

Thursday, January 6, 1881

COUNCIL OF GOVERNOR GENERAL  
OF  
INDIA

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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.

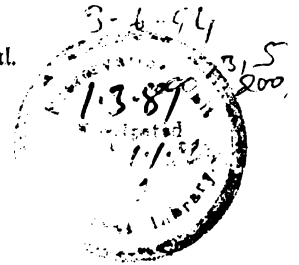
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WITH INDEX.

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1882.

*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.*

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The Council met at Government House on Thursday, the 6th January, 1881.

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

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

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 Jotíndra Mohan Tagore, C.S.I.

The Hon'ble C. Grant.

The Hon'ble H. J. Reynolds.

The Hon'ble G. F. Mewburn.

NEW MEMBER.

The Hon'ble G. F. MEWBURN took his seat as an Additional Member.

BURMA FOREST BILL.

The Hon'ble MR. RIVERS THOMPSON introduced the Bill to amend the law relating to forests, forest-produce, and the duty leviable on timber in British Burma, and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Stokes, Mahárájá Jotíndra Mohan Tagore, and Messrs. Colvin and Grant and the Mover. He need not recapitulate the circumstances which had led to this legislation. In the Statement of Objects and Reasons which accompanied the Bill these had been fully detailed, and they were also described in the speech which his hon'ble friend Mr. Aitchison made in the Council on a previous occasion. The subject of legislation for the Burma forests had for a long time occupied the attention of the authorities in British Burma, and it was at one time considered that, when the general Indian Forest Act was passed, it might have been possible to extend it to that Province. It was deemed, however, upon fuller consideration, that, having regard to the fact that the circumstances and the condition of things in Burma, and especially as regarded forests, were very different from those which obtained on this side of India,

it would be better to wait and see the working of that Act in this part of the country before extending its provisions to Burma. He thought experience had justified the course which was then taken, because under the Acts which already existed, it had been found practicable to carry on the work in Burma sufficiently well up to the present time; and the operation of the general Act in India suggested many modifications and changes.

For the last four or five years all that had been needed in connection with the administration and reservation of forests in Burma had been done under the Acts of 1865 and 1869 and the rules which under those Acts had the force of law. It had been found, however, as had been explained by Mr. Aitchison, that there were many things which were not covered by those Acts or rules, and the present opportunity would therefore be taken for giving the necessary powers to the local administration for the proper prosecution of such work, especially as the forests being rich and valuable in themselves, effective rules for their protection were of the greatest importance both administratively and financially.

In undertaking legislation now it was thought advisable to repeal all existing Acts and rules in force at the present time, and to present to the Council a complete and consolidating measure which should comprise in one Act all that was necessary in relation to forest-administration in Burma; and that was provided for by the second section of the Bill which he had now the honour to submit to the Council. It would be found that in the present Bill, both as regarded the definitions and the general substance of its provisions, the Act of 1878 had been mainly followed and adopted. He would briefly draw attention to a few points in which modifications in that Act were rendered necessary. Chapter II of the Bill, which dealt with reserved forests and the procedure to be adopted in reserving such forests, was perhaps, both in the Bill and the Act of 1878, the most important part of the subject. The chapter in the Bill followed in all essential particulars the lines of the Indian Forest Act, and, where new provisions had been adopted, it was with reference to the particular circumstances and conditions of land-tenure in British Burma. Thus, under section 5 of the Bill, which corresponded with section 3 of the Act, it was provided that the Chief Commissioner might, from time to time, constitute any land, over which no person had any rights, into a reserved forest. In the Act of 1878 the action of Government was limited to land which was the property of Government. The fact was that in Burma the Government possessed the proprietary right over all land except where rights had been created by the Government itself, such as by waste-land grants or any other such alienations. Thus, the extent to which the authority of the Government extended in Burma

was very much larger than on this side of India, where much property was in the hands of large proprietors and zamíndárs, and not almost exclusively, as in Burma, in the hands of Government. It would be noticed again in the last clause of that section a new provision had been added. In the conduct of operations for the demarcation and reservation of State forests, it was proposed that the Government should have power to appoint a Forest-Settlement-officer. In all inquiries of this kind in British Burma, very careful investigations into private rights and interests were essentially necessary amongst a people who were rude and uneducated and perhaps unable or unwilling to assert their own rights; and so it had always been thought necessary to entrust the duty of enquiry into all forest-rights in Burma to officers who were independent of the Forest Department, on the not unnatural assumption that such officers in the course of such enquiries might be led to exercise an unconscious bias in the direction of their own departmental interests. In Burma, therefore, it was proposed that the chief officer to be entrusted with the duty should be in no way connected with the Forest Department; he might be a civilian or some other officer; and though a Forest-officer might be associated with such Forest-Settlement-officer in the investigation and record of all independent claims and privileges, it was intended that he should always act in subordination to the Forest-Settlement-officer. Under the Indian Forest Act, power was given to the Local Government to constitute a body of three persons for conducting these duties, one of whom might be a Forest-officer, who would therefore act as a colleague and not in a subordinate capacity.

