

Friday, January 9, 1880

**COUNCIL OF THE GOVERNOR GENERAL
OF INDIA**

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ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of

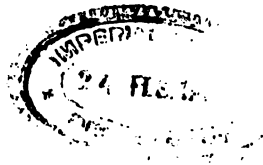
ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

1880.

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1881.



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 Friday, the 9th January, 1880.

P R E S E N T :

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

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

His Excellency the Commander-in-Chief, G.C.B., G.C.S.I., C.I.E.

The Hon'ble Sir A. J. Arbuthnot, K.C.S.I., C.I.E.

Colonel the Hon'ble Sir Andrew Clarke, R.E., K.C.M.G., C.B., C.I.E.

The Hon'ble Sir J. Strachey, G.C.S.I., C.I.E.

General the Hon'ble Sir E. B. Johnson, R.A., K.C.B., C.I.E.

The Hon'ble Whitley Stokes, C.S.I., C.I.E.

The Hon'ble Rivers Thompson, C.S.I.

The Hon'ble Sayyad Ahmad Khan Bahádur, C.S.I.

The Hon'ble T. C. Hope, C.S.I.

The Hon'ble B. W. Colvin.

The Hon'ble Maharájá Jotíndra Mohan Tagore, C.S.I.

The Hon'ble G. H. M. Batten.

The Hon'ble C. Grant.

The Hon'ble E. C. Morgan.

RELIGIOUS CONGREGATIONS BILL.

The Hon'ble MR. STOKES moved that the Reports of the Select Committee on the Bill to provide for the holding of property by certain Religious Congregations be taken into consideration. He reminded the Council that this Bill had originated in the complaint made, as far back as 1873, by certain members of the Simla Union Church, that they laboured under a hardship in being unable, without constantly recurring trouble and expense, to keep up a permanent and effective body of trustees to whom to commit the property of the church. The Secretary to the Calcutta Missionary Conference, about the same time, made a similar representation; and there were, as afterwards appeared, other bodies associated for religious purposes in India who experienced like difficulties.

A Bill was accordingly framed on the model of the Statute known as Peto's Act, 12 & 13 Vic., c. 28. It merely provided that when property of

certain descriptions was conveyed on trust for any religious congregation, and no special provision was made for the appointment of new trustees, new trustees might be appointed in such manner as the congregation might determine; and that, on the appointment of new trustees, whether in exercise of the powers thus conferred or otherwise, the property should vest in them without any further conveyance. Persons professing Hinduism, Muhammadanism or Buddhism were excepted from the provisions of the Bill, as it was thought undesirable to interfere with the laws regulating their endowments.

Since the publication of the Bill several communications had been received from the Local Governments and many of the religious bodies to which the Bill applied, all of which had been carefully considered by the Select Committee to which the Bill had been referred. The Committee had got rid of the ambiguous term "congregation". They had rendered the Bill applicable to immoveable property held for whatever purpose, as well as to moveable property. They had provided for deciding cases of dispute as to what constituted membership of the bodies to which the Bill applied, and for the dissolution of those bodies, and the distribution of their property on being dissolved. These amendments had been mentioned to the Council when the preliminary Report was presented last September, and the present Report stated two further amendments—that words had been inserted in section 3 requiring the memorandum of appointment of trustees to be registered, and that a section had been added declaring that, where there was an instrument containing provisions for the dissolution of a religious body or the distribution of its property on such dissolution, those provisions should not be over-ridden by the Bill.

With these remarks he might ask His Excellency the President to put the motion; but, first, he thought it necessary to notice a criticism received from the Local Government which styled itself, somewhat inaccurately, "His Grace the Governor in Council." He would quote the criticism verbatim:—

"2. His Grace the Governor in Council much doubts the expediency of creating these perpetual trusts. He observes that they must be for 'a religious purpose;' but what is 'a religious purpose?' Would Mormonism be included? Further, he fails to see with what reason Native Christians are to be shut out. Referring to the last sentence of clause 1, it appears that in 'Hindus,' converts to Christianity from a particular religion, followed by the majority of the people of India, would be included."

MR. STOKES ventured to say that he had seldom, if ever, read any statement regarding a short and simple Bill, which betrayed so many misconceptions. First, His Grace "much doubts the expediency of creating these perpetual trusts." But the Bill did not create any trust whatever,

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either perpetual or temporary. It assumed that a trust had been created, and made provision, in certain cases, for the appointment of new trustees and the vesting of the trust-property. Secondly, His Grace observed that these imaginary trusts must be "for a religious purpose." But the words quoted did not appear in the Bill in any one of its stages. The question "what is a religious purpose?" did not therefore arise. The question whether the Bill would apply to Mormon-societies might, Mr. Stokes thought, be left unanswered as not very likely to arise in India. When, if ever, it did so arise, our Courts would probably look at the case of *Hyde v. Hyde*, L. R. 1 P. & D. 130, as to the non-recognition of a Mormon marriage.

