

Thursday, March 18, 1869

ABSTRACT OF PROCEEDINGS

COUNCIL OF THE GOVERNOR GENERAL OF INDIA

LAWS AND REGULATIONS.

VOL 8

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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 Thursday, the 18th March 1869.

P R E S E N T :

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I.,

presiding.

Major General the Hon'ble Sir H. M. Durand, C. B., K. C. S. I.

The Hon'ble H. Sumner Maine.

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K. C. S. I.

The Hon'ble F. R. Cockerell.

The Hon'ble Rájá Shioráj Singh, C. S. I.

The Hon'ble Mahárájá Sir Dig-Bijay Singh, Bahádur, K. C. S. I., of
Balrámpúr.

The Hon'ble D. Cowie.

The Hon'ble M. J. Shaw Stewart.

The Hon'ble J. N. Bullen.

I N C O M E T A X B I L L.

The Hon'ble SIR RICHARD TEMPLE, in presenting the report of the Select Committee on the Bill for imposing duties on Income and Profits arising from Offices, Property, Professions and Trades, said :—

“The Bill as amended by the Committee is the same substantially as that which I presented to the Council at the previous special Meeting (March 11th). The alterations are few, and some of them only need now be selected for notice. The first point to be noticed is paragraph 4 of the Committee's report, where they say ‘We have struck out the exemption of Insurance Companies.’ At first this exemption was proposed, not because we thought that such Companies, however beneficial, should be exempt, but because we feared that it would not be possible to assess them properly. And no doubt under a strictly regular procedure there would be difficulty. But after consulting the non-official members of the Committee, we believe that, under the rough procedure

afford such fair and reasonable assistance to the Collectors as may be required for the making of a proper assessment. We hope that, in this respect, the present rough procedure may work so well that we may not in any future year be obliged to ask this Council for power to demand returns.

Such being the few remarks I have to make on the details of the Bill, I must further mention that we have considered two memorials presented by the British Indian Association, one of a general character against the principle and policy of the Bill; the other adverting to some of its details.

As regards the general objections to the measure, I cannot give a stronger answer than that which is contained in the substance of my Budget Statement to this Council. The memorialists may be sure that we are perfectly satisfied and convinced of the lawfulness, legality, justice and expediency of applying this tax to land-owners, whether under permanent settlement or otherwise.

The memorialists seem to think that I have not analysed the causes of the increase of expenditure that has been going on for years, and have not fully explained the recent deficits. Hereon I must refer them to my Budget exposition, where the deficits of the two years which I had to deal with *are* explained. As to analysis of expenditure, I did in that exposition analyse each item of increase, in general terms, according to the limited time and space at my disposal. No doubt, this analysis referred only to the two years with which I was concerned. For the increases of the years prior to this period, I would refer the memorialists to the statements and expositions presented year by year by my predecessors to this Council. If these be not enough, I would further invite the attention of the memorialists to a volume (recently published by Government) of the financial statistics of the past five years, where every sort of information can be found, in abundant detail, tabulated specially to facilitate comparison. It is only by bestowing upon these publications the attention they merit, that the progress of British Indian finance can be understood.

Of the particular objections, two may be selected for brief notice. The memorialists urge that various charges incident to land may be deducted from the profits assessable to this tax: in other words, that the tax may be assessed on the nett profits of land after deduction of various expenses. We have decided not to insert any conditions of this sort in the Act. In cases such as that of Companies, we have used the words nett profits. And no doubt, as regards many kinds of business, there is no difficulty in deducting all the expenses really necessary for the carrying on of that business. In the case of land, however, there is some difficulty. For it is not always easy to say what is the *necessary*

expense of management. That would vary according to the circumstances or even the habits of the landlord; would depend on whether he were an absentee or a resident on the spot; and so on. There would be further variation according to the circumstances of the different parts of India. We have therefore preferred to leave all this to be decided by Executive Rules to be issued by the Government. This course will be preferable to anything like legislative elaboration of the conditions. I may say, however, that the Executive Government does not desire to allow less to the landlord in these respects than what was allowed in the first income-tax. Without giving any precise engagement, I may add that, as a rule, what was allowed in the first income-tax will be allowed in this one also.

The other objection refers to the section which prescribes that arrears of this tax are to be realised by the same process as arrears of land-revenue. This the memorialists seem to think will somehow be an infringement of the permanent settlement. I cannot see the force of this objection. When land, even under permanent settlement, may be sold in satisfaction of private debts, why may it not be sold in satisfaction of the lawful dues of the State? It is hoped, however, that no necessity for proceeding to such an extremity under this Act will ever arise. I may add that this section was taken from the Certificate Tax Act.

