

Wednesday, April 30, 1862

***INDIAN LEG.
COUNCIL
DEBATES***

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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 Wednesday, the 30th April 1862.

PRESENT :

His Excellency the Viceroy and Governor General of India, *presiding*.

His Honour the Lieutenant-Governor of Bengal.

Major-General the Hon'ble Sir R. Napier, K.C.B.

The Hon'ble S. Laing.

The Hon'ble H. B. Harington.

The Hon'ble W. Grey.

The Hon'ble H. Forbes.

The Hon'ble C. J. Erskine.

The Hon'ble W. S. Fitzwilliam.

The Hon'ble D. Cowie.

CRIMINAL PROCEDURE CODE AMENDMENT.

His Honour THE LIEUTENANT-GOVERNOR moved that the Report of the Select Committee on the Bill to amend the Code of Criminal Procedure be taken into consideration, and that the Bill, as settled by the Select Committee, be passed.

The Motion was put and agreed to.

INCOME TAX.

The Hon'ble MR. LAING moved that the Report of the Select Committee on the Bill to limit in certain cases the amount of assessment to the duties chargeable after the 31st day of July 1862, under Act XXXII of 1860 (for imposing Duties on Profits arising from Property, Professions, Trades and Offices), and Act XXXIX of 1860 (to amend Act XXXII of 1860), and otherwise to modify the said Acts, be taken into consideration, and that the Bill, as settled by the Select Committee, with the amendment of which notice had been given, be passed. He said that the amendment which he had proposed was merely designed to meet the case of those who had returned no profits in the first year, and therefore had not been assessed in the second, but who subsequently had made profits which, it was the manifest intention of the Bill, should be assessed to the duties under the Income Tax Act. A memorial had been received from the British Indian Association stating that they saw no provision in the Bill for repealing the two per cent. duty. But the fourteenth section, which they

appeared to have overlooked, provided for that object. The memorial also commented, on the power given by the Bill to re-open assessments. But the amendment of the Select Committee had guarded that provision, and limited the power to cases in which the returns were obviously inadequate. If the revenue only were concerned, it might not be worth while to make any special provision on the subject. But justice to other tax-payers required that, in such cases, the parties liable to the duties should not wholly escape. The power of re-assessing was limited to Commissioners and Collectors, and the intention was that it should be exercised with great discretion, and only when neglect of it would operate as a grievance on others.

The Motion was put and agreed to, and the Bill, as settled by the Committee, with the following amendment, was passed accordingly :—

Section VII, line 19.—After the word “jurisdiction,” the introduction of the words “*or to any person to whom such special notice shall have been issued, but who shall not have been assessed to the said duties for the said year by reason of the amount of his profits or income not rendering him liable to the said duties or for any other cause.*”

CRIMINAL LAW REPEAL.

The Hon'ble MR. HARRINGTON moved that the Report of the Select Committee on the Bill to repeal certain Regulations and Acts relating to Criminal Law and Procedure be taken into consideration, and that the amendments proposed by the Committee be adopted.

The Motion was put and agreed to.

The Hon'ble MR. ERSKINE then moved the following amendments of which he had given notice :—

Section III, lines 16 and 17.—The omission of the words “in the manner provided in Section 445 of the said Code.”

The addition of the following Section, after Section VI :—

“*Nothing in this Act shall affect any sentence or order passed, or any proceeding held, or any act done previously to the passing of this Act, and in accordance with any Act or Regulation repealed by this Act.*”

In the Schedule, the omission of the words “Act XXXV of 1837. The whole Act,” and the substitution of the words “*Act XXXVII of 1837. The whole Act.*”

The omission of the words “Act IV of 1838. The whole Act.”

In the third column opposite Act XXX of 1841, the omission of the words “in so far as it relates to Courts of Justice,” and the substitution of the words “*Section I.*”

In that portion of the Schedule which relates to the Bombay Regulations :—

In the third column opposite Regulation XII, 1827, the insertion after the words “ Clause 2 of Section XXVII ” of the words “ *Section XXX.* ”

In the same entry the omission of the words “ Section XXXVII ” and the substitution of the words “ *Sections XXXVII and XL.* ”

In the third column opposite Regulation XIII, 1827, the insertion after the words “ Clauses 1 and 2, Section XXXI ” of the words “ *Clause 3 of Section XXXIII.* ”

In the same entry the omission of the words “ and Clause 9 of the same Section ” and the substitution of the words “ *and except Clause 9 of the same Section, Clause 2 of Section XXXVI, and Clauses 1 and 2 of Section XLIII.* ”

After the entry relating to Regulation XLV, 1827, the insertion of a new entry as follows :—

“ *Regulation XV, 1827.—A Regulation containing rules under which landholders may be invested with Police authority within their respective lands or other convenient limits, and deprived of the same : and declaring the mode of procedure to be followed in regard to them in criminal matters. The whole Regulation.* ”

In the third column opposite Regulation XXIII, 1827, the omission of the words “ Section V ” and the substitution of the words “ *The whole Regulation.* ”

He said that these amendments were prepared chiefly in accordance with a Despatch which had been received from the Bombay Government within the last few days. They did not in any respect infringe the principle of the Bill, and as they were recommended by the Sudder Court, and related almost exclusively to details of Criminal Procedure, and the Bombay Government had not stated any objection to them, he felt it to be unnecessary to enter into any detailed explanations of them.

