

Wednesday, March 26, 1862

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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 26th March 1862.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding*.
 His Honour the Lieutenant-Governor of Bengal.
 The Hon'ble Sir H. B. E. Frere, K.C.B.
 The Hon'ble Cecil Beadon.
 Major-General the Hon'ble Sir R. Napier, K.C.B.
 The Hon'ble S. Laing.
 The Hon'ble H. B. Harrington.
 The Hon'ble H. Forbes.
 The Hon'ble C. J. Erskine.
 The Hon'ble W. S. Fitzwilliam.
 The Hon'ble D. Cowie.
 The Hon'ble Raja Deo Narain Singh Bahadoor.
 The Hon'ble Rajah Dinkar Rao Rugonauth Moontazim Bahadoor.

KING OF OUDE BILL.

The Hon'ble Mr. BEADON moved that the Report of the Select Committee on the Bill to protect the personal dignity of His Majesty the King of Oude be adopted, and that the Bill be passed. He stated that the amendments suggested by the Committee were not of an important character, and were intended chiefly to make the provisions of the Bill more distinct. The last section would make it clear, that it was not the intention of Government to continue the title of King of Oude after the death of His Majesty. Mr. BEADON then proceeded to say, that he could not move the passing of the Bill without mentioning that the amendments proposed by the Select Committee were made with the full approval, and, indeed, chiefly at the suggestion, of their lamented and beloved colleague, Mr. Ritchie. It was, he believed, the last work on which Mr. Ritchie was engaged; at any rate it was the last he completed, before he was seized with the fatal malady that hurried him prematurely to the grave. Having been his school-fellow at Eton, and having been intimately associated with him for many years both in private life and public duty, he (Mr. BEADON) might be permitted in

in that place, to express the admiration with which, in common with the whole community, he regarded the many virtues which adorned his character, the esteem in which all held him, and the heart-felt sorrow with which all deplored his loss. It was a loss which, beyond his own family, those only could fully appreciate who had been accustomed to rely upon his sound judgment, his great legal knowledge, his varied and ripe experience, his ready advocacy of every good and useful measure, the clear and comprehensive views he brought to bear on every subject submitted to him, his amiable disposition, and above all, the truth, honesty, and simplicity of his nature. In that Council, and not less in the Executive Government of India, his absence would long be painfully felt: and it was not too much to say that it would be difficult, if not impossible, for Her Majesty's Government to find a successor in all respects his equal.

The Motion was put and agreed to.

INCOME TAX ASSESSMENT IN PRESIDENCY BANKS.

The Hon'ble MR. LAING presented the Report of the Select Committee on the Bill for constituting the Secretaries and other officers of the Banks of Bengal, Madras and Bombay, respectively, ex-officio Assessors of certain of the Duties payable under Act XXXII of 1860 (for imposing Duties on the Profits arising from Property, Professions, Trades and Offices) and applied to His Excellency the President to suspend Rules 23, 24 and 25 for the Conduct of Business, with a view to enable him to move that the Report of the Select Committee be adopted, and that the Bill be passed. He said that the Bill was purely a matter of form, to enable the officers of the Banks, in making the payments formerly made by the Sub-Treasurers, to make the deductions on account of income-tax which formerly had been made by the Sub-Treasurers. The Bill had been prepared by their lamented colleague Mr. Ritchie, and would have been passed a fortnight ago, if the arrangement with the Bank of Bombay had been completed. That arrangement had since been completed and published in the Gazette.

His Excellency THE PRESIDENT declared the Rules in question to be suspended.

The Hon'ble MR. LAING then moved that the Report of the Select Committee be adopted, and that the Bill be passed.

The Motion was put and agreed to.

CUSTOMS LAW CONSOLIDATION.

The Hon'ble MR. ERSKINE introduced the Bill for the consolidation and amendment of the laws relating to Customs Duties, and moved that it be referred to a Select Committee with instructions to report thereon in one month and that under No. 18 of the Rules for the Conduct of Business in the Council, the publication of the Bill be suspended until the Select Committee's Report should have been received and considered. He stated that he proposed, in this instance, that the Council should take the same course as was taken with the

Bill.

Bill to consolidate and amend the law relating to Stamp Duties, and for the same reason. This Bill, like that one, had for a long time been before the public, and had been fully considered by those who were most interested in its provisions. It stood at present in the shape in which it had been drawn by the Customs Committee, and published for general information. It had then been referred to the Local Governments, and by them to the officers of Customs, and the Chambers of Commerce. Much correspondence had ensued, some of which had only lately reached his hands. There did not appear to be any objection to the principle of the Bill, namely, the consolidation of the laws relating to Sea Customs for all India; but many valuable and reasonable suggestions had been received from different parts of the country, as might have been expected, when a Code of uniform rules for the whole country was under consideration. Local experience would in such a case discover incongruities and defects in the proposed law. The Select Committee, which he proposed, would consider the various papers which had been received, and recommend such improvements in the Bill as they might consider necessary. To publish it in its present shape would only mislead the public, and unnecessarily occupy the attention of the Council. On the Report of the Select Committee being received, the Bill could then be published with the amendments they suggested.

