

Wednesday, May 6, 1863

**COUNCIL OF GOVERNOR GENERAL
OF
INDIA**

VOL . 2

JAN. - DEC.

1863

P . L .

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 and 25 Vic., Cap. 67.

THE Council met at Government House on Wednesday, the 6th May 1863.

PRESENT :

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

His Honor the Lieutenant-Governor of Bengal.

The Hon'ble H. B. Harington.

The Hon'ble H. Sumner Maine.

The Hon'ble Sir C. E. Trevelyan, K. C. B.

The Hon'ble W. Grey.

The Hon'ble D. Cowie.

The Hon'ble Rajah Dinkar Rao Rugonauth Moontazim Bahadoor.

The Hon'ble A. A. Roberts, C. B.

CIVIL PROCEDURE, &c. (BRITISH BURMAH) ACT AMENDMENT.

The Hon'ble Mr. HARINGTON applied to the Hon'ble the President to suspend the Rules for the Conduct of Business, in order to enable him to introduce the Bill to amend Act I of 1863 (to define the jurisdiction and to regulate the procedure of the Courts of Civil Judicature in British Burmah, and to provide for the extension of certain Acts to the said Territory). He said that copies of the Bill not having been a week in the hands of Hon'ble Members, it was necessary to suspend the Rules for the Conduct of Business at this stage to admit of the Bill being introduced and of its being carried through its several stages to-day. It was obviously desirable that the uncertainty which had been created by the extension to the Province of Pegu, without due authority, of the Code of Civil Procedure should be removed without delay; and that, for administrative purposes, the power which it was proposed by the Bill to confer upon the Government of vesting certain Courts with extraordinary jurisdiction, should be exercised at once. It might be added that the Bill involved no public or private interest rendering its publication necessary before its passing into law.

The Hon'ble the PRESIDENT declared the Rules to be suspended.

The Hon'ble MR. HARINGTON then introduced the Bill, and moved that it be taken into consideration.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

IMPRISONMENT OF CONVICTS IN THE CALCUTTA HOUSE OF CORRECTION.

The Hon'ble MR. MAINE applied to the Hon'ble the President to suspend the Rules for the Conduct of Business, in order to enable him to introduce the Bill to empower Judges of the High Court and other Authorities at Calcutta to direct Convicts to be imprisoned either in the House of Correction or the Great Jail, and to authorize the transfer of Convicts from the House of Correction to the Great Jail, and from the Great Jail to the House of Correction. He said that the first Sections of the Bill merely made it legal that prisoners sentenced by the High Court to rigorous imprisonment, or imprisonment with hard labour, should be committed either to the Great Jail or to the House of Correction, as might be most desirable ; and that prisoners sentenced to penal servitude or transportation might be kept in either of those prisons as a place of intermediate custody. Section VII declared that persons sentenced by a Justice of the Peace or Police Magistrate to rigorous imprisonment might be committed either to the House of Correction or to the Great Jail. The eighth Section authorized the Lieutenant-Governor, when, from sickness, overcrowding, or any other cause, it was desirable to order the transfer of prisoners from the one place of confinement to the other ; and Section IX legalised certain transfers recently effected. As it was excessively desirable that this unavoidable illegality should be removed as quickly as possible, he had no hesitation in applying to have the Rules suspended.

The Hon'ble the PRESIDENT declared the Rules to be suspended.

The Hon'ble MR. MAINE then introduced the Bill, and moved that it be taken into consideration.

The Hon'ble the LIEUTENANT-GOVERNOR said that, although the Bill was one of which, so far as it went, he wholly approved, he looked upon it as a measure of a merely temporary nature, the immediate passing of which was required, but which did not meet all the necessities of the case. In his opinion the House of Correction and the Great Jail in Calcutta ought to be on the same footing, and under the same management, as the other Jails in the Presidency of Bengal. Recently, the Adjutant General of the Army had enquired of the Government of Bengal whether any Jail in the Presidency was fit to be used as a place of confinement for European female prisoners. The Government of Bengal wrote on the subject to the High Court and enquired whether such prisoners could be accommodated in the Great Jail, and also whether the Great Jail might not well be put on the same footing, and under the same control, as all other Jails in Bengal. The Government, at the same time, wrote to the Inspector-General of Jails, and enquired whether there was any Jail in Bengal suitable for the reception of European female prisoners. The Inspector-General of Jails replied that there was no Jail suitable for the purpose, unless the Great Jail could be made available. No reply had been received directly from the High Court : but he (the Lieutenant-Governor) had received from the Sheriff an intimation that the Chief