The Motion was put and agreed to.

The Hon'ble MR. HARRINGTON, with the permission of the President, moved the following two further amendments : *1st.*—That, in the 3rd column opposite to Regulation XV, 1806 of the Bengal Code, the words “ *The whole Regulation* ” be substituted for the words “ Sections II, III, IV and V ; ” Section I of that Regulation being merely a Preamble, and the only other section of that Regulation having been already repealed. *2nd.*—That the entry relating to Regulation XXII, 1816 of the same Code be omitted, the whole of that Regulation having been already repealed.

The Motion was put and agreed to.

The Hon'ble MR. HARRINGTON then moved that the Bill, with the amendments proposed, be passed.

The Motion was put and agreed to.

SUPREME COURTS' CRIMINAL PROCEDURE.

The Hon'ble MR. HARRINGTON presented the Report of the Select Committee on the Bill to repeal Act XVI of 1852 in those parts of British India in which the Indian Penal Code is in force, and to re-enact some of the provisions thereof with amendments, and further to improve the administration of Criminal Justice in Her Majesty's Supreme Courts of Judicature; and applied to His Excellency the President to suspend Rule 23 for the Conduct of Business.

His Excellency THE PRESIDENT declared the Rule in question suspended.

The Hon'ble MR. HARRINGTON then said that the amendments proposed by the Select Committee were numerous, but were chiefly verbal, and the Chief Justice had seen and approved of them. The suggestion of the Lieutenant-Governor, that the Bill should be limited to a certain time, had been considered by the Committee, who were of opinion that the words which they had introduced into the Preamble would sufficiently mark the temporary character of the Bill. The preparation of a Code of Criminal Procedure for the Supreme Courts would be the duty of this Council, from whatever source the materials might come; and although it would be quite proper to submit any such Code for the approval of the learned Judges before it was passed into law, still the responsibility and duty of passing any Code that might be so prepared, must rest with the Council; and unless they wished to throw the Supreme Court back on the state of things which this Act was intended to remedy, this Act must remain in force, subject to any modifications that might be found necessary, until such a Code was brought into operation.

His Honour THE LIEUTENANT-GOVERNOR said that the addition to the Preamble sufficiently fulfilled the object he had in view.

The Hon'ble MR. HARRINGTON, with the permission of the President, then moved the following additional amendments:—

Section XLVI, the insertion of the words "*in either case*" after the word "and" and before the word "that" in line 13.

Section XLIX, to strike out the word "aforesaid" in line 5, and to insert the following words in the place thereof: "*mentioned in either of the last two preceding Sections;*" to insert the words "*they both*" at the end of line 13.

Section LII, to strike out the word "to" in line 14, and to insert the word "*of*" in lieu thereof; to strike out the word "or" in line 15, and to insert the word "*and*" in lieu thereof.

Section LIII, to strike out the word "or" in line 14, and to insert the word "*and*" in lieu thereof.

Section LIV, to strike out the word "thereof" in line 8, and to insert the words "*of the Act*" in lieu thereof.

Sections LVI and LVII,--to transpose these sections.

The Motion was put and agreed to.

The Motion was then put that the Bill, with the proposed amendments, be passed, and was agreed to.

CONTRABAND SALT (OUDE).

The Hon'ble MR. HARRINGTON presented the Report of the Select Committee on the Bill to extend to the Province of Oude certain provisions of Acts XIV of 1843 and XXXVI of 1855 relating to the manufacture of contraband Salt, and to amend the last-named Act; and applied to His Excellency the President to suspend Rule 23 for the Conduct of Business.

His Excellency THE PRESIDENT declared the Rule in question suspended.

The Hon'ble MR. HARRINGTON then moved that the Report of the Select Committee be taken into consideration, and that the Bill be passed.

The Motion was put and agreed to.

ADJOURNMENT.

His Excellency THE PRESIDENT said that, in now adjourning the Council, he did not propose to adjourn it in the usual manner to the following Wednesday, and it might be convenient to the Members that he should state that he did not propose to call them together again until some time in November next. The Members were aware that, under the Act of Parliament, the Governor General was empowered to summon the Council to assemble whenever and wherever he thought necessary, and he did not intend, by any declaration he now made, to divest himself of the power with which he had been entrusted for the public good. Subject to that reservation, it would be convenient to the Members, who had other interests and avocations, to be informed by him of the period when they were likely to meet again. At present he would adjourn the Council without naming the time and place for its next meeting.

The Council then adjourned.

M. WYLIE,

Depy. Secy. to the Govt. of India,

Home Department.

CALCUTTA;

The 30th April 1862.