Again, His Grace the Governor in Council failed to see with what reason Native Christians were shut out. The answer was that they were not shut out. If Hon'ble Members would look at section 1, they would see that the Bill applied to every person in British India except "Hindús, Muhammadans or Buddhists," and persons whom the Governor General in Council might exclude from the operation of the proposed Act. His Grace obviously supposed that "Hindú" was necessarily an ethnic term, and consequently included Native Christians. But, from its connection with "Muhammadans" and "Buddhists," it was clear that the expression "Hindús" was here in the Bill (as it was in the Succession Act, section 331) used strictly as a theological term, and that the exception could not, therefore, apply to converts from Hindúism to Christianity.

MR. STOKES had only further to observe that the Bill would supply an admitted want, and that it had been received with considerable favour by the representatives of many different denominations of Christians in the country,—the Protestant Bishops of Lahore and Rangoon, the learned and excellent Bishop Caldwell, the Roman Catholic Bishop of Bombay, and others,—whose remarks Hon'ble Members would find in the papers laid before them.

The Hon'ble MR. HOPE said there was one question regarding which he should be glad to receive an explanation, which he had no doubt the Hon'ble Mover of the Bill would be able satisfactorily to give, but on which he did not find an answer appearing clearly on the face of the Bill, although it might be latent under certain provisions which he had not fully grasped. A large number of those whose opinion was asked in regard to the Bill had urged the necessity of providing some sort of definition of what a "member" of a religious body was. This matter had been noticed by the Calcutta Missionary Conference, the Judicial Commissioner of the Central Provinces, the Madras Government, the Chief Commissioner of Mysore, the Wesleyan Mission in Mysore,

the Legal Remembrancers for Bengal and Bombay, the Archdeacon of Calcutta, the Bishops of Calcutta and Rangoon, and the Judicial Commissioner of Oudh. Some of these authorities had suggested a solution of one kind; others of another; and there could be no doubt that the drawing up of a precise definition of what should constitute church-membership was a matter of extreme delicacy, difficulty and doubt. It was provided in section 9 that when any question arose, either in connection with the matters thereinbefore referred to or otherwise, as to whether any person was a member of any such body as aforesaid, any person interested in such question might apply by petition to the High Court for its opinion on such question, and that opinion would have the force of a decree. MR. HOPE would be glad to know whether, if there was a provision in the trust-deed stating what membership should mean, that provision would stand absolutely good in all voting in respect of the matters provided for in sections 2, 6 and 7 of the Bill. He was inclined to think it would.

The Hon'ble MR. STOKES replied that he thought it would; and he was sorry he had not brought with him a case (*Forbes v. Eden*, L. R. 1 Scotch Appeals 580) which he was looking at only half-an-hour previously in the Legislative Council House, and in which Lord Cranworth laid down that the Court was bound to take cognizance of the provisions of any instrument upon which a voluntary religious association was organised, for the purpose of satisfying itself as to who was entitled, as a member, to the funds.

The Hon'ble MR. HOPE said he was quite satisfied on that point. He would wish further to know the meaning of the words "or otherwise" in section 9 which he had before quoted. Did they mean *any* question in connection with disputes in the body?

The Hon'ble MR. STOKES explained that the words "or otherwise" referred to things *ejusdem generis* with any of those previously mentioned, such as the appointment of a new trustee, the dissolution of the association, and the like. It would not authorize the Court to decide questions as to the exact nature of the religious teaching to be afforded by the body.

The Hon'ble MR. HOPE expressed himself satisfied upon this point also. He was much obliged for the explanations, which he had thought it best to elicit, in view of the importance of the two points in question.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill as amended be passed.

The Motion was put and agreed to.

BOMBAY CIVIL COURTS ACT, 1869, AMENDMENT BILL.

The Hon'ble MR. STOKES also moved for leave to introduce a Bill to amend the Bombay Civil Courts Act, 1869. He said that the Government of Bombay had lately represented that the repeal of section 30 of the Bombay Civil Courts Act, XIV of 1869, by the Repealing Act, 1876, had deprived that Government of a power it formerly possessed under that section, of from time to time altering the limits of the local jurisdiction of the Subordinate Judges. The section in question ran as follows :—

“ 30. The present Principal Sadr Amíns shall be the first Subordinate Judges of the first class, and (subject to any alteration of the limits of their ordinary local jurisdiction which may from time to time be made by the Governor of Bombay in Council) shall severally exercise the jurisdiction of Subordinate Judges of the first class under this Act, within the local limits within which, immediately before the passing of this Act, they respectively exercised the jurisdiction of Principal Sadr Amíns.

“ The present Sadr Amíns and Munsifs shall be the first Subordinate Judges of the second class, and (subject to any alteration of the limits of their local jurisdiction which may from time to time be made by the Governor of Bombay in Council) shall severally exercise the jurisdiction of Subordinate Judges of the second class under this Act, within the local limits within which, immediately before the passing of this Act, they respectively exercised the jurisdiction of Munsifs.”

