

Monday, 2nd July, 1860

PROCEEDINGS

OF THE

**LEGISLATIVE COUNCIL OF
INDIA**

Vol. VI

(1860)

Section XXX, relating to the fee for license, was omitted on the motion of Sir Mordaunt Wells.

Section XXXI was passed after amendments.

After some discussion as to the advisability of adding a Clause to the Bill to enable the Government to disarm in certain proclaimed Districts—

THE CHAIRMAN suggested that as it was impossible to pass the Bill this evening, and as Act XXVIII of 1857 expired to-day, it would be better to pass a temporary Act for one month, and to postpone the consideration of this Bill.

MR. HARRINGTON having assented to the course, the consideration of the Bill was accordingly postponed, and the Council resumed its sitting.

MR. HARRINGTON then moved that the Standing Orders be suspended to enable him to introduce and pass through its several stages a Bill "to continue in force Act XXVIII of 1857."

SIR BARTLE FRERE seconded the Motion, which was put and carried.

MR. HARRINGTON accordingly moved that the Bill be read a first time.

The Bill was read a first time.

MR. HARRINGTON moved that the Bill be read a second time.

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

MR. HARRINGTON moved that the Council resolve itself to a Committee on the Bill.

Agreed to.

The Bill passed through Committee without amendment, and the Council having resumed its sitting, was reported.

MR. HARRINGTON moved that the Bill be read a third time and passed.

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

MR. HARRINGTON then moved that Sir Bartle Frere be requested to take the above Bill to the Governor-General for his assent.

Agreed to.

MILITARY POLICE BATTALIONS.

MR. SCONCE moved that Sir Bartle Frere be added to the Select

Committee on the Bill "to provide for the good order and discipline of the Battalions of Military Police."

Agreed to.

KOONCH AND CALPEE.

MR. HARRINGTON moved that Sir Bartle Frere be requested to take the Bill "to remove the Pergunnahs of Koonch and Calpee, in Zillah Jaloun, from the operation of the General Regulations" to the Governor-General for his assent.

Agreed to.

POSTPONED ORDERS.

The following Orders of the Day were postponed:—

Adjourned Committee of the whole Council on the Bill "for imposing Duties on profits arising from Property, Professions, Trades, and Offices."

Committee of the whole Council on the Bill "for the licensing of Arts, Trades, and Professions."

Committee of the whole Council on the Bill "relating to the Transportation of Convicts."

The Council adjourned at 6 o'clock on the motion of Sir Bartle Frere, till Monday, the 2nd July, at 7 o'clock in the morning.

Monday Morning, July 2, 1860.

PRESENT:

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

Hon'ble Sir H. B. E. Frere,	Hon'ble J. Wilson,	Hon'ble Sir M. L. Wells.
Hon'ble Sir H. B. E. Frere, Esq.,	Hon'ble Sir M. L. Wells, Esq.,	

ARMS AND AMMUNITION.

THE VICE-PRESIDENT read a Message informing the Legislative Council that the Governor General had assented to the Bill "to continue in force Act XXVIII of 1857."

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 CCXXI provided as follows :—

"No person who shall have been served with a notice as aforesaid shall be liable to the penalties before mentioned, for not delivering any return or declaration required by any notice as aforesaid, if it shall appear to the Collector or Commissioners, on enquiry before them, that such person is entitled to be exempted from the payment of all and every the Duties hereby granted."

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

"No person who shall not have been served in the manner directed by Section XXVII of this Act with the notice provided by that Section, shall be liable to the penalties before mentioned for not delivering a return or declaration of his profits or income."

Section CCXXII was passed as it stood.

Sections CCXXIII and CCXXIV were amalgamated and then passed.

Section CCXXV was passed as it stood.

THE CHAIRMAN moved the introduction of the following Section after Section CCXXV :—

"Nothing in this Act contained shall prevent any person being punished for any offence in any manner otherwise provided by law. Provided that, if any proceedings be taken under this Act for the punishment of any person for an offence, a conviction or acquittal shall be a bar to any other proceedings for the same offence."

Agreed to.

Section CCXXVI provided, as follows :—

"Any person, not being a European British subject, who shall be guilty of any offence, for which, according to the provisions of this Act, he shall be liable to a forfeiture or fine only, shall be punishable for such offence,

except in the Presidency Towns and the Straits' Settlement, by any Magistrate or person lawfully exercising the powers of a Magistrate, whether the offence shall have been committed within the local limits of the jurisdiction of such Officer or not."

