

Friday, 29th June, 1860

PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA

Vol. VI

(1860)

The Council adjourned at 10 o'clock on the Motion of Sir Bartle Frere, till to morrow morning at 7 o'clock.

Friday Morning, June 29, 1860.

PRESENT :

The Hon'ble the Chief Justice, *Vice-President*,
in the Chair.

Hon'ble Sir H. B. E. Frere,	H. Forbes, Esq.,
Right Hon'ble J. Wilson,	A. Sconce, Esq.,
H. B. Harington, Esq.,	and Hon'ble Sir M. L. Wells.

INCOME TAX.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill "for imposing Duties on Profits arising from Property, Professions, Trades, and Offices," the Council resolved itself into a Committee for the further consideration of the Bill.

Section CLXXX provided as follows :—

"Instead of proceeding by distress and sale, or by attachment and sale, or in case of failure to realise thereby the whole or any part of the duty assessed and payable under this Act, the Collector or Commissioners may, if they believe the defaulter is wilfully with-holding payment of the arrears, or has been guilty of any fraudulent conduct in order to evade payment, issue their warrant for the arrest of such defaulter, and such warrant shall be of the same effect as the warrant of any Court of the district, and shall be executed in like manner. Such warrant shall specify a term of imprisonment in the Civil Jail, to be appointed by such Collector or Commissioners, which shall in no case exceed two years; nor a longer period than six months, if the arrear does not exceed five hundred Rupees, or a longer period than three months if the arrear does not exceed fifty Rupees."

THE CHAIRMAN moved the omission of all the words from "believes the defaulter" to the end of the Section, and the substitution of the following :—

"I think fit, issue a warrant for the arrest of such defaulter. Upon such warrant, the Officer charged with the execution thereof shall bring the defaulter with all convenient

speed before such Collector or Commissioners. If the defaulter shall not then deposit in the hands of the Collector or Commissioners the full amount of the arrears of duties under this Act, due and payable at the time of issuing such warrant, or make such arrangement for the payment of the same as shall be satisfactory to the Collector or Commissioners, or satisfy the Collector or Commissioners that he has no present means of paying the arrears, and that he has reasonable excuse for not having paid, such Collector or Commissioners may send him to the Civil Jail, there to remain for such time as shall be directed by a warrant addressed to the keeper of the jail, unless he shall in the mean time pay the full amount of the said arrears. Provided that the time for which a debtor may be confined in Jail under such warrant shall not exceed three Calendar months when the amount of such arrears shall not exceed fifty Rupees, or six Calendar months when such amount does exceed five hundred rupees, or two years in any other case. Provided also that such imprisonment shall not extinguish the liability to pay such arrears, but all property then belonging to the defaulter or afterwards acquired shall be liable to be distrained or attached under the provisions of this Act in satisfaction of such arrears, or of so much thereof as shall remain unpaid, as if no imprisonment had been ordered."

MR. HARINGTON observed, with reference to that part of the amendment which provided that imprisonment should not extinguish the claim, that the Code of Civil Procedure provided that, when the amount of the decree did not exceed a certain sum, imprisonment should have that effect, and it might be a question whether the same provision should not be maintained in the present Bill. The subject had been considered by the Select Committee, and the Section, as now drawn, allowed a party to be imprisoned only when he wilfully refused to pay the tax or was guilty of any fraudulent conduct in respect of it.

SIR MORDAUNT WELLS said, he thought that, in cases of fraud, imprisonment ought not to extinguish the debt due to the Crown. Otherwise you would have combinations in districts to resist the payment of the tax, and although such persons might be willing to subject themselves to imprisonment, unless they were compelled to pay the Income Tax when they came out of jail, they would succeed in defeating the Government. Of course, with regard to parties who could give satis-

factory evidence of their inability to pay, the Collector or Commissioners would not be empowered to send such persons to jail, as mere poverty ought not to be treated on the same footing as wilful non-payment and fraudulent concealment of property.

THE CHAIRMAN said, it was quite different in the Code of Civil Procedure, which related to small debtors, whereas the Section now under consideration made provision for debts to Government. A similar provision was allowed in the Small Cause Courts Act for the Presidency Towns.