I have, in conclusion, to thank the non-official members of the Select Committee for the useful and practical advice afforded by them on all parts of the Bill. And once more, on this as on so many other occasions, I have to declare our obligations to the Secretary to the Council."

The Hon'ble MR. BULLEN said, if he understood correctly what had fallen from the Hon'ble Sir Richard Temple with reference to the memorial of the British Indian Association, he (Sir Richard Temple) had said that provision was made by the Bill for the deduction from gross profits of the expenses incident to the carrying on of all trades and occupations, but that the same exemption could not be made in the case of profits derived from land. MR. BULLEN did not know under what section of the Bill the deductions referred to would be made, but as far as he had been able to discover, there was no section in the Bill which provided for the making of such deductions. He considered it a great oversight on the part of the Select Committee, that the question of nett profits was not brought up and fully discussed in Committee. Part III of the Bill, relating to Companies, contained a distinct provision that the tax should be levied only on the nett profits; and Part IV provided that the duty should

be levied on all income and profits : the inference was that the duty under this Part should be levied, not on the nett profits, but on the gross profits. He was aware that it was not the intention of the Government that the duties levied on profits derived from trades and occupations should be levied on the gross income, but he thought a provision to that effect should be laid down, either in the Bill or the Executive Rules to be passed under the Act, so that it should be made clear that the duties would be chargeable only on the nett profits. He would only mention a few items which it was clearly necessary should be deducted before the assessment on profits was made. In the case of a person in trade, there could be no question that the rent of the business-premises was a fair charge against profits; in the same manner the salaries of persons employed by the trader should be deducted; so also losses occasioned by the insolvency of debtors, and also the interest on borrowed capital, if any. In the case of the owners of land, the expenses of the management of the land were surely a fair charge against the profits, and also the interest payable to the mortgagee, supposing the person in possession to hold the land subject to a mortgage. In the case of house-owners there would be the cost of triennial repairs and the collection of rents, the insurance, and the interest on mortgage, if any. Even in the case of persons residing out of India, who drew their incomes through the agency of firms or individuals, these firms or individuals exacted a certain commission on the duties they performed on account of their absent principals, and the commission which they charged should be deducted out of the income before it was assessed for duty under the Act. If that were not done, in all the cases which MR. BULLEN had instanced, the Government would get the tax twice over; first, from the person who was primarily liable; secondly, from the salaries of the assistants; from the owners of the houses, and from the capitalist who had lent money and who had to return the amount of interest received on his loan which in itself was chargeable for income-tax. He presumed there could be no doubt as to what the intention of the Legislature was, and he had only made these observations with the object of eliciting a distinct declaration on the part of the Government that the rules to be issued under the Act would be framed with the greatest exactness so as to provide for the omission to which he had referred

The Hon'ble MR. MAINE said that for his own part he could not accept the charge, if charge it were, which his Hon'ble friend had made against the Select Committee. Part III of the Bill applied to Companies, and there the expression "nett profits" was used because the Companies would make up their own accounts for the purposes of the Act, and would require some guidance in making up such accounts. Part IV referred to the rough and in some degree

conjectural assessment of income and profits by the Collector. No doubt there was not a definition of income or profits in this Part; but that was an essential feature of the Bill, and it had all along been intended that, as soon as the Bill became law, the Financial Department should issue Rules for the guidance of officers, which would deal with all the points adverted to by Mr. Bullen, and would instruct the Collectors to make practically the same deductions which had been made on the assessments for the income-tax. The word "nett" would have been out of place in Part IV, and its omission had been deliberately intended.

The Hon'ble MR. BULLEN continued—The Hon'ble Sir Richard Temple had alluded to the opinions which the non-official Members of the Council had given with reference to the question of exempting Insurance Companies. He himself could not draw any real distinction between the profits made by Insurance Companies, and any other profits derived from trade. It might be difficult to define exactly what were the profits derived from India of a Company domiciled in England but doing business here; but he did not think there was more difficulty in determining these than in determining the profits of other Companies similarly situated. He would instance the Peninsular and Oriental Steam Navigation Company. This Bill proposed to make certain of their ships liable to income-tax in respect of the profits made from their Indian business. It did not seem to him more difficult to define the profits of an Insurance Company from its Indian business, than the profits made by ships which traded, not only between Indian ports alone, but between Indian and other ports.

Another question which arose in Committee was with reference to taxing the incomes of persons resident in England, but deriving their incomes from the interest of Government securities here. He could not draw any distinction between incomes derived from Government securities and incomes derived from any other source. It was clearly not the intention of the Bill, for instance, that the owner of Indigo factories in India, residing in England, but carrying on the cultivation by means of agents here, should be exempted from the tax; and if a person residing in England, and deriving an income from that description of property, was not exempted, he did not see why any person residing out of India whose means were derived from the interest on Indian securities payable in India should be exempted. The only clear line which could be drawn was the line which the Bill had drawn, *viz.*, that paper enfaced for payment of interest by drafts on India should be exempted. The effect of that was to place such securities on the same footing

as loans raised by the Secretary of State, which the Indian Government had no power to tax. He thought that that made an intelligible distinction, and was the only line which could be properly drawn.

