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**COUNCIL OF THE GOVERNOR GENERAL  
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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.

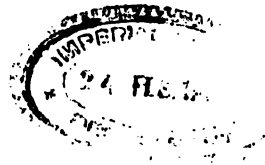
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*Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.*

The Council met at Government House on Thursday, the 23rd December, 1880.

P R E S E N T :

The Hon'ble Whitley Stokes, c.s.i., c.i.e., Senior Ordinary Member of the Council of the Governor General, *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 J. Gibbs, c.s.i.

The Honble C. U. Aitchison, ll.d., c.s.i.

Lieutenant-General the Hon'ble Sir D. M. Stewart, g.c.b.

The Hon'ble B. W. Colvin.

The Hon'ble Maharájá Jotindra Mohan Tagore, c.s.i.

The Hon'ble C. Grant.

The Hon'ble J. Pitt Kennedy.

The Hon'ble G. C. Paul, c.i.e.

The Hon'ble H. J. Reynolds.

PROBATES AND ADMINISTRATION BILL.

The Hon'ble MR. STOKES moved that the Bill to provide for the grant of probates of wills and letters of administration to the estates of certain deceased persons, be referred back to the Select Committee.

The Motion was put and agreed to.

BURMA FOREST BILL.

The Hon'ble MR. AITCHISON moved for leave to introduce a Bill to amend the law relating to forests, forest-produce, and the duty leviable on timber in British Burma. He said that, before explaining the necessity for legislation, he wished, in a few sentences, to draw the attention of the Council to the importance to the Government of forest-conservation in Burma, for the purpose of securing a permanent supply of teak for the requirements of India, and for export to Europe and elsewhere. Notwithstanding the enormous increase in the use of iron and the high price of teak timber, the consumption of the latter had steadily increased, and Rangoon and Maulmain were the two principal ports of supply for India and the world. There were large and

valuable forests in Southern India; but they were insufficient for local consumption, and, consequently, a large quantity of teak was imported annually into India from Burma. In Java and the neighbouring islands there were also teak forests, but the supply from them was insignificant. The chief sources of supply were Upper Burma, Siam, the Karen-nee country and British Burma. The far larger portion of timber from these forests found its way to Rangoon and Maulmain, by the Salween, Sittang and Irrawaddy rivers. To give an idea of the present increased supply, he would compare the statistics for the first eight years after the annexation of Pegu, with the figures for the five years ending 1878-79. The imports into Rangoon and Maulmain for the first period were 85,056 tons of fifty cubic feet; for the last period 276,749 tons. The exports for the same periods were 76,763 tons, as compared with 134,563 tons. During the last-mentioned period, about two-thirds of the teak exported from Rangoon and Maulmain were to Indian ports, and of the imports, about four-fifths came from forests beyond the British frontier. The supply from beyond the frontier, however, was fluctuating; the forests were not in any way under control of the British Government; the timber was recklessly felled and not properly protected from fires. These foreign sources might, perhaps, supply a quantity of teak for many years to come, but from the circumstances he had explained, they might become exhausted. Therefore, it was the more important that the Government should have a well-preserved area for home supply. Besides teak there were many other valuable forest trees. One of the most important forest-products was kutch. From reckless felling the tree was scarce in British Burma; but it was now being carefully preserved in the demarcated forests. During the last five years, the yield from beyond the frontier had been 11,000 tons a year, valued at Rs. 22,00,000. Burma being a moist country, the effects of forest denudation were less felt there than in some parts of India. Still the low ranges of hills adjoining the frontier had become exceedingly dry from over-felling. There were also considerable and valuable tracts of rice-lands in the plains which had been destroyed by silt brought down by the streams from the Pegu Yoma range. These and other evils arising from denudation would be met to a great extent by forest-conservation.

With respect to the necessity for legislation, MR. AITCHISON observed that at present forest-administration was carried on under three different enactments and two different sets of rules. The Government Forest Act of 1865 was in force, and under that enactment rules had been made for the administration of Burma forests. But those rules, though purporting to have been made under the law, were not covered by its provisions, and Act VII of 1869 was passed to give legal effect to them. Again, in 1873, it was found necessary to amend