Justice had no objection to have the Great Jail put under the control of the Inspector-General of Jails, if the Sheriff were relieved of all responsibility in respect of it : and further, that the Chief Justice approved of the Great Jail being used as a place of confinement for females. He should himself immediately submit a proposal to the Government of India to have the Great Jail put under the Government and on the same footing as other Jails in Bengal, and to relieve the Sheriff of his connection with it. He intended to make this proposal to the Government of India, and hoped that when the Council next met he should be in a position to submit a Bill, by which the object that he had in view might be carried out.

The Hon'ble MR. MAINE said that it must not be supposed that his opinion differed from that of the Lieutenant-Governor on the general question as regarded the Great Jail ; but he thought that it would not have been fair to the Council to-day to introduce clauses into this Bill for removing the Great Jail from the control of the Sheriff. It appeared to him that when the Council was asked to pass a Bill at one or two Meetings, it should know precisely its position, and that the Council ought not to be called upon, under circumstances like the present, to adopt provisions of which the full effects could not be seen at a glance.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

CUSTOMS DUTIES.

The Hon'ble SIR CHARLES TREVELYAN applied to the Hon'ble the President to suspend the Rules for the Conduct of Business, in order to enable him to introduce the Bill to amend Act XI of 1862 (to amend Act X of 1860, to amend Act VII of 1859, to alter the Duties of Customs on Goods imported or exported by Sea). He said that, as appeared from the statement he had made last week, the Bill would reduce the Import Duty upon Iron from ten per cent. to one per cent., except in the case of Ironmongery, Cutlery, and Hardware, which consisted of manufactured Articles for domestic use. So the Duty on Wines and Liqueurs would be reduced to an uniform Duty of one Rupee per Imperial Gallon, while the Duty on Porter, Ale, Beer, and other similar fermented Liquors was reduced from two annas the Imperial Gallon to one anna.

The Hon'ble the PRESIDENT declared the Rules to be suspended.

The Hon'ble SIR CHARLES TREVELYAN then introduced the Bill, and moved that it be taken into consideration.

The Hon'ble MR. COWIE desired to make a suggestion regarding one portion of the Customs Bill. The Duty on Iron, which had previously been ten per cent. was reduced to one per cent. only, and the Hon'ble Sir Charles Trevelyan, at their last Meeting, had stated that this small percentage was in the nature of a Registration fee. He (Mr. Cowie) would submit, for the consideration of his Hon'ble Colleague, whether such Registration fee was necessary, since all free goods imported and exported had an accurate account kept of them at the Custom house, both in respect of quantity and value. He suggested that Iron might reasonably be placed on the free list, instead of being charged one per cent., *ad valorem*.

The Hon'ble SIR CHARLES TREVELYAN said that the question raised by the Hon'ble Member was one of general policy. One course of proceeding was to make a broad distinction between free and dutiable articles; in such case, if it was desired to favour any article in particular, it was put on the free list. The other course was to lay on all, or nearly all, articles some Duty, but to make all Duties so low as not to obstruct Trade. Thus very moderate Duties were put on all goods, which might be raised as the necessities of the State required. He therefore did not look upon the question raised by the Hon'ble Member as an individual question merely affecting Iron, but he looked upon it as part of a question of general policy. He did not think that question could receive sufficient consideration at that Meeting, and he therefore proposed that the Bill should remain unaltered.

The Hon'ble MR. ROBERTS said that he quite concurred in what had fallen from the Hon'ble Member (Mr. Cowie). The very same thing had struck him also: and as Machinery was free, he certainly thought Iron might also be free.

The Hon'ble SIR CHARLES TREVELYAN explained that, in his opinion, the free list had been already too much extended. Some Articles were admitted free, upon which he thought a small Duty might be levied, while on the other hand there were certain Articles which he would like to see placed on a more favourable footing.

The Motion was put and agreed to.

The Hon'ble SIR CHARLES TREVELYAN then moved that the Bill be passed.

The Motion was put and agreed to.

INCOME TAX.