THE CHAIRMAN moved the substitution of the words "whether a European British subject or not" for the words "not being a European British subject."

Agreed to.

THE CHAIRMAN moved the addition of the following words :—

"or if the offence shall be committed by a European British subject, or shall be committed in the Presidency Towns or Straits' Settlement, he shall be tried by a Police Magistrate."

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

Section CCXXVII to CCXXXVI were passed as they stood.

Section CCXXXVII provided as follows :—

"All forfeitures or penalties not exceeding 200 Rupees, imposed by this Act, exclusive of any increased Duties chargeable under this Act, may be recovered before the Collector or before two or more Commissioners in and for the place wherein the offence shall have been committed, or the offender shall have been assessed; and also such of the penalties exceeding 200 Rupees as consist of any increased Duties, or of any sums which are hereby directed to be added to the assessment of the Duties, shall be so recoverable."

THE CHAIRMAN moved the omission of all the words after the words "shall have been assessed"

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

Section CCXXXVIII provided as follows :—

"The Collector or Commissioners shall take cognizance of any offence of which he or they shall have cognizance under the last Section, upon information or complaint in writing made to them, and upon a summons to the party accused to appear before the Collector or Commissioners at such time and place as they shall fix, or without such summons, in case the party shall have been charged before the Collector or Commissioners upon any appeal, objection, or surcharge as aforesaid, with increased Duties in respect of the matter complained of, and shall have appeared upon such objection or surcharge before the Collector or Commissioners."

THE CHAIRMAN said, he was not sure whether this Section was quite right. The Collector or Commissioners should have power in all cases of offences committed in his or their presence. He should therefore move the omission of all the words after the word "case," and substitution of the words "the person shall be guilty of the offence in their presence."

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

Section CCXXXIX was passed as it stood.

Section CCXL was passed after a verbal amendment.

Section CCXLI was passed as it stood.

Sections CCXLII and CCXLIII were severally passed after an amendment.

Section CCXLIV was passed as it stood.

Section CCXLV was passed after a verbal amendment.

Sections CCXLVI and CCXLVII were passed as they stood.

Section CCXLVIII provided as follows :—

"It shall be lawful for the Governor-General of India in Council to postpone for such period as he shall deem necessary the period for this Act to come into operation in any part of India."

THE CHAIRMAN said, he thought it necessary to call the attention of the Council to this Section. He thought it right that the Governor-General should have the power to postpone the operation of this Act in any part of India where it might be necessary to do so. But it appeared to him that some misapprehension existed as to the power of the Executive Government to enact laws and enforce them in what were called the Non-Regulation Provinces. In the Punjab and Oude it appeared that taxes under various names had been raised, and were, during the present year, being levied under the authority of the Governor-General. Now it appeared to him that no law could be passed except by this Council. Under the Charter Act of 1833, 3 and 4 Wm. IV c. 85, the

power to make laws and regulations was vested solely in the Governor-General in Council, and all laws and regulations were to be made at some meeting of the Council, at which the said Governor-General and at least three of the Ordinary Members of Council should be present. By the subsequent Act 16 and 17 Vic. c. 95, however, the constitution of the Legislative Council had been enlarged by the addition of six Members, two of them being Judges of Her Majesty's Supreme Court in Calcutta; and the Governor-General could pass no law except at a meeting of this Council, at which the Governor-General or Vice-President, or some Ordinary Member of Council, and six or more Members of the Council should be assembled, a Judge of Her Majesty's Supreme Court or the fourth Ordinary Member of Council being one. The Governor-General therefore could pass no law except in this Council, nor could the power of passing laws be vested in him by this Council when he might be absent from his Council. It seemed impossible to conceive, therefore, how the Chief Commissioner of Oude or the Lieutenant-Governor of the Punjab could pass any law, or impose any tax, either with or without the assent of the Governor-General, any more than the Governor of Madras or Bombay could do. He was equally at a loss to comprehend how the Chief Commissioner in Oude could adopt and enforce within that Province a measure for taxing the people in a lump sum. The Lieutenant-Governor of the Punjab was also levying a similar tax, and at Simla there was what was called a Town Duty, the collection of which was made over to a native contractor. It was said that these measures were based to a great extent upon the Bill brought in by the Honorable Member for the North-Western Provinces, for licensing Trades and Professions, which had been rejected by the Council. Be this, however, as it might, he (the Chairman) must say that the Lieutenant-Governor of the Punjab and the Chief Commissioner of Oude had not the power to pass any such laws, and he wished now to put a stop