In the 16th section of the Bill, which corresponded with the 16th section of the Act, an alteration had been made. Under the Act, in the conduct of these demarcation inquiries, appeals from the decisions of Forest-Settlement-officers might be referred to a Court, which was called in the Act a "Forest Court," composed of three persons to be appointed by the Local Government. That provision had been omitted entirely from the Burma Bill. In British Burma, in ninety-nine cases out of a hundred, all questions at issue would probably be settled on the spot; and if appeals were preferred from such decision, it was provided that they should go to the chief executive officer of the district, the Deputy Commissioner, whose decision, though final as regarded any right of appeal, was open to revision on all points by the Chief Commissioner of the Province. It would be seen that ample provision had been made in the Bill for the settlement of all appeals without recourse being necessary to the elaborate constitution of a Forest Court to take up appeals.

As regarded offences under the Act, an important departure had been made from the rule which prevailed under the Act. In the Bill, though the offences

were the same in number and character, it would be found that the penalties attached to them were different. In the Act, all offences were punishable with imprisonment which might extend to six months, or to a fine which might extend to rupees five hundred. In three cases which embraced lesser offences, such as trespass or damage by neglect, or the infraction of rules, it had been thought proper to modify to a large extent the power of punishment, which had been limited in the Bill to a fine which might extend to rupees fifty only, or, when the damage resulting from the offence amounted to more than rupees twenty-five, to double the amount of such damage. For the rest of the offences the punishment was the same as under the Act.

The provisions relating to village-forests which came under chapter III of the Bill differed from the corresponding provisions of the Act in as far as they gave power to constitute *any* forest which was at the disposal of Government a village-forest, and not only such as had already been declared reserved forests. The privileges allowed to village-communities were much wider and more liberal under the Bill than those given under the Indian Act. The object was to secure to all village-communities the privilege of pasture and the use of such timber and wood for domestic purposes as were in immediate proximity to their homes. Such prescriptive rights had always existed in Burma, and it was the object of the Bill to maintain them.

The provisions in the Act which related to protected forests were not necessary in Burma, where all land was the property of Government, and only here and there rights of user obtained. It would not be necessary to make special provisions for forests outside the area of reserved or village-forests. There were only two kinds of forests included in the Burma Bill. In the Indian Act there were three, including protected forests, in which the Government had rights, though they were not reserved forests. Still outside reserved forests it would be necessary, on account of the great value of the teak wood, to protect teak timber, and to give power to reserve other special classes of wood which, in the discretion of the Chief Commissioner, he might deem it advisable to protect.

Chapter VI of the Indian Forest Act, which related to the control over forest land not the property of Government, for which provision was made in the Indian Act, was not necessary in British Burma on the grounds which he had stated, as the proprietary right in all forests there pertained to Government.

In chapters V and VI the general provisions of the Indian Act had been followed, and so also he might say as regarded the collection of drift and stranded timber found in chapter VII of the Bill.

The draft of this measure had for a considerable time been in the hands of the local authorities in British Burma, and had received the attention of more than one Chief Commissioner and a large body of officers experienced in forest-administration there. Its importance to the Province would be very great from the fact that it affected very large and valuable State forest-domains from which an important revenue was already realised, amounting as it did in one year to something more than Rs. 17,00,000. It was impossible to state to what extent these revenues might yet be developed, and the object of the present legislation was directed both to the conservation of this very valuable property on scientific principles, and to the protection of the privileges and rights of the village-communities in the reasonable use of wood and other forest-produce in the neighbourhood of their villages. He could scarcely conclude without recording the acknowledgments which were due to Mr. Brandis, the Inspector General of Forests under the Government of India, for the assistance he had rendered in the legislation now proposed. In Burma, especially, Mr. Brandis had rendered invaluable service when, as Conservator of Forests there, he had, against much local opposition, recognised and secured the rights of the Government in this extensive property, and laid down the rules for its efficient administration. The conservancy of forests on right principles there, both in the interests of the Government and of the people, was due to his foresight and persistency: and if the Bill which he (MR. RIVERS THOMPSON) now presented to the Council became law, he believed it would materially help the Local Government in carrying out the work to a successful completion.

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 might think fit.