The Hon'ble SIR CHARLES TREVELYAN applied to the Hon'ble the President to suspend the Rules for the Conduct of Business, in order to enable him to introduce the Bill further to amend Act XXXII of 1860 (for imposing Duties on profits arising from Property, Professions, Trades, and Offices), and to amend Act XXXIX of 1860 (to amend Act XXXII of 1860), and Act XVI of 1862 (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, and Act XXXIX of 1860, and otherwise to modify the said Acts).

The Hon'ble the PRESIDENT declared the Rules to be suspended.

The Hon'ble SIR CHARLES TREVELYAN then introduced the Bill, and moved that it be taken into consideration.

The Hon'ble RAJAH DINKAR RAO said that this Bill was of importance, in that it reduced the Income Tax from four to three Rupees per cent. It was scarcely necessary for him to express approval of this reduction, or to add his meed of praise for what Sir Charles Trevelyan had done for the relief of the people of India in this respect. He (Sir Charles Trevelyan) had had a long experience of India, and it was universally known what a well-wisher he was of the country and its people. The present Budget showed that, although the Government had not a very large surplus, it had out of that remitted taxation to the extent of Rs. 33,50,000. This would strengthen the expectation of the people that the Income Tax would be soon abolished. He thought it would be well to introduce a provision into this Bill to repeal that part of Section VII of Act XVI of 1862 which allowed the Commissioners and Collectors to interfere on suspicion.

The Hon'ble SIR CHARLES TREVELYAN said that the Council was hardly prepared at a single Meeting to take into consideration the machinery employed for levying and collecting the Income Tax, but he could assure the Hon'ble Member who had just spoken that every care would be taken by the Executive Government to prevent any oppression being practised.

The Hon'ble MR. HARRINGTON said that the Government of India had recently been in communication with the Government of Bengal in respect to the exercise of the power of making fresh assessments, given by the section of the Act to which his Hon'ble Colleague the Rajah Dinkar Rao had referred, and he (Mr. Harrington) trusted that the orders issued would, for the future, prevent any undue or improper exercise of that power.

The Hon'ble the LIEUTENANT-GOVERNOR said that a case had recently occurred in Bengal, in which an Income Tax Commissioner, in the exercise of the powers given him by the Act, took upon himself to revise an assessment made upon Returns which he said were not fraudulent but evidently inaccurate. The matter having been brought to the notice of Government, orders were at once issued that action should be confined to cases in which fraudulent Returns were made.

He (the Lieutenant-Governor) was glad to take this opportunity to state on his own behalf, and indeed, he might say, on behalf of the Province which he considered he in some degree represented in that Council, the extreme gratification with which he had listened to Sir Charles Trevelyan's statement at the last Meet-

ing. It was not merely that the existence of a considerable surplus and a healthy state of Financial affairs was gratifying; but the frank disclosure of the whole condition of the Finance of the country and of the general policy of the Government could not be otherwise than most highly satisfactory to the mind of every one. No intelligent person could read the statement which had been made, without feeling himself at once placed in such a position as to be able to form an opinion for himself on the subjects with which the Government had dealt so fully and openly, and on which it might be said to have invited discussion. In such cases every one of course had an opinion of his own: and doubtless some might think the surplus might be disposed of otherwise than it had been; as, for example, it might be thought that, instead of the uniform reduction of one per cent. of the Income Tax, it would have been better had the Tax on small Incomes been wholly remitted. But these were mere matters of individual opinion, and he (the Lieutenant-Governor) certainly did not think that, on the whole, a Budget could have been framed more suitable to the occasion or more acceptable to the public. He could personally bear testimony to the very great satisfaction with which the Financial Statement had been received by all classes in Calcutta.

The Hon'ble the PRESIDENT said that he could assure the Hon'ble Member, Rajah Dinkar Rao, that the orders issued by Government would ensure that, for the future, there should be no supererogatory interference in the collection of the Income Tax. It was most gratifying to know that the Financial Statement had been so very well received. He need not say that every Member of Government was well aware of the benefits of publicity, and all were deeply indebted to Sir Charles Trevelyan for the manner in which he had discharged his arduous task.

