, D.C.L., C.S.I.
The Hon'ble G. C. Paul.
The Hon'ble E. C. Morgan.
The Hon'ble F. R. Cockerell.

RANGOON PORT COMMISSIONERS BILL.

The Hon'ble MR. RIVERS THOMPSON moved for leave to introduce a Bill to appoint Commissioners for the Port of Rangoon. He said that the proposal for the creation of a Port Trust at Rangoon was brought forward at the instance of the Chief Commissioner of British Burma, cordially supported, as would appear from the papers before the Government, by the Chamber of Commerce in Rangoon and all concerned in the mercantile interests of the port.

A very brief review of the past history and circumstances of the port of Rangoon would explain to the Council the necessity which existed for the proposed measure, based on the rapid development of the trade connected with it since it had been a British possession, and the urgency for a change in the present system of its administration, with a view to special arrangements to meet its future demands. Though the Province of Pegu was acquired by the British power after the second Burmese war in 1852, and Rangoon was constituted a port in the following year, it was not till some nine years after that the Pegu Division became amalgamated with the Arakan and Tenasserim Divisions, and became established as a single administration under one Chief Commissioner. Rangoon, from the superiority of its central position and its other advantages, became the head-quarters of the Local Government,

and from returns which were before him, it was ascertained that the shipping which visited the port in 1861-62 comprised some 860 vessels, with an aggregate of 2,95,000 tons. The bulk of this trade, however, was a coasting trade. Internal traffic had been only partially opened out, and the vessels which entered the port from foreign countries were but few in number. The goods landed by these vessels were carried to shore by boats. No appliances existed for the shipping or landing of cargo, and the place had been described in the earlier records of our settlement as presenting very much the appearance of a dirty fishing village situated in a distressingly unhealthy marsh. It was not until 1865, during the administration of Sir Arthur Phayre, that the first attempts were made to establish a wharf, which was finished in about two and a half years, at a cost of Rs. 1,31,000. The number of vessels which entered and cleared from Rangoon in 1866-1867 was 1,071, of 4,40,330 tons. The value of the trade had increased to four millions sterling. In the years 1868 and 1869, many important improvements were added to the facilities for approaching the port, by the erection of two substantial light-houses, which were completed in 1870; and immediately following, in 1871 and 1872, when his hon'ble friend the Lieutenant-Governor had succeeded to the administration, additional wharves were constructed on the banks, and to all of those warehouses and tramways and other appliances had since been attached, to meet the advancement and demands of a rapidly extending commerce. Further, a steam-dredger and flats had been purchased for the improvement of the bed of the harbour, and several boat-jetties had been added for the convenience of the lighter traffic, which was carried on extensively by the Natives.

The value of the trade, which was, in 1861-1864, £2,641,000, in 1866-1867 advanced to £4,085,000; in 1871-1872 to £5,365,000; and in 1876-1877 to about £8,600,000.

In the same period the aggregate shipping had increased from 867 vessels of 295,000 tons, to 1,687 vessels of 984,000 tons.

Briefly stated, to borrow the words of the Collector of Customs in Rangoon, who was an excellent authority on the subject from the knowledge he possessed, and the interest he took in everything connected with the port, nearly ten lakhs of rupees had been expended on public works for the benefit of the port during the last ten years. The entrance to the port was admirably lighted and well buoyed. The port itself had a fair amount—though, he would add, a not adequate amount—of wharf-accommodation, and the number of vessels visiting it had increased by fifty-eight per cent. during the decade, with an increase of tonnage of 124 per cent., and, in the value of trade, of 110 per cent.