The Hon'ble MR. LAING said that it would be observed that the Bill related solely to Customs Regulations, and not to Tariffs of Duties, which formed a subject for separate consideration.

The Motion was put and agreed to.

RECOVERY OF RENT (N.-W. P.).

The Hon'ble MR. HABINGTON moved for leave to bring in a Bill to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal). He stated that that Act conferred original jurisdiction on the Revenue Courts in Bengal, in all cases of dispute arising between landlord and tenant, and between landlord and agent; but there was another class of cases of a somewhat analogous character which, as the Act was now framed, were not embraced by it. He alluded to disputes arising in joint undivided estates between the lumberdar, who was the recognized representative of the other sharers in such estates, and, as such, paid the dues of Government and the co-sharers whom he represented, whether on account of the portion of Government revenue payable by such co-sharers or any of them, or relating to the adjustment and distribution, amongst the several sharers, of the profits of the estate after payment of the Government revenue and the village expenses. The reasons which induced the legislature to vest the Revenue Courts in Bengal with jurisdiction in the cases brought within their cognizance as Courts of first instance by the Act of 1859, seemed to apply with nearly equal force to cases such as those mentioned by him. The omission to include such cases in the Act was, he had reason to believe, simply

simply an inadvertence. The omission was discovered by the Board of Revenue for the North-Western Provinces, before Act X of 1859 became law; but it was not brought to his notice until after the passing of the Act, and there were particular reasons at the time which seemed to render it unadvisable to apply to the legislature for an immediate alteration of the law. The first section of this Bill would supply the omission. Then section CXII of Act X of 1859, which applied to distress, provided first, that no sharer in a joint undivided estate should exercise the powers of distant, except through a manager authorized to collect the rents of the estate on behalf of all the sharers; and, secondly, that in putteedaree estates in the North-Western Provinces, distress should be made only through a lumberdar. The object of these restrictions was, obviously, to prevent two or more processes of distress being taken out against the same crop by different shareholders, possessing, not a separate, but only a joint interest in the land on which the crop was growing, or was grown; and there could be no doubt that the restrictions were very proper. But the Board of Revenue for the North-Western Provinces had pointed out that, "while it would not be expedient to vest the power of distress in all putteedars, its limitation to lumberdars only is in some instances productive of inconvenience; that, though the lumberdars are invariably responsible for the revenue which is paid through them, there are putteedaree estates in the North-Western Provinces containing puttees, of which the rents are not collected by a lumberdar, but by putteedars who are responsible to the lumberdar for their quota of the revenue, and of the village expenses; and it would seem equitable that the power of distress should be conferred on those who are entitled to collect the rent; and that to remedy this evil, it would be sufficient to add to section CXII the following words:—'or where the rent of a puttee is not collected by a lumberdar, through the putteedar who is entitled to collect the rent'." He concurred with the Board, and in the second section of the Bill he proposed to amend the existing law in the manner recommended by the Board. The next section was of a declaratory character, and had for its object to remove doubts which had arisen, as to whether it was intended that the decisions passed by Zillah Judges in regular appeal, under section CLX of Act X of 1859, from decisions of the Revenue Courts, should be open to special appeal to the Sudder Court. The point had, he understood, been determined in the affirmative by the Sudder Courts at Calcutta and at Agra, and he thought there could be no doubt as to the correctness of their decision. An amendment of Act X of 1859 being found necessary, it was considered advisable to give the force of law to the ruling of the Courts. The only other section of the Bill, which he deemed it necessary particularly to notice, was the one which proposed to give to the Revenue Courts, when making an award for an arrear of rent or revenue, power to grant immediate execution on the verbal application of the judgment creditor. This power had lately been given to the Civil Courts in all cases of debt, damage, and the like, to the amount of five hundred rupees; and it was considered that the same power might be properly possessed by the Revenue Courts, in suits for arrears of rent or revenue falling within their cognizance under Act X of 1859. Provisions, similar to the last

two mentioned by him, were contained in a Bill to amend Act X of 1859 now before the Legislative Council of Bengal. That Bill contained other provisions, some of them of a penal character, the extension of which to the North-Western Provinces was, he was happy to think, not required by anything in the state of that part of the country. It only remained to mention that this Bill would be restricted in its application to the North-Western Provinces.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill for the consolidation and amendment of the laws relating to Customs Duties—the Honourable Messrs. Laing, Harington, Forbes, Erskine, Cowie and Fitzwilliam.

The Council adjourned till Wednesday, the 2nd of April, at 11 A.M.

M. WYLIE,

CALCUTTA; } *Deputy Secy. to the Govt. of India,*
The 26th March 1862. } *Home Department.*