SIR MORDAUNT WELLS said, it would be the interest of Government not to seize the person of a defaulter if they could get his money.

SIR BARTLE FRERE said, he would put it to the Honorable Member for the North-Western Provinces whether, as remarked by the Honorable and learned Chairman, there was not a considerable difference between the Code of Civil Procedure and the present Bill. A small debtor might be a pauper. The theory of the present Bill, however, was to impose a tax on incomes: no pauper could be taxed. A person had no business to spend that portion of his income which the Government claimed under this Act, and if he did not pay it to Government, his refusal or neglect to do so must clearly proceed from perversity and not from poverty.

MR. WILSON said, the new Clause appeared to him considerably to mitigate the old one, and was restricted to those cases in which the Collector had reason to believe that the defaulter had no immediate means of paying the amount of the claim. The provision merely was that the defaulter might be sent to jail if he could not satisfy the Collector of his inability to pay.

The Motion was put and carried, and the Section, as amended, then passed.

THE CHAIRMAN then moved the introduction after Section CLXXXVIII of the following new Section regarding the priority of Government claims over all other claims:—

"The claim of the Government for all sums payable for the said duties shall have priority

Sir Mordaunt Wells

over all private claims in administering the assets of any deceased person by his representatives, or of any bankrupt or insolvent by his assignee. Provided that the said duties shall not be claimed under this Section for more than one year."

Agreed to.

Section CXC was passed as it stood.

Section CXCI (which required separate accounts to be kept at the Government Treasuries of the three per cent. and one per cent. duties) was passed after an amendment making the Section applicable only to the one per cent. duty.

Section CXCI provided as follows.—

"Separate accounts shall also be kept at the said Treasuries—

"1st.—Of such sums paid in on account of the said one per cent. duty, as shall have been assessed upon persons residing in, or carrying on business in, or upon any house or land in any Presidency Town or any Station in the Straits Settlement."

"2nd.—Of such sums paid in on account of the said one per cent. duty as shall have been assessed upon any person residing in, or carrying on business in, or upon any house or land in any town or suburb not within the Presidency Towns or Straits Settlement aforesaid, wherein Act XXVI of 1850 shall be in force, and Commissioners shall have been appointed under that Act.

"3rd.—Of all sums paid in on account of the said one per cent. duty as shall have been assessed upon any other person, or upon any other house or land in each district."

MR. SCONCE said, he had doubts of the propriety of the distinction drawn by the 2nd Clause of the Section between Towns brought under the operation of Act XXVI of 1850 and others.

THE CHAIRMAN said there would be some difficulty in ascertaining and apportioning their proportion of duty to districts which might be incorporated with the Presidency Towns.

SIR MORDAUNT WELLS said, he must confess that this Clause would cause much embarrassment to the Government. He did not want to see the one per cent. fund in the hands of any other body than the Government. They had a perfect machinery for carrying out the principle which had already been affirmed by the Council on

the motion of the Honorable and learned Chairman. He could say from his own knowledge that there were many persons perfectly willing to let the Government have the management of the fund ; whereas, if any attempt were made to put it in the hands of Local Boards or any other body, the object of the tax would not be understood, and great dissatisfaction would be the consequence.

SIR BARTLE FRERE said, he thought that, if the Honorable and learned Judge were acquainted with the action of the Municipal bodies constituted under Act XXVI of 1850, he would agree with him (Sir Bartle Frere) as to the propriety of entrusting the management of such a fund to this agency. By doing so he had no apprehension that the effect would be a frittering away of the fund, for he could speak from his own experience that wherever the principles of Act XXVI had been fairly carried out the action of the Municipal bodies had been found most beneficial.

SIR MORDAUNT WELLS said, he had no objection to Government employing whatever body they pleased, provided they were to be the responsible and controlling authority : what he objected to was to have on the face of the Bill that any Municipal body whatever was to have the management of this fund.