The administration of this property on the foreshore, which, he might add, was almost exclusively Government property, extending to about two miles of river-frontage, was up till 1874 supervised by the town magistracy. When a municipality was established in Rangoon about that time, the Municipal Commissioners were vested with its control, the greater part of the wharves and jetties being farmed out to European and other lessees, and their proceeds were generally devoted, not so much to the improvement of the bank and the ports, as to the general internal needs of a young and hungry municipality. The absence of uniformity, regularity and direction in the management of the port-arrangements, led the authorities at the beginning of 1876 to take advantage of certain provisions of the Port Act, and to place the administration of the port and of the strand-bank under the Conservator of the Port and a committee associated with him; and they had the testimony of the present Chief Commissioner that, during the time this committee had been at work, they had effected many improvements on that portion of the bank under their care, though, at the same time, it must be admitted that the progress had not kept pace with the wider developments of the Province, and the importance of the trade of Rangoon. For example, there were no moorings in the river, fixed or floating. There were no floating jetties. There were no cranes that could lift more than five tons' weight, and the arrangement for Native boat-traffic was still extremely deficient. Much also had to be done for a better system of river-police. Though to a large extent the internal traffic of the Province had been developed by the excellent arrangements of the Irrawaddy Steam Flotilla Company, the opening of the Irrawaddy Valley State Railway had given an immense impulse to this trade, not only in our own districts, but from Upper Burma, which extended to the Provinces of South West China. With Upper Burma the trade had extended to nearly three millions sterling per annum; and it might be added that Rangoon, as the chief port in British Burma, absorbed now ninety-three per cent. of the entire foreign import-trade to the Province. Regular direct monthly communication was established with English ports via the Suez Canal, and 501 coasting steamers entered and left the port during the last year, while the connection commercially with Siam and the Straits was largely increasing every year.

It was in these circumstances of a very expanding trade, and the necessity for a change in the administration of the port, that the Chief Commissioner had represented to the Government of India the necessity for a legislative measure to place the control of the port and its affairs in the hands of a legally constituted body; and Mr. THOMSON would conclude his observations by calling the attention of the Council to certain statements in a memorandum drawn up

by the Chief Commissioner in submitting the present measure for consideration. He said—

"The management of both the port and the banks is entirely in official hands. In my opinion, it is not right that, in so large and important a harbour, the mercantile community, whose commercial enterprise is the very life and soul of the place, should have no voice in the management of the affairs of the port. Practically, the whole export and import-trade of the basin of the Irrawaddy and its tributaries, as far as Western China, is brought under contribution for the benefit of the port; while the merchants whose industry is taxed have nothing to say to the expenditure of the money. Of course, in any scheme that may be devised, imperial, provincial and municipal interests must be duly provided for; but it seems to me that the time has arrived when a voice in the expenditure of the port-dues and other taxes should be entrusted to those whose interests are directly and immediately concerned in the improvement of the river."

"At the same time, mercantile men cannot reasonably be expected to take an active share in the public business of the port, unless they are invested with the legal authority necessary to carry out the measures that may be devised for the common good. At present, the position of the strand-bank committee is not recognized by law. Practically, the committee are in the same position as a private person would be, who possessed lands and jetties on the river-bank. They may spend large sums of (public) money on the improvement of the banks, but no one need take advantage of the facilities provided. They have no power to compel ships to use the wharves, jetties or landing-places. They cannot recover dues from persons who use them and fail to pay, except by ordinary process of law. At the same time, they are liable to be personally sued by any one who may think himself injured by their proceedings. This is not a position which we can expect non-official gentlemen voluntarily to place themselves in."

"The defect lies in the division of responsibility within the port limits, in the constitution of the committee, and the absence of legal authority for, and legal recognition of, their powers. For all this, the proper remedy seems to me to be that suggested by the Chamber of Commerce, namely, the appointment of Commissioners with powers and duties duly defined and regulated by law."

It was for that purpose and with that object that MR. THOMPSON asked the permission of the Council to introduce this Bill. He might state that the Government of India had liberally consented to forego all claims for the outlay already incurred in the port and had sanctioned that the sum expended upon the port during the last ten years should not be a charge upon the new Port Trust, but that the port and the property in it should be vested in the Commissioners free of all incumbrances. The foreshore was almost entirely the property of the Government, and no private interests would be affected by the creation of the Trust. The Port Commissioners, as he had already said, would enter upon their duties free of all liabilities; and not only so, but he had reason to think the successful management of the Strand-Bank Committee would show a fair balance at the credit of the Port-fund, which would enable the new

Commissioners to commence at once upon the improvements which were necessary for the proper development of the trade and commerce of the capital of British Burma.

The Motion was put and agreed to.

CODE OF CIVIL PROCEDURE AMENDMENT BILL.