the law relating to timber floated down the rivers of British Burma; accordingly, Act XIII of 1873 was passed. Again, the rules of 1865 related only to a portion of the Government forests; not to all; and, to cover the latter, rules were made under the General Forest Act of 1875. Thus, there were three different enactments and two different sets of rules, and the inconvenience of such a state of things was very obvious. It was proposed, therefore, to consolidate the law relating to forests and forest-produce, and the duty leviable on timber in British Burma. But amendment was also necessary. Experience had shown that the best mode of forest-administration was to have compact, well-selected areas demarcated, freed from all private rights, and guarded, as far as possible, from the growth of prescriptive claims. For the last five years, steps had been taken carefully to demarcate forests in British Burma, and the demarcation had been preceded by elaborate and careful enquiry by Settlement-officers, independently of the Forest-officers, so as to afford security against any one-sided views. The requirements of the people in the neighbourhood were supplied either from land excluded from these demarcated forests, or, under certain rules, from within given areas inside such forests. Under that arrangement, forests had been demarcated, and their area aggregated, on 31st March last, 1,442 square miles. But the procedure followed in this respect in Burma in some particulars required legal sanction, and the object of the present Bill was to legalize what had been done and lay down the procedure to be followed in future. This procedure would differ from that laid down in the Indian Forest Act of 1878, and would afford greater security for proper investigation of rights. But the principal reason for special forest-legislation in Burma lay in the provisions of the Burma Land and Revenue Act of 1876. Section 6 of that Act defined the rights in land which were recognized by law, and clause (b) recognized rights acquired under sections 27 and 28 of the Indian Limitation Act of 1871. The rights thus recognized were "easements" in the ordinary English acceptance of the term, and did not include prescriptive rights of user. The Indian Limitation Act of 1877 extended the definition of easements so as to include rights of user, but it was held that that Act did not affect the provisions of the Burma Land and Revenue Act of 1876. Consequently, as the law at present stood, it denied the existence of prescriptive rights of user of forest-produce in British Burma.

But as a matter of fact, such rights unquestionably did exist. They had been liberally recognized in the course of forest-demarcation, and in any legislation for British Burma, such rights could not be ignored. These were, in the main, the reasons for special forest-legislation in Burma. In preparing the Bill deviation had, in some other respects, been made from some

of the provisions of the Indian Forest Act. In the first place, in the Indian Act the penalties were uniform, and, in some cases, for petty offences the penalties were disproportionately severe. In the Bill the penalties had been classified, so that the punishments for minor offences were of less severity than those for more serious offences. Then there was a fundamental difference in the chapter which dealt with the protection of timber, &c., on Government lands not included in reserved or village-forests. The Indian Forest Act attempted to solve the question by constituting a third class of forests, called protected forests, in which the rights of Government and of private persons respectively were inquired into and recorded. In Burma, where in many districts a large portion of the area, sometimes as much as three-fourths, was forest, this plan would be both unnecessary and impracticable. Consequently, instead of recognizing three classes of forests, the Bill dealt only with two classes, namely, reserved forests and village-forests. The powers that were taken with regard to forest-land outside such tracts, were to preserve certain specified trees, amongst which teak was the most important. The other differences in the Bill would form the subject of notice when the Bill was introduced. The Bill had been under consideration for five years: it was well considered in every clause by a Committee of Forest and Revenue-officers, presided over by the Chief Commissioner himself, and had the entire approval of the Chief Commissioner. It might appropriately be described as the Indian Forest Act of 1878 with such changes as were necessary to adapt it to the special circumstances of British Burma.

The Motion was put and agreed to.

#### DISTRICT DELEGATES BILL.

The Hon'ble MR. STOKES moved that the Bill to provide for the grant of probates of wills and letters of administration in non-contentious cases, be referred back to the Select Committee.

The Motion was put and agreed to.

#### PEGU AND SITTANG CANAL BILL.

The Hon'ble MR. AITCHISON presented the Report of the Select Committee on the Bill to regulate the navigation of the Pegu and Sittang Canal, and to provide for the execution of works necessary for its maintenance.

#### MADRAS CORONER'S JURISDICTION BILL.

The Hon'ble MR. STOKES moved for leave to introduce a Bill to empower the Government of Madras to alter the local limits of the Coroner's Jurisdiction, and for other purposes. He said that, under Act No. IV of 1871

(The Coroners Act, 1871), the local limits of the jurisdiction of the Coroners in the towns of Calcutta, Madras and Bombay were made co-extensive with the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William, Madras and Bombay, respectively, no power to alter them being conferred. In Madras, these limits comprised twenty-seven square miles and included no less than twenty-three villages, occupied by agriculturists or toddy-drawers. Of late years, there had been a great increase in the number of inquests to be held: thus in 1800, when the limits of the Coroner's jurisdiction were fixed, there had been only six inquests; but in 1860 the number had risen to 154, in 1870, to 198, and in 1878 (the last year for which MR. STOKES had the number), to 227. As the Coroner should always be available for an inquest, if necessary, it was obvious that the present area had become too large for one officer. It was therefore proposed that the Local Government should be empowered to restrict the local limits of the Coroner's jurisdiction by excluding from them the non-urban portion which differed but little from the adjoining mufassal district. To give effect to this proposal, the Bill, which he now asked leave to introduce, had been prepared. It empowered the Governor of Madras in Council, with the previous sanction of the Governor General in Council, to alter the local limits of the Coroner's jurisdiction, as might be from time to time convenient, provided that these limits were never extended beyond the present ones.