to all taxes which had been levied without the force of law. He had no official information, but he had seen it stated in the newspapers that there was great oppression exercised towards the people of Oude in the collection of this tax; and rather than allow those oppressions to be continued, when this law came into force, he would exempt the people of Oude from its operation during the current year for which they had been assessed, and for which they had already made payments. It had been asserted, but wrongly, he thought, that the Non-Regulation Provinces might be legislated for by the Governor-General. But what was a Non-Regulation Province? The term simply meant a Province to which the general Regulations passed before this Council had any existence did not extend. The Governments of Bombay and Madras, when they had the power of legislation, had not extended the Regulations which they then passed to many parts of the Presidencies under their government. They were equally Non-Regulation Provinces. These Governments therefore had as much power to legislate for those Provinces as the Governor-General in his Executive Council, or the Governor-General alone, when absent from his Council. He (the Chairman) thought it right to call the attention of the Council to this matter, as he believed there was a great deal of misapprehension as to the powers of the local Governments in the Non-Regulation Provinces. They seemed to think that they might act on their own sense of justice independently of any laws passed by the Legislative Council, or that they might act on the spirit of laws disregarding the letter. But this was not the case. Non-Regulation Provinces, unless especially excepted in the Act, were as much bound by a general Act of the Council as Regulation Provinces. But the whole of India was subject to the Charter Act of 1833. The Governor-General in Council, before the Act of 1853, had the power to pass laws provided three Members of Council were present, and in such a Council the Governor-General might repeal, amend, or alter any

The Chairman

laws or Regulations. By the law, as it now stood, this Council and this Council alone could pass laws. If the Local Governments of the Punjab and Oude, either with or without the sanction of the Governor-General, had thought proper to impose duties or taxes, he thought that they ought not to be continued, and that they ought to be superseded by this Act. As the new taxes, however, had been actually levied, he was quite willing to indemnify the Officers who had assisted in carrying out the orders of the local Government for whatever had been done under a mistake. He only wished it to be understood that they could not do so for the future. He would therefore move the addition of the following words to the Section:—

“But no other Tax or Duty shall, during such period, be leviable in that part of India, except such as could be lawfully levied in addition to the Duties provided by this Act.”

Mr. WILSON said, he had no objection whatever to offer to the exposition of the law which the Honorable and learned Chairman had laid down. He would only ask him to allow his amendment to be so worded as to apply to the existing circumstances of the case, that is, to make an exception in favor of assessments during the current year, so that the arrangements which had been made in pursuance of the supposed power, which we need not discuss now, should be maintained. With that limitation he had no objection to the amendment.

THE CHAIRMAN said, he was quite willing to make an exception in favor of the taxes already paid. But as, from the information which he had received, it appeared that great oppression was exercised in the levy in a lump sum of the tax in Oude, he would not have them liable to a continuance of that oppression. It was true that the Government would lose some revenue; but better that it should do so, than that the people should be subjected to any oppression.

Mr. WILSON said, that, so far from its being true that any oppression had taken place, he could assure

his Honorable and learned friend that there was no ground for the reports published in the public prints. A recent case alluded to by one of the papers was particularly enquired into and found to be without any foundation whatever. The Government received frequent reports from Oude, which were very satisfactory. The manner in which the assessments were made was to assess a lump sum on villages and districts, and to leave the people to divide the assessments among themselves, either by punchayet or in whatever other manner they pleased.