The Hon'ble Mr. STOKES moved that the Hon'ble Messrs. Evans and Paul be added to the Select Committee on the Bill to amend the Code of Civil Procedure.

The Motion was put and agreed to.

BURMA ELEPHANTS BILL.

The Hon'ble Mr. THORNTON presented the Preliminary Report of the Select Committee on the Bill to prevent the indiscriminate destruction of wild elephants in British Burma. He said that it would be in the recollection of the Council, that the Bill as originally introduced was limited both as regards its local extent and as regards its scope and object. The Act was to apply only to the territories under the administration of the Chief Commissioner of British Burma, and its object was to prevent the indiscriminate killing of wild elephants in the Government forests of that Province. But when the Bill was referred to a Select Committee, three suggestions were reserved for further inquiry and consideration; first, whether the scope of the Bill might not be suitably extended so as to regulate not only the killing, but also the capture, of wild elephants; secondly, whether the local extent of the Act might not be appropriately enlarged so as to include not only the territories of British Burma, but also the territories of other Provinces of India, where wild elephants were found; and, thirdly, whether some provision should not be introduced, whereby the tusks of wild elephants slaughtered should be declared, unless otherwise expressly allowed, to be the property of the State. After considering the replies made to the inquiries issued from the Legislative Department and the comments of the Local Governments, the Committee had deemed it expedient to adopt, in whole or in part, each of the above-mentioned suggestions. Accordingly, in the revised draft which he had the honour to present with this report, the provisions of the Bill applied to the capture as well as to the killing of wild elephants, and the local extent of the Act was so far enlarged as to include, in the first instance, the territories of the North-Western Provinces and Oudh, the Central Provinces and Coorg; and power was given to the Local Governments of territories other than the Provinces above-named, to extend its provisions to their respective territories or to any part of them. This enlargement of the local extent of the

Act introduced new matter for consideration. So long as the measure was confined to the territories of British Burma, the situation was simplified by the fact that all the forests of that Province in which wild elephants were found were Government forests. But in other parts of India, the case was different. For instance, in parts of the Central Provinces and elsewhere, herds of wild elephants were found in forests which were not the property of Government, but of private owners. The Committee had consequently to consider whether the law should be applicable only in the case of wild elephants found in Government forests, or should be applicable also in cases where they were found in forest-tracts which were the property of zamindars. On this point the Committee were of opinion that, having regard to the paramount importance, in the interest of the community, of preserving the breed of elephants in British India, it was just and expedient that the law should be applicable in the case of wild elephants wherever found in British territory.

Further, in concurrence with a suggestion received from the Department of Revenue, Agriculture and Commerce, provision had been made for the realization, on behalf of the State, of what he would venture to designate, in default of a better term, a royalty on all elephants killed or captured. Such a claim on the part of the Government, though it had not as yet been brought upon the statute-book, was no novelty in India. It was, in fact, already made and enforced in parts of British territory, and he believed it would be found to be in force in most, if not all, the Native States where wild elephants were procurable. The principle of the claim had the sanction of European codes, and it was also, if he mistook not—his hon'ble friend Mahárájá Jotíndra Mohan Tagore would correct him if he was wrong—in harmony with oriental sentiment, which regarded the wild elephant as the special heritage of Kings.

Briefly, then, the main provisions of the Bill, as amended, were as follows: that, in all territories to which the Act shall extend or be extended, no person shall kill, injure or capture wild elephants—otherwise than in defence of life or property—except under a licence from the District officer; such licence to be granted in accordance with rules made by the Local Government; which rules might provide, *inter alia*, for the payment by the licensee of a fee in money, tusks or a proportion of elephants captured.

Further, in view to prevent the unnecessary killing or capture of wild elephants without licence under plea of such act being done in defence of life or property, it was provided that, in all such cases, the elephant captured, or the tusks of the elephant killed, should be the property, not of the killer or capturer, but of the Government.

Other amendments had been introduced by the Committee and were duly noticed in the Report, but called for no special mention in the present occasion.

The Bill having undergone material alteration since its introduction, and its scope and extent having been enlarged, the Committee recommended its publication in the amended form before final consideration.

The Council adjourned to Tuesday, the 31st December, 1878.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

CALCUTTA,
The 18th December, 1878. }