

Friday, December 30, 1880

**COUNCIL OF THE GOVERNOR GENERAL
OF INDIA**

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ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of

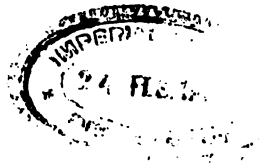
ASSEMBLED FOR THE PURPOSE OF MAKING

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 Thursday, the 30th 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.

Lieutenant-General the Hon'ble Sir D. M. Stewart, G.C.B.

Major the Hon'ble E. Baring, R.A., C.S.I.

The Hon'ble B. W. Colvin.

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

The Hon'ble C. Grant.

The Hon'ble G. C. Paul, C.I.E.

The Hon'ble H. J. Reynolds.

BURMA FOREST BILL.

The Hon'ble MR. GRANT, in the absence of the Hon'ble Mr. Aitchison, asked leave to postpone the introduction of the Bill to amend the law relating to forests, forest-produce, and the duty leviable on timber in British Burma.

Leave was granted.

MADRAS CORONER'S JURISDICTION BILL.

The Hon'ble MR. STOKES introduced the Bill to empower the Government of Madras to alter the local limits of the Coroner's Jurisdiction, and for other purposes, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Gibbs and Colvin and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill be published in the *Fort St. George Gazette* in English and in such other languages as the Local Government might think fit.

The Motion was put and agreed to.

TÁJ MAHAL'S PENSION BILL.

The Hon'ble MR. COLVIN moved that the Report of the Select Committee on the Bill for the determination of claims to Táj Mahal's pension be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. COLVIN also moved that the following section be added to the Bill :—

“ 18. The said Secretary of State in Council shall, without unnecessary delay, invest, in securities of the Government of India, all arrears of such pension due at the time of the passing of this Act, and all such arrears falling due thereafter, and before the investment of the principal sum aforesaid. When any such arrears have been so invested, all further claim in respect thereof shall cease, and the persons obtaining a certificate in manner hereinbefore provided shall, in lieu of such arrears, be entitled to the securities in which they have been invested and the income resulting therefrom.”

He said that the amendment which he moved had been rendered necessary by an accidental omission which had been made in the Bill as originally reported upon by the Select Committee. It had been the intention of the Committee that a principal sum equal to the proportionate amount of the loan due to Táj Mahal should be invested in Government securities, together with any interest which might be due on such principal sum. The Bill, as it stood, only provided for the investment of the interest payable hereafter on the securities so bought. But a considerable sum of money had already accrued due as interest to Táj Mahal's estate during the time that her pension had been in dispute, and it was possible that further sums of interest might accrue before the investment which the Bill directed could be made. The Committee had intended that these arrears should be invested along with the principal sum. It was obviously fair that this should be done, and the omission to provide for it was merely due to oversight. The object of adding section 18 into the Bill, as he proposed, was to remedy that oversight.

The only other remark which he had to make in addition to what he had said when he presented the report of the Select Committee, was with reference to the indemnity which the Government took to itself in respect of payments heretofore made. He might mention, for the information of the Council, that those payments amounted to rather more than a lách of rupees, which, with one exception, had been, as far as he could learn, made to one only of the claimants. On the 18th August 1877 a lách of rupees was paid on account of interest to the claimant referred to, and on the same day a sum of rupees five hundred was

paid to the guardian of the same claimant at Lucknow. Again, rupees eight hundred and ten were paid on account of arrears of subscription to the new Charity Fund at Lucknow on the 21st October 1877. This last payment appeared to have been made on account of subscriptions due from the late Táj Mahal, which he presumed must have been due at the time of her death. There was a further sum of rather more than a hundred rupees which had been disbursed on account of Telegraph charges. These payments, of which he had informed the Council, constituted the whole sum in respect of which the Government now proposed to take an indemnity.

The Motion was put and agreed to.

The Hon'ble MR. COLVIN then moved that the Bill as amended be passed.

The Motion was put and agreed to.

OBSTRUCTIONS IN FAIRWAYS BILL.

The Hon'ble MR. STOKES introduced the Bill to empower the Government to remove or destroy obstructions in fairways and to prevent the wilful creation of such obstructions, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Gibbs, Colvin and Kennedy and the Mover. He had only one remark to offer in addition to those which he made when moving for leave to introduce this Bill.

The Council would see that the Bill did not, as was usual with their general Acts, contain a clause declaring its local extent to be co-extensive with British India. In fact, the measure, if it became law, would operate, and was intended to operate, outside the limits of British India. But he believed this to be within the scope of their legislative powers. It was a recognised rule of international law that maritime States had, for certain limited purposes, power to make regulations with respect to the waters adjacent to their coast, even beyond the three-mile limit, fixed, according to most writers, with reference to the distance to which an old-fashioned cannon would carry. Thus in England, in 1736, the so-called Hovering Act (9 Geo. II, c. 35) was passed, prohibiting the transhipment of foreign goods within four leagues of the coast. The United States, as he learnt from Wheaton and Kent, had made similar provisions for the protection of their revenue, and it appeared from Sir A. Cockburn's decision in *The Queen v. Keyn* that France subjected all vessels to her customs laws to a distance of five leagues from shore. Such jurisdiction might be exercised not only for the protection of customs revenue, but also for the protection of fisheries, the exaction of harbour and light-house dues, the protection of territory from violation in time of war

between other States, and (according to Parliament and the late illustrious Chief Justice of England) also for the benefit of navigation.

It was true that the law-making power of this Council was a delegated power and should therefore be construed strictly. But, as he had said when the Transport of Salt Bill (now Act XVI of 1879) became law, "a statute is always construed as impliedly giving powers absolutely essential to the privilege granted;" and jurisdiction to legislate as the present Bill proposed to do, for the protection of ships entering our ports was a necessary incident to the general power of legislation expressly conferred upon the Governor General in Council for the benefit of British India.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill be published in the local official Gazettes in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

PEGU AND SITTANG CANAL BILL.

The Hon'ble MR. GRANT, in the absence of the Hon'ble Mr. Aitchison, moved that 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, be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. GRANT also moved that the Bill as amended be passed. He said that the changes which the Select Committee thought it necessary to recommend in the Bill were sufficiently simple in character, and though one of them was not without considerable importance to the general public, there was nothing in them to make any material change in the frame of the Bill necessary. The Select Committee had, therefore, recommended that the Bill, as amended, might be passed, and the present motion gave effect to that recommendation.

The Motion was put and agreed to.

BENGAL CESS ACT AMENDMENT BILL.

The Hon'ble MR. STOKES introduced the Bill to amend Bengal Act No. IX of 1880 (The Cess Act, 1880), and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Colvin and Reynolds and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. STOKES also moved that the Bill be published in the *Calcutta Gazette* in English and in such other languages as the Local Government might think fit.

The Motion was put and agreed to.

INDIAN GOVERNMENT SECURITIES BILL.

The Hon'ble MR. STOKES also moved that the Hon'ble Major Baring be added to the Select Committee on the Bill to provide for certain matters relating to securities of the Government of India.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 6th January, 1881.

D. FITZPATRICK,

CALCUTTA ;
The 30th December, 1880. }

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