In the event of the powers conferred by the Bill being exercised and the local limits of the Coroner's jurisdiction restricted, the provisions of the Criminal Procedure Code relating to enquiries by the Police into unnatural and sudden deaths would extend to the tract excluded from the jurisdiction of the Coroner, and the Commissioner of Police would discharge the functions of the Magistrate under those provisions.

The Motion was put and agreed to.

#### TÁJ MAHAL'S PENSION BILL.

The Hon'ble MR. COLVIN requested permission to postpone the motions relating to the Bill for the determination of claims to Táj Mahal's pension which stood in his name.

Leave was granted.

#### EXEMPTION FROM MUNICIPAL TAXATION BILL.

The Hon'ble MR. COLVIN moved that the Hon'ble Sir D. M. Stewart be added to the Select Committee on the Bill to exempt certain persons and property from Municipal taxation.

The Motion was put and agreed to.

## OBSTRUCTIONS IN FAIRWAYS BILL.

The Hon'ble MR. STOKES moved for leave to introduce a Bill to empower the Government to remove or destroy obstructions in fairways and to prevent the wilful creation of such obstructions. He said the object of this Bill was to empower the Government to remove obstructions to navigation which might exist in fairways situate in seas adjacent to British India, and to prevent, so far as this could be done by a law, the creation of such obstructions for the future. The advantages of having such a law had been impressed upon the Government by certain recent cases. In one of these a question had been raised as to the power of the Government to remove the fishing stakes which were annually placed during the fine season in the sea off the port of Bombay, and which, having recently been advanced into the approach to the harbour, were now a source of serious danger to vessels frequenting that port. As to this we had a mass of evidence in the shape of resolutions of the Bombay Government, letters from captains of Peninsular and Oriental and British India steamers, communications from the Secretary to the Bombay Port Trust, and letters from the Port-officer. It would be enough to read to the Council part of one of the letters received from the last mentioned official :—

“The fishing stakes fixed off the entrance to the Port throughout the fine season are the cause of constant complaints and frequent accidents which occur both to the fishing boats which attach to them and to steamers and vessels approaching the harbour at night. . . .

“The danger to fishing boats attached to the stakes exists in their lying there without lights until the close approach of a steamer or other large vessel, which is probably steaming full speed and anxious to make the Outer Light-vessel, when suddenly a ‘flare-up’ is shewn from a boat attached to the stakes right ahead and close to, and immediately afterwards from scores of boats for miles on either side of the vessel’s course. The boats are lying at uncertain distances from the stakes, and may or may not be run over according to whether the steamer has time to avoid them and answers its helm quickly or not. If too close to allow of turning in time to clear the boats and stakes, the vessel’s only alternative is to endeavour to pass between them at very great risk of having the boats or ports swept away in passing, or of having the propeller injured by the stakes, or of winding up a net on, and thus disabling, a propeller. Broken stakes also are left indiscriminately under water throughout the year, not being worth the trouble of removing are left to decay, and a constant danger to shipping is thus created.”

In another case which related to the deposit of ballast by ship-masters, at the mouth of the Rangoon river,—a practice which, if permitted, might cause serious impediment and danger to the navigation of the approaches to the port of Rangoon,—the need for some further preventive powers than those which Government now possessed, had been made apparent. The Rangoon Port Com-



missioners Act (XV of 1879) no doubt empowered the Commissioners to make rules for preventing "filth or rubbish" from being thrown into the port. But, first, it was exceedingly doubtful whether the term "rubbish" as here used could be stretched to include ballast; and, secondly, the deposits in question were made at places to which the port-limits could not reasonably be extended.

