

Friday, January 23, 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.

WITH INDEX.

VOL. XIX.

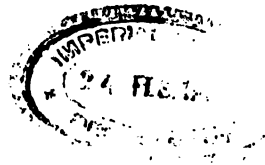
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*Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.*

The Council met at Government House on Friday, the 23rd 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.

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 Khán Bahádur, C.S.I.

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

The Hon'ble B. W. Colvin.

The Hon'ble Mahárájá Jotindra Mohan Tagore, C.S.I.

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

The Hon'ble C. Grant.

The Hon'ble E. C. Morgan.

The Hon'ble J. Pitt-Kennedy.

BURMA SURVEY BILL.

The Hon'ble MR. RIVERS THOMPSON moved that the Bill to provide for the demarcation and survey of land in British Burma be referred to a Select Committee consisting of the Hon'ble Messrs. Stokes, Colvin and Grant and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. RIVERS THOMPSON also moved that the Bill be published in the *British Burma Gazette* in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

## BOMBAY CIVIL COURTS ACT, 1869, AMENDMENT BILL.

The Hon'ble MR. STOKES introduced the Bill to amend the Bombay Civil Courts Act, 1869, and moved that it be circulated for the purpose of eliciting opinion thereon.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill be published in the *Bombay Government Gazette* in English.

The Motion was put and agreed to.

## BURMA DISTRICT CESSES AND RURAL POLICE BILL.

The Hon'ble MR. RIVERS THOMPSON moved that the Report of the Select Committee on the Bill to amend the law relating to District Cesses and Rural Police in British Burma be taken into consideration. He said that it would be seen from the Report of the Select Committee that since the introduction of the Bill very few changes had been made in its provisions. The only material changes were in connection with the 9th section of the Bill, which referred to the purposes for which these district-funds were to be applied. An addition had been made in the list of purposes for which local funds might be used, by adding "the improvement of river-channels." As communications in British Burma were as much by water as by land, it was considered desirable that power should be taken for using local cesses for the improvement of these water-channels.

In connection with this section, he desired to refer to the principle which was affected by the amendment which the Select Committee had introduced. In the Bill, as it originally stood, power was conferred upon the Chief Commissioner to transfer funds from one district to another for all general purposes. As such cesses were levied by a percentage upon the land-revenue, it would always be the result that in backward districts, where cultivation had not advanced from paucity of population or other causes, the amount realized by local cesses for local purposes was small; and thus, while richer districts found themselves at the end of the year with a surplus which they could not utilise for local purposes within their own jurisdiction, the poorer district in the neighbourhood was unable to carry out any work of real utility. The Chief Commissioner had, accordingly, represented the desirability of taking power to use these funds generally throughout the province, and that their use should not be restricted to the particular districts in which the cesses were levied. The principle of course was right, in a Bill of this kind, that local cesses should



be used in the districts where they were raised ; and this was more especially the case where the appropriation of the funds was in the hands of the Government and not of a local Committee ; and, so far as was reasonable, the Select Committee desired to maintain the principle that local funds should be expended in the districts to which they belonged. While, then, the general power to transfer funds from one district to another had been abandoned by the Select Committee in considering this particular section, it had been thought desirable to provide that, as regards two of the purposes to which local funds might be applied, namely, the maintenance of a local postal service and the construction and maintenance of district-roads and other communications, the Chief Commissioner should have power to transfer at the end of a year the surplus-funds of one district to any other district *in the same division*. Perhaps the one thing which Burma more essentially required than any other was the more rapid development of the resources of its less advanced districts by the opening out of communications. As matters stood, a well-to-do district might be able from its funds to carry out a road within its own limits, but to go no further ; while a backward district, which had no funds to complete the communication between itself and the adjoining district, or from one centre to another part of the division, remained without the means of carrying out projects the most advantageous for itself. It had, therefore, been considered by the Select Committee desirable to modify the general rule in that respect as regards roads, and as a consequence as regards the improvement of the local postal service ; and, by the proviso to the 9th section of the Bill, power had been given to the Chief Commissioner to utilise, at the end of a year, the surplus-funds of a richer district for continuing such works in connection with other districts in the same division. He (MR. RIVERS THOMPSON) thought such limited powers might safely be entrusted to the local administration with a prospect of much benefit to the province.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

#### MILITARY CANTONMENTS ACT AMENDMENT BILL.

The Hon'ble MR. STOKES presented the final Report of the Select Committee on the Bill to provide for the revision of proceedings in trials held under the Military Cantonments Act, 1864, section 20.