It occurred to him, on reading the Bill since the report of the Select Committee had been made, that there was a little ambiguity in section 14. He believed, however, that the intention of the Act was clear: the intention was that incomes of less amount than Rs. 500 a year, should be exempt from the tax. The Bill provided first, in Part II, section 7, that incomes amounting to less than Rs. 41-10-8 per month, which was exactly Rs. 500 a year, should not be chargeable under that Part; and section 14 provided that, in making such assessment, income exempted under section 7 should be treated as chargeable under this Part. That appeared inconsistent; but he believed it was intended that, if a person whose salary was less than Rs. 500 a year had an income from other sources also, the two might be added together, and the person thus made liable to the tax. That was also a point which MR. BULLEN thought should be clearly laid down in the Rules to which he had already referred—

The Hon'ble MR. MAINE did not think that there was any ambiguity. Possibly his Hon'ble friend had not read section 14 in connection with section 11. In order that the Collector might make an assessment under section 11, he must assess "in accordance with schedule A," or, in other words, he must bring up the annual income to Rs. 500. It might happen, however, that the income or profits chargeable under Part IV did not quite come up to the minimum. In that case, if the minimum could be reached by adding the salary of an office, that salary clearly ought to be taken into account, even though so small in itself as to be exempted under section 7.

The Hon'ble MR. BULLEN resumed—He did not think there was any doubt about the intention; but if that intention was not clearly defined either in the Bill or the Rules, some over-zealous Deputy Collector might think it his duty to tax incomes of the lowest amount, because it was nowhere distinctly provided that incomes under Rs. 500 should not be liable to tax under the Act. There were distinct provisions on this point in the Income Tax Act of 1860 and in the Certificate Act, but there was no provision in this Bill that incomes under Rs. 500 per annum should not be taxed; though of course it might be inferred that such was the intention, because the schedule attached to the Bill does not provide the amount of tax to be imposed on incomes under that amount.

In conclusion, he would wish, with His Excellency the President's permission, to take this opportunity of putting a question to the Hon'ble Member in charge of the Financial Department. The question that he wished to put was with reference to the payments made by the Government of India on account of the Abyssinian Expedition. It was no secret—indeed the Hon'ble Member had referred to the matter in his Budget Statement—that, to make these payments, large sums had been borrowed by the Government from the Banks of Bengal and Bombay; and commercial gentlemen were well aware that the advances were made by those Banks at rather high rates of interest. MR. BULLEN would therefore ask—*first*, if the Hon'ble Member would state the amount of interest paid or payable to the Banks on account of advances made by them to the Government for the expenses of the Abyssinian Expedition; and, *secondly*, whether it had been intimated to the Secretary of State that such interest should be charged to the English Government, and, if so, whether the English Government had agreed to its repayment or otherwise.

HIS EXCELLENCY THE PRESIDENT said, before the Hon'ble Sir Richard Temple answered the questions of the Hon'ble Member, he thought it right to remark that, according to the Rules of the Council, the questions were not strictly in order; and, therefore, in allowing the questions to be put, he wished to guard himself against its being made a precedent in future. He was induced to allow the questions to be put, though they were not strictly in order, because this was the last day on which the questions could be put.

The Hon'ble SIR RICHARD TEMPLE said, this particular point had for some time past engaged the careful attention of the Financial Department. He was not prepared to state at this moment the exact items, which were the subject of complicated accounts. But he might state that, although the adjustment of the Abyssinian advances and expenditure was proceeding with unexampled rapidity, the greater part of the advances having already been refunded to the Indian Government, yet, as these complicated accounts approached final adjustment, there would be many items, claims, counter-claims, debits, credits and the like, to be settled. Among these items there would probably be the item alluded to by the Hon'ble Member. He trusted that it would be seen that this answer was as much as his official obligations would permit him to give.

HIS EXCELLENCY THE PRESIDENT said, he might further state that the conditions under which advances should be made by this Government on account of the Abyssinian Expedition were very strictly laid down at the time that

Expedition commenced, and HIS EXCELLENCY had every reason to believe that those conditions would be strictly fulfilled, and if they were, ample justice would be done both to the Home and the Indian Governments.

The Hon'ble SIR RICHARD TEMPLE having applied to His Excellency the President to suspend the Rules for the Conduct of Business,

The President declared the Rules suspended.