The Motion was put and agreed to.

#### BENARES FAMILY DOMAINS BILL.

The Hon'ble MR. COLVIN presented the Report of the Select Committee on the Bill to amend Bengal Regulation VII of 1828.

#### FORT WILLIAM MAGISTRATES BILL.

The Hon'ble MR. REYNOLDS moved for leave to introduce a Bill to provide for the better government of Fort William. He said the object of this Bill was to enable the Local Government to make rules for the better government of Fort William, and to establish a court for the trial of persons charged with breaches of such rules.

It had always been the practice for the Garrison Quarter-Master of the Fort to take cognizance of offences against garrison rules, and to punish infractions of such rules by sutlers, camp-followers and other persons connected with the Fort. But though this jurisdiction had the support of prescription and usage, it seemed to be at least doubtful whether it rested upon any solid legislative foundation. So long ago as October 1877, the question was raised by the Brigadier-General in command of the Presidency District, who suggested that the necessary powers should be given to the Garrison Quarter-Master under the Articles of War. On consideration, it appeared that this proposal would not fully meet the necessities of the case, and that the object aimed at could not be attained by the extension of the Cantonment Act to the Fort under the orders of the Local Government. He believed the Council would recognize the necessity of there being some officer in the Fort legally empowered to enforce obedience to such rules as the Government might prescribe, both in matters of sanitation, and for the purpose of preserving order; and the Government was advised that, for this purpose, fresh legislation was required. The Bill which it was proposed to introduce was of a short and simple character, and was based upon a draft submitted by the Government of Bengal, after receiving the report of a Committee consisting of the General Commanding the Presidency Division, the Commissioner of Police, and the Senior Magistrate of Calcutta.

The main principles of the Bill were two in number—first, the Local Government was empowered to lay down rules in certain matters specified in a schedule attached to the Bill, and to prescribe certain penalties for any breach of such rules; and secondly, the Bill provided for the appointment of a commissioned officer of the Army (whom it was proposed to call the Fort Magistrate) to try persons charged with any breach of the rules in question. It was not intended, however, to do away with the jurisdiction of the Presidency Magistrates. The Bill, if introduced, would give the Fort Magistrate power to inflict light punishments for petty offences; but cases might arise of a more serious character, and it might be necessary to proceed with greater severity against persons who might be convicted of repeated violations of the rules. It was therefore proposed that the present jurisdiction of the Presidency Magistrates should be saved. The only other section which seemed to call for notice was a section which declared valid all sentences which might have been passed by the Garrison Quarter-Master under the procedure hitherto in force.

The Motion was put and agreed to.



MADRAS PORT-DUES BILL.

The Hon'ble MR. GIBBS presented the Report of the Select Committee on the Bill to enhance the rate of Port-dues leviable at Madras. He said that Hon'ble Members were aware that this was a Bill to provide for the interest on the sum to be expended on the new Madras Harbour. The Committee had received a communication from the Madras Government, in which they expressed the opinion that a port-due at the rate of six annas a ton would cover all the charges which were likely to fall under this head; but the Select Committee, on considering the matter, came to the conclusion that it was better to leave the maximum rate at eight annas per ton, as provided in the draft Bill. Because that was the maximum, it did not follow that the full rate would be levied. The rate of dues to be levied would be determined by the Local Government according to the amount which would be actually required.

SUNDRY BILLS.

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

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

To provide for the registration of Trade-marks.

To regulate the importation, possession and transport of Petroleum and other substances of a like nature.

The Motion was put and agreed to.

NORTH-WESTERN PROVINCES RENT ACT, 1873, AMENDMENT BILL.

The Hon'ble MR. COLVIN presented the Report of the Select Committee on the Bill to amend the North-Western Provinces Rent Act, 1873. He said he would reserve the observations which he wished to make until the next week when he hoped to move that the Bill be taken into consideration.

PROBATES AND ADMINISTRATION BILL.

The Hon'ble MR. STOKES presented the further Report of the Select Committee on the Bill to provide for the grant of probates of wills and letters of administration to the estates of certain deceased persons.

## DISTRICT DELEGATES BILL.

The Hon'ble MR. STOKES also presented the further Report of the Select Committee on the Bill to make further provision for the grant of probates of wills and letters of administration in non-contentious cases.

## INDIAN GOVERNMENT SECURITIES BILL.

The Hon'ble MR. STOKES requested permission to postpone the motions relating to the Bill to provide for certain matters relating to Securities of the Government of India.

Leave was granted.

The Council adjourned to Friday, the 14th January, 1881.

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

CALCUTTA; }  
*The 6th January, 1881.* }