## KÁZÍ BILL.

The Hon'ble SAYYAD AHMAD KHÁN moved for leave to introduce a Bill for the appointment of persons to the office of Kází. He said:—"MY LORD,— In asking leave to introduce a Bill into the Council relating to the appointment of Kázís, I am supported by a sincere conviction that I am recommending a piece of legislation which will do no more than meet a long-felt want of the Muhammadan subjects of Her Imperial Majesty in some parts of the Empire.

"Before the advent of British rule in this country, a Kází was appointed for each pargana, and a Kází-ul-Kuzát for each great centre. The duties of these functionaries are stated at length in the law-books of both the Shía and Sunni sects, from which it appears that the Kází held a judicial office, and was invariably appointed by the State. His ultimate connection with the performance of certain ceremonial duties, and some other rites which may be said to be ceremonial from one point of view and social from another, arose from his recognised credit as the nominee of the Government, and from his supposed knowledge of the Muhammadan law. A large portion of the judicial powers of the Kází had already been transferred to other officials before the introduction of British rule, while the appointment of Judges and Magistrates under the British Government deprived him altogether of the last remnant of his functions as a judicial officer. The British Government, though no longer recognizing the judicial functions of the Kází, invariably accorded a legal sanction to his appointment for three-quarters of a century until the passing of Act XI of 1864. At the time of the passing of this Act the duties of the Kází did not extend beyond (1) celebrating marriages and presiding at divorces, and (2) performing various other rites and ceremonies. The performance of these duties by the Kázís was partly due to the fact that the practice had acquired the force of a social custom by the lapse of time, partly to the recognized acquaintance of the Kázís with the law, and partly to the fact that the presence of a duly appointed Kází was considered necessary at the performance of certain rites and ceremonies.

"Now, it was exceedingly doubtful whether a Kází not appointed by the State could be said to be a duly appointed Kází. Some of the highest Courts in this country have held that he could not. Accordingly, my Lord, although it is expressly stated in Act XI of 1864 that nothing contained in that Act 'shall be construed so as to prevent a Kází-ul-Kuzát or other Kází from performing, when required to do so, any duties or ceremonies prescribed by the Muhammadan law,' yet, when the State divested itself of the power of appointment, it was felt that no duly appointed Kází could be found for the performance of those rites and ceremonies.

“My Lord, the absence of a duly appointed Kází on occasions on which the Muhammadans regard his presence as necessary from their social or ceremonial point of view is the source of much inconvenience to them, as has been represented on several occasions by members of that community, and more particularly by the Muhammadans of the Madras Presidency. To undertake, therefore, the appointment of Kázís will be but a reasonable concession on the part of Government to the wants of a large section of Her Imperial Majesty’s subjects, and will prove a most acceptable relief to them.

“My Lord, as the want of duly appointed Kázís has been chiefly felt in the Presidency of Madras, the Bill I ask leave to introduce is intended to extend, in the first instance, only to that Presidency; but it is proposed to add a clause to it empowering any other Local Government to extend its provisions to the territories administered by it, should the Muhammadans in those territories hereafter desire its extension.

“My Lord, the object of the present motion is nothing more than the creation of duly appointed Kázís to satisfy the social and ceremonial wants of the Muhammadan population. A detail of the duties to be devolved on the Kázís does not come under the scope of the proposed Bill. The use to be made of these functionaries will depend on the customary practice of the parties concerned. The Bill in question will simply provide for the appointment of Kázís by Government, leaving their position and duties, whatever they may be, just as they now are, and conferring no judicial or other powers on them; and, in order to prevent any possible misapprehension as to the object of the proposed Bill, a saving clause will be added to that effect.

“My Lord, in conclusion, I beg to express once more my strong conviction that such a wholesome piece of legislation will prove highly beneficial to a large section of the population of India, and will be welcomed by the Muhammadan subjects of Her Imperial Majesty with feelings of gratefulness and satisfaction.”

The Motion was put and agreed to.

The Council adjourned to Friday, the 30th January, 1880.

D. FITZPATRICK,

*Secretary to the Government of India,*

*Legislative Department.*

CALCUTTA ;  
The 23rd January, 1880. }