The Hon'ble SIR RICHARD TEMPLE then moved that the Report be taken into consideration.

The Motion was put and agreed to.

The Hon'ble SIR RICHARD TEMPLE then moved that the Bill as amended be passed. He said that he desired to express his particular thanks to each Member of the Council for the generous confidence which had been shown towards the Financial Department in all the discussions relating to the Budget: he hoped that this tax would be administered so as to ensure the safety of the revenue without unnecessary trouble to the people; and he would assure the Council that the best endeavours of the Government would be given to ensure, with the help of this tax, that financial equilibrium which had been set forth in the Budget.

The Motion was put and agreed to.

POLICE SUPERANNUATION FUNDS' BILL.

The Hon'ble Sir RICHARD TEMPLE presented the Report of the Select Committee on the Bill to abolish the Police Superannuation Funds.

The Hon'ble Sir RICHARD TEMPLE having applied to His Excellency the President to suspend the Rules for the Conduct of Business,

The President declared the Rules suspended.

The Hon'ble Sir RICHARD TEMPLE moved that the Report be taken into consideration.

The Motion was put and agreed to.

The Hon'ble Sir RICHARD TEMPLE then moved that the Bill as amended be passed.

The Motion was put and agreed to.

LAND CUSTOMS' BILL.

The Hon'ble Sir RICHARD TEMPLE presented the Report of the Select Committee on the Bill to make better provision for the collection of land customs on certain foreign frontiers of the Presidencies of Fort Saint George and Bombay.

The Hon'ble Sir RICHARD TEMPLE having applied to His Excellency the President to suspend the Rules for the Conduct of Business,

The President declared the Rules suspended.

The Hon'ble Sir RICHARD TEMPLE moved that the Report be taken into consideration.

The Motion was put and agreed to.

The Hon'ble Sir RICHARD TEMPLE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

CUSTOMS DUTIES' BILL.

The Hon'ble SIR RICHARD TEMPLE also presented the Report of the Select Committee on the Bill to amend the law relating to Customs Duties. He said the Council would remember that this was the particular Bill required to allow of the alterations necessary on the tariff valuations of certain articles liable to Customs Duties. If the Council passed this Bill, the executive measure to which it would give immediate effect was such as to afford the trading and commercial communities facilities in their intercourse with the Customs Department.

The Hon'ble MR. BULLEN said that, in consenting to the passing of this Bill, and thus placing in the hands of the Executive Government the power of lowering or raising the tariff valuations, he trusted it was distinctly understood that no increase in the valuations would, on other occasions, be made by the Government without previous communication as hitherto with the various Chambers of Commerce. He wished distinctly to guard himself against being understood to agree to the placing in the hands of the Executive Government the unrestricted power of increasing the tariff valuations. He would, however, have no objections to make to the passing of the Bill if the Government would give an assurance that they would communicate with the representatives of the mercantile community whenever it might be their intention to increase the tariff valuations.

The Hon'ble SIR RICHARD TEMPLE said, he had no hesitation in assuring the Hon'ble Member that, before proposing any increase whatever on the tariff valua-

tions, the Government would be most careful to consult those most interested in the matter.

The Hon'ble MR. BULLEN said he trusted that the Government would soon see its way to effect a large revision of both the import and export tariff, especially of the export tariff, in which many articles were made dutiable in opposition to sound principles of political economy. He might instance the export duty on Native made cotton piece goods ; he might also refer to the export on grain. He was aware that grain was an item from which a large export duty was derived, and that the Government might not be prepared to reduce the duty on that article at present. The present rate of three annas per maund was a very heavy duty. In Burma and the East Coast ports it amounted to a charge of fifteen per cent. on the cost, and this when a large trade had sprung up in Saigon and Siam, whence the export was free. From 1,300 tons, which comprised the import of rice from Siam and Cochin China into Europe in 1867, it increased last year to 37,000 tons, and in all probability the import would be larger this year.

The Hon'ble SIR RICHARD TEMPLE said that, in reply to the observations just made, he could only refer the Hon'ble Member to that passage in his Budget Statement in which he referred in a general way to the subject of tariff valuations and import and export duties.

The Hon'ble SIR RICHARD TEMPLE having applied to His Excellency the President to suspend the Rules for the Conduct of Business,

The President declared the Rules suspended.

The Hon'ble SIR RICHARD TEMPLE then moved that the Report be taken into consideration.

The Motion was put and agreed to.

The Hon'ble SIR RICHARD TEMPLE then moved that the Bill as amended be passed.

The Motion was put and agreed to.

The Council adjourned till the 19th March 1869.

WHITLEY STOKES,

*Secy. to the Council of the Governor General
for making Laws and Regulations.*

CALCUTTA, }
The 18th March 1869. }