MR. FORBES said, the Act had been greatly improved by the amendment of the Honorable and learned Chairman, namely, the substitution of the words "reproductive public works" for the words "local purposes" in Section III. He had no doubt that, if the Municipal bodies were to be employed in carrying out the objects of this tax, they would be found highly useful. But now that the works to which the tax would be applied were to be reproductive public works only, he thought that the amendment in Section III rendered unnecessary the retention in the present Section of the words which referred to Act XXVI of 1850 and to the Municipal Commissioners appointed under that Act. The Municipal Commissioners appointed under that Act would be very

proper authorities to be entrusted with the execution of works for purely "local proposes," such as might be carried on within any town or village, but reproductive public works implied probably something extending over a much larger area, and Municipal Commissioners might not be so well fitted to superintend the construction of a line of road or the building of a bridge at a distance from the sphere of their ordinary local operations.

MR. WILSON said, he thought there would be some difficulty in retaining the words as they now stood. In England it had been found impossible to separate a Revenue District from an Income Tax District ; and he did not think that the term District as used in the present Bill had a special meaning. He proposed the introduction of the following Clause, which he thought would carry out the views of his Honorable friend opposite (Sir Bartle Frere) and of his Honorable and learned friend (Sir Mordaunt Wells) :—

"A separate account shall be kept of the duty paid in respect of the said one per cent. duty, which shall accrue from the dividends or interest paid upon the Government debt and from the salaries of public officers and from the profits of any Railway or other public Company whose profits shall be derived from different parts of India, or of which any part of the profits is derived from a place other than that at which its head office is situated, and such portion of the one per cent. duty shall be appropriated to the different Governments of India, to be applied for the execution of public reproductive works which have been duly sanctioned, according to their discretion, and that such appropriation shall be made to each local Government in the proportion in which each Presidency or Lieutenant Governorship or Province under a Chief Commissioner shall contribute to the whole amount of the duty raised under this Act."

After some further discussion—

THE CHAIRMAN thought it better to decide how the one per cent. was to be appropriated before deciding how the accounts were to be kept. He would therefore propose that the consideration of Section CXCII be postponed until after that question was decided.

The Motion having been carried, Mr. Wilson's new Section was then proposed from the Chair.

MR. HARRINGTON said, in adopting the amendment which had been introduced in Section III of the Bill, the Committee had affirmed a very great and important principle, and by declaring that the amount of the tax collected under the Section in question should be appropriated, not to local purposes at the discretion of particular parties, but at the discretion of the Government of India to general reproductive works, the objection which he (Mr. Harrington) entertained to the Section, and which he had stated on a former occasion, had been, to a considerable extent removed. The Committee had, in fact, made the portion of the tax which would be collected under the Section imperial revenue equally with the rest of the income which would be derived from the operation of the Bill, provision only being made that the money should be expended in a particular way, that is, on general reproductive works. Such being the decision of the Committee, he thought that they should be careful not to place any unnecessary or too great restrictions upon this exercise of the discretion, proposed to be given to the Executive Government. In laying down such rules as had been suggested it appeared to him that they would be refining too much, and that they should run the risk of hampering the Government in a manner which, in practice, might prove very inconvenient. What the public might fairly require to know was the aggregate sum collected on account of the four per cent. duty, and that one-fourth of that sum was strictly appropriated to reproductive works of a general nature. He agreed with the Honorable and learned Judge, (Sir Mordaunt Wells) that the rest might safely be left to the Executive Government. It had been suggested by the Honorable Member for Madras that the aggregate sum collected on account of the one per cent. duty should be appropriated to the different Presidencies in proportion to their several revenues. The rule

appeared a simple and equitable one, and it seemed to him (Mr. Harrington) that it might be properly adopted.

After some further discussion, Mr. Wilson's proposed Section was put and carried.

SIR MORDAUNT WELLS then moved the insertion of the following Section, which he thought would cover every thing that was necessary, and get rid of the whole difficulty :—

"The whole of the residue of the sums derived from the said one per cent. duty shall be appropriated to each Presidency, Lieutenant Governorship, and Province, to the extent contributed by such Presidency, Lieutenant Governorship, and Province, and shall be expended by the local Governments and Chief Commissioners thereof in reproductive public works duly sanctioned as aforesaid in the various districts under them as nearly as may be in proportion to their respective contributions thereto."