There could be no doubt that it was desirable that the powers of Government officers, and the procedure to be followed by them, in relation to matters of this nature, should be clearly defined, and as the Indian Statute-Book, as it now stood, did not deal adequately with the subject, the present Bill had been prepared. A precedent for such legislation would be found in the Imperial Statute 40 & 41 Vic., c. 16 (the Removal of Wrecks Act, 1877). The Council would find that the Bill, while following generally the lines of the statute, went beyond it in two material respects. The power to remove obstructions conferred by the Bill was not confined, as in the statute, to the case of obstructions caused by wrecks, but extended also to fishing stakes, ballast and any other thing which might form an obstruction or danger to navigation. The other point in which the Bill went beyond the statute was that, in addition to giving power to remove existing obstructions, it enabled the Government to prevent the wilful creation of obstructions in the future. With this object the Governor General in Council was empowered (section 7) to make rules to regulate or prohibit in any fairway the placing of fishing stakes, the casting of ballast, or the doing of any other act which would, in his opinion, cause or be likely to cause danger or obstruction to navigation.

The Hon'ble MR. KENNEDY said he remembered that there were in his youth obstructions very similar in character to those which had been just described along a great portion of the coast of Ireland—long stake nets running very considerable distances under the surface of the water; and certainly the Bombay Port-officer in no way exaggerated the difficulties of navigation arising from such obstructions.

The Motion was put and agreed to.

#### MADRAS IRRIGATION AND CANAL COMPANY'S CANAL BILL.

The Hon'ble MR. GIBBS presented the Report of the Select Committee on the Bill to regulate the traffic on the Madras Irrigation and Canal Company's Canal.

The Hon'ble MR. GIBBS also moved that the Report be taken into consideration. He said the Bill as published was forwarded to the Madras Government, who had no observations to make on it, nor had any communication been received regarding it from any other quarter. Under these circumstances,

the Select Committee were of opinion that the Bill might be passed as it had been published.

The Motion was put and agreed to.

The Hon'ble MR. GIBBS then moved that the Bill be passed.

The Motion was put and agreed to.

#### SUNDRY BILLS.

The Hon'ble MR. STOKES moved that the Hon'ble Mr. Colvin be added to the Select Committees on the following Bills:—

To define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques.

To define and amend the law relating to the Transfer of Property.

The Motion was put and agreed to.

#### TRADE-MARKS BILL.

The Hon'ble MR. STOKES also moved that the Hon'ble Messrs. Colvin and Kennedy be added to the Select Committee on the Bill to provide for the registration of Trade-marks.

The Motion was put and agreed to.

#### BENGAL CESS ACT AMENDMENT BILL.

The Hon'ble MR. STOKES also moved for leave to introduce a Bill to amend Bengal Act No. IX of 1880 (the Cess Act, 1880). He said that when the Bill, which had since become Bengal Act No. IX of 1880 (the Cess Act, 1880), was submitted, for the first time, by the Government of Bengal for the assent of the Governor General, His Excellency, though approving of the policy of the Bill, was unable to give his assent, as he was advised that two of its sections were *ultra vires* of the Bengal Legislative Council. Section 65 of the Act was *ultra vires*, inasmuch as it extended to suits the parties to which were not landholder and tenant, the special procedure which the provincial legislature was, by section 4 of the Code of Civil Procedure, permitted to prescribe only in suits between landholder and tenant; and section 66 also appeared to be *ultra vires*, as it was inconsistent with the same Code, in enacting that a decree might be executed against a person who was neither a party or privy.

Though, however, feeling compelled for these reasons to withhold his assent from the Bill in its then form, His Excellency intimated to the Government of Bengal that he would be willing to give his assent to the measure if it

was re-enacted with the omission of the provisions to which exception had been taken, and further, that if the Lieutenant-Governor should think these provisions were indispensable, a Bill would be introduced into the Council of the Governor General incorporating them, and drawn so as to come in force simultaneously with the Bengal Bill when re-enacted.

In accordance with this intimation, the Government of Bengal re-submitted the Bill with the omission of the objectionable provisions, and His Excellency had given his assent to the measure as thus amended. But, as the Local Government had expressed at the same time a strong opinion that the omitted sections were essential to their scheme of legislation, the present Bill had been prepared in fulfilment of the promise made by His Excellency. It simply re-enacted the provisions to which exception had been taken, and incorporated them in the Bengal Act, by inserting them retrospectively in that enactment from the date on which it became law.

The Motion was put and agreed to.

#### SUNDRY BILLS.

The Hon'ble MR. STOKES also moved that the Hon'ble Mr. Gibbs be added to the Select Committees on the following Bills:—

To provide for the grant of probates of wills and letters of administration to the estates of certain deceased persons.

To exempt Pársís from certain provisions of the Administrator General's Act, 1874.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 30th December, 1880.

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

CALCUTTA ;  
The 23rd December, 1880. }