Now, it seemed to the Government of India that this section rather assumed the existence of such a power than conferred it; but, as it was quite clear that the Local Government should possess such a power, the present Bill had been prepared to confer it. It would merely add to the Bombay Civil Courts Act, 1869, a section conferring power on the Governor of Bombay in Council to fix and alter the local limits of the ordinary jurisdiction of the Subordinate Judges, and would validate such orders as might have already been issued fixing or altering such limits.

The Motion was put and agreed to.

BURMA SURVEY BILL.

The Hon'ble MR. RIVERS THOMPSON introduced the Bill to provide for the demarcation and survey of land in British Burma, for the introduction of which leave had been given at Simla. The main objects of the Bill, he said, were in connection with the Cadastral-survey, which had been already commenced in that Province as a preliminary to the proper assessment and settlement of the land,—a measure of great importance as affecting the general interests of the province, and calculated to enhance its public revenues. He should mention

that, as prepared by the Chief Commissioner, the Bill was intended, as a General-survey Act, to meet the necessities of the frequent surveys which were undertaken in connection with the alignment of new roads, the construction of railways, of canals and embankments, or other similar projects. But on full consideration it was decided by the Government of India that in legislating upon this subject it was desirable to restrict the character of the Bill to a Revenue-survey Bill, as objections existed to giving it any wider application. He need not detain the Council by detailing the reasons which influenced that decision. It would be sufficient to say that, in a new and somewhat delicate and difficult duty connected with scientific surveys of land in Burma, and in a work which was likely to extend over very many years and to be carried out by officers who had no experience in the conduct of accurate and detailed measurements of land, it was thought better to keep the Bill as simply a Revenue-survey Bill, having sole reference to the preliminary and professional work to be undertaken for the purpose of the proper adjustment of the land-revenue. It seemed to the Government of India also, with regard to the other objects which the Chief Commissioner had in view, that the Land-acquisition Act of 1870, which contained ample provisions for the acquisition of land for public purposes, secured all that was necessary in these respects. The Bill, therefore, which he (MR. RIVERS THOMPSON) now proposed to submit to the Council was one which dealt only with questions connected with the Revenue-survey. Of course, experience had been gained in the numerous surveys and settlements which had been made in the older and more advanced provinces of India as regards such legislation; and the present Bill had at least the recommendation of being concise and simple in its provisions, capable of effecting—what was very essential—a cheap survey, and, he hoped, of securing the objects which it was desired to secure.

The Bill provided, after notification by the Chief Commissioner, for the entry upon land for the purposes of demarcation and for the subsequent professional survey. It proposed to confer powers for laying down boundaries, for erecting boundary-marks, for effecting clearances and removing obstructions in performing that work, and for giving compensation to any who had suffered loss from the clearances made. The first few sections of the Bill related to the appointment and functions of Demarcation-officers. On the completion of a demarcation, the Demarcation-officer was required to submit to an officer, to be called the Boundary-officer, a report of all his proceedings, with the maps which he had prepared. The Boundary-officer would be one who was qualified to exercise regular judicial functions; and it would be his duty, as a Court of first instance, to hear and decide all cases of dispute which

may have arisen regarding boundaries and all objections taken regarding the demarcation-proceedings. It was intended that there should be an appeal from the decision of the Boundary-officer to the Commissioner of the division, and in certain cases, where there might be intricacy or interference with private rights, there would be a final appeal to the Judicial Commissioner. Ample provision had thus been made for securing the protection of all individual rights. When an order determining a boundary became final, permanent boundary-marks would be laid down, and the Cadastral-survey Department would enter upon the field. As these Survey-officers, to perform their duties properly, would need similar powers to those which were exercised by the officers who conducted the preliminary operations, it was proposed, by section 28 of the Bill, to invest with those powers any officer appointed by the Local Government for such surveys. The only other point which required notice was that the 32nd section of the Bill gave the Chief Commissioner power to make rules for the collection and record of all information connected with survey-proceedings, such as it was usually the practice to collect in such cases.

In the ordinary course he (MR. RIVERS THOMPSON) would have concluded his remarks with a motion to refer the Bill to a Select Committee. But the fact was that the draft of the Bill which was now laid upon the table was only prepared last night, and it had therefore not been sufficiently long in the hands of the Members to enable them to consider and criticise its provisions. Under the circumstances, with his Excellency the President's permission, he would propose to defer the motion to refer the Bill to a Select Committee to the next meeting of the Council, when, if any Hon'ble Member required any explanations regarding the measure, he would be glad to give them.

BURMA DISTRICT CESSSES AND RURAL POLICE BILL.

The Hon'ble MR. RIVERS THOMPSON also presented the Report of the Select Committee on the Bill to amend the law relating to District Cesses and Rural Police in British Burma.

FACTORIES BILL.

The Hon'ble MR. COLVIN moved that the Hon'ble Mr. Morgan be added to the Select Committee on the Bill to regulate labour in Factories.

The Motion was put and agreed to.

The Council adjourned to Friday, the 23rd January, 1880.

D. FITZPATRICK,

Secretary to the Government of India,

Legislative Department.

CALCUTTA ;
The 9th January, 1880. }