The Hon'ble SIR CHARLES TREVELYAN said that he was very grateful for the approbation with which the Financial Statement was regarded. That it had met with that approbation was due to the great assistance he had received from all quarters—from Government Servants, as well as from independent mercantile men, bankers, and others. He had received every encouragement to go forward in the same course, and try to complete, to the best of his ability, with the support of Government, and the assistance of all classes, the work of reform so ably commenced by his predecessors, Mr. Wilson and Mr. Laing, and which he (Sir Charles Trevelyan) was highly honoured in being permitted to attempt to complete. He trusted that he might be able to leave things in such a condition that, after him, there would be no need to send to England for persons specially selected for the office, but that Officers of the Indian Services would be found well qualified to take his place, and efficiently perform duties which would then have become of a regulated and ordinary kind.

The Motion was put and agreed to.

The Hon'ble SIR CHARLES TREVELYAN then moved that the Bill be passed.

The Motion was put and agreed to.

STAMP DUTIES IN THE STRAITS SETTLEMENT.

The Hon'ble MR. MAINE moved for leave to introduce a Bill to remove doubts as to the operation of Act X of 1862 (to consolidate and amend the law relating to Stamp Duties) in the Settlement of Prince of Wales' Island, Singapore, and Malacca, between the 1st day of November 1862 and the 1st day of January 1863, and respecting the rate of Exchange for payment of Stamp Duties in the Currency of India in the said Settlement. He said that, as in the case of the Burmah Courts Bill which had first been passed, the necessity for this Bill was caused by an illegality into which a Local Government had fallen, probably unavoidably. The Stamp Act of 1862 came into operation generally on the 1st June 1862, and it extended to the Straits Settlement; but the Governor-General in Council suspended its operation by a notification, dated the 30th May 1862. By another Notification, dated the 1st November, that Notification was cancelled; but by a subsequent Notification, dated the 6th November, the Straits Settlement was exempted from the operation of Schedule B. The Governor of the Straits, on the receipt of these Notifications, found himself unable to carry the Act into force, and took the responsibility of postponing its operation until the 10th December; and then, in consequence of his inability to meet the demand for all the stamps required, he further postponed its operation until the 1st January 1863. Although the Act was certainly in force from the date of the Notification of the 1st November until the 6th November, and, although Schedule A remained in force after the 6th November, the effect of the orders of the Governor was to prevent instruments from being properly stamped according to its provisions: many penalties had therefore been incurred, and many documents had been rendered invalid or inadmissible in evidence. To obviate the extensive mischief which might follow from this state of things, it had been thought necessary, by legislation, to provide generally that the Act should be held not to have come into operation in the Straits Settlement prior to the 1st January 1863. The Bill declared that Schedule A came into operation in the Straits Settlement on that date, and that Schedule B should come into force from the time which the Governor-General in Council should appoint. The latter portion of the Bill was intended to cure a difficulty which had arisen in ascertaining the exact sum to be paid as Stamp Duty in the Straits. The Stamp Act gave the sum only in Rupees, but in the Straits nearly all the Currencies of the East were to be met with, and the question was, according to what rate of Exchange Stamp Duty was to be calculated? Probably a Court of Law would hold that it should be calculated according to the true rate of Exchange of the day: and he believed that an Hon'ble Member of the Council (Mr. Cowie) would say that it was the practice in Calcutta that it should be calculated in that manner. The Governor of the Straits, however, had been in the habit of calculating Stamp Duties according to the rates of Exchange notified by him from time to time in the Government Gazette. This course of proceeding had its conveniences, and it was proposed by this Bill to legalise it. The Bill gave power to

the Governor of the Straits, by Notification from time to time, to fix the rate of Exchange at which Stamp Duties should be payable on instruments executed in the Straits Settlement, the value of which is not expressed in the Currency of India; and declared all such instruments which had been duly stamped, prior to the time at which this part of the Bill should come into operation, according to a rate fixed by any former Notification, to have been duly stamped under the Act.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also applied to the Hon'ble the President to suspend the Rules for the Conduct of Business, with a view to enable him to introduce the Bill.

The Hon'ble the PRESIDENT declared the Rules to be suspended.

The Hon'ble MR. MAINE then introduced the Bill, and moved that it be taken into consideration.

The Motion was put and agreed to.

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

The Motion was put and agreed to.

The Council adjourned.

A. G. MACPHERSON,

Offg. Depy. Secy. to the Govt. of India, Home Dept.

CALCUTTA,
The 6th May 1863.

}