Agreed to.

THE CHAIRMAN moved the omission of Section CXCII, and the substitution of the following :—

"Separate accounts shall also be kept of such sums paid in on account of the said one per cent duty as shall have been assessed upon persons residing in or carrying on business in or upon any house or land in any Presidency Town or any Station in the Straits Settlement, or in any District."

Agreed to.

Sections CXCIII to CCII were then omitted as unnecessary, in consequence of the two new Sections severally adopted on the motions of Mr. Wilson and Sir Mordaunt Wells.

Sections CCIII to CCXII were passed as they stood.

Section CCXIII (which prescribed the penalty for making false returns of profits or of the value of lands) was passed after a verbal amendment, and with an amendment making it applicable to the making of all false returns.

Section CCXIV was passed as it stood.

Section CCXV was passed after a verbal amendment.

Section CCXVI was passed as it stood.

Section CCXVII prescribed a penalty not exceeding five hundred

Rupees for any offence under Section LXXII relating to composition.

THE CHAIRMAN moved the following addition to the penalty:—

“and treble the duty justly chargeable in respect of all the sources of his income.”

The Motion was carried and the Section as amended then passed.

Sections CCXVIII and CCXIX were passed as they stood.

The consideration of the Bill was then postponed, and the Council resumed its sitting.

The Council adjourned at 10 o'clock, on the Motion of Sir Bartle Frere, till to-morrow, at 11 o'clock.

Saturday, June 30, 1860.

PRESENT :

The Hon'ble the Chief Justice, *Vice-President*,
in the Chair.

The Hon'ble Lieut-Genl. Sir J. Outram,	H. B. Harington, Esq.,
The Hon'ble Sir H. B. E. Frere,	H. Forbes, Esq.,
The Right Hon'ble J. Wilson,	A. Sconce, Esq., and The Hon'ble Sir M. L. Wells.

BOUNDARY MARKS (FORT ST. GEORGE).

THE VICE-PRESIDENT read a Message, informing the Legislative Council that the Governor-General had assented to the Bill “for the establishment and maintenance of Boundary Marks and for facilitating the settlement of Boundary Disputes in the Presidency of Fort St. George.”

EMIGRATION TO NATAL.

SIR BARTLE FRERE moved the second reading of the Bill “relating to Emigration to the British Colony of Natal.”

The Motion was carried, and the Bill read a second time.

EMIGRANT VESSELS.

SIR BARTLE FRERE moved the second reading of the Bill “relating to

vessels carrying Emigrant passengers to the British Colonies.”

The Motion was carried, and the Bill read a second time.

KOONCH AND CALPEE.

Mr. HARRINGTON moved that the Bill “to remove the Perannahs of Koonch and Calpee, in Zillah Jalloun, from the operation of the general Regulations,” be read a third time and passed.

The Motion was carried, and the Bill read a third time.

ARMS AND AMMUNITION.

The Order of the Day being read for the adjourned Committee of the whole Council on the Bill “to make perpetual Act XXVIII of 1857 (“relating to the importation, manufacture, and sale of arms and ammunition, and for regulating the right to keep or use the same)”—

Mr. HARRINGTON said, before they went into Committee on the Bill, he thought it right to mention to the Council that he had received a letter on the previous evening from the Secretary to the Government of the North-Western Provinces, in which he was reminded that Act XXVIII of 1859, which extended the duration of the original Arms and Ammunition Act for the further period of six months, would expire to-day; and he was urged to take immediate steps, in order that what had already been done towards disarming the Native population of the North-Western Provinces might not be rendered abortive or of no effect by the cessation of the law. [Mr. Harington here read an extract from the letter received by him.] He went on to say that it was the knowledge that the present law was about to expire which had led him to give notice in the Orders of the Day, published on Thursday last, of his intention to move to-day the suspension of the Standing Orders. It appeared to him very desirable, either that the Bill now in Committee should pass into law to-day in such form as the Council might in their wisdom determine, or if that could