Mr. SCONCE said, he was not partial to the system of assessment by punchayets, for then the weak invariably had to pay the most. It seemed to him that the term "lump assessment," as used in enforcing the Income Tax in Oude, was wholly a misnomer. It was not assessing in a proper ratio, but some he feared paid a small sum whose means were large, and others a high figure whose means were small. He knew of the proceedings taken in Oude only from the published despatch of the Chief Commissioner, and in so far as he remembered, the *modus operandi* was this. First of all a list was procured of the inhabitants of each village, and the incomes of all the inhabitants were estimated. When the incomes of individuals were thus ascertained, a total was struck, and this was called a "lump assessment," to be re-distributed over the people. Now, in the first place, this term was a misnomer, as it was founded upon a detailed estimate of the incomes of the people; and it was also a misnomer, if the total estimate were redistributed according to the actual incomes of the people. In that case a double process of assessment would be uselessly gone through. But what he feared was that, in distributing a "lump assessment," as the term was, the incomes of the people would be arbitrarily estimated, and that while, according to this mode of assessment the tax would fall on some at the rate of one or two per cent., it might amount to five or six per cent upon others, according as the parties

concerned in the distribution should favor themselves and friends, and lay the burden on other people. Certainly, in assenting to the agency of a punchayet as part of the present Bill, he did not assent to the introduction of the lump assessment system, as it seemed to be employed in Oude. He thought it important to notice also that the mode in which the Income Tax was imposed differed in other respects much from the provisions of the present Bill. Here the minimum of assessment was an income of two hundred Rupees: but in Oude the distribution of the lump assessment appeared to go much lower. In Oude the rule was that every one who could pay a Rupee a year should be taxed: and as the tax was supposed to amount to three per cent. on income, obviously a tax of one Rupee would be levied on an income of thirty-three Rupees.

SIR BARTLE FRERE said that the subject to which the Honorable and learned Chairman had drawn attention was one of great difficulty and importance. He might remind the Council that one of the theories held on the subject was that all powers of the Government we had superseded were vested in the representative of the British Government. For his own part, when in charge of a Non-Regulation province, he (Sir Bartle Frere) had always considered that he was bound to give effect to the laws passed by that Council, as far as the machinery at his disposal allowed. Where the machinery did not exist this was of course impossible. He instanced the case of appeals in a Civil Court. If a law provided for appeals from a Moonsiff to a Judge, from a Judge to the Sudder Adawlut, and neither Moonsiff, Judge, nor Sudder existed, it was of course impossible to follow the law literally. All you could do was to be guided, as far as possible, by its spirit.

SIR MORDAUNT WELLS said, he concurred entirely in the exposition of the law laid down by his Honorable and learned friend in the Chair with regard to the mode of assessment adopted in Oude. He apprehended that an

assessment in a lump was not an Income Tax. If you lumped the assessment and afterwards distributed it among the people, it could no longer be considered an Income Tax. If therefore any such rules had been put in force in Oude, it was quite clear that, under the words proposed to be introduced by his Honorable and learned friend, there would be no power to the Executive Government to continue them. Certainly no such power was given by the Act.

MR. FORBES said, it was optional with every person to be assessed by a punchayet or not according to their own wish. Section CIII provided that, if any person objected to be assessed by punchayet, he should be assessed by the Collector or other Officer specially appointed, as if no order for assessment by punchayet had been made, and he (Mr. Forbes), did not therefore share in the objections against the punchayet system as introduced into this Bill, which were felt and had been stated by the Honorable Member for Bengal.

MR. HARRINGTON said, he did not propose at the present time to enter into any discussion as to the powers which could be exercised by punchayets under the provisions of the Sections relating to assessment by punchayet as settled by the Committee. If any Honorable Member considered that those Sections did not go far enough, or that they went too far, or that they were not sufficiently specific, it was open to him to ask the permission of the Committee to go back to the part of the Bill in which the Sections in question were contained, and to propose any amendment thereof which he might deem necessary or proper. But he (Mr. Harrington) wished to correct a misapprehension into which the Honorable and learned Vice-President had fallen in supposing that the Lieutenant-Governor of the Punjab and the Chief Commissioner in Oude had introduced modes of taxation into the Territories subject to their authority after the Council had voted against their adoption. Such was not really the case. The Honorable and learned Vice-Pres-

ident alluded to the Bill for licensing Trades and Professions, which was brought in by him (Mr. Harrington) in the course of last year. So far from the Council having rejected that Bill, he begged to remind the Honorable and learned Vice-President that, with some modification, it was read a second time by a unanimous vote of the Council. No doubt, the Bill, as introduced, met with considerable opposition, and the principle of it was much discussed, but still the Bill was read a second time and it was not, until the Bill had passed through that stage and been published in the usual course, that the Lieutenant-Governor of the Punjab and the Chief Commissioner in Oude introduced the measures of taxation to which the Honorable and learned Vice-President now objected. The Lieutenant-Governor of the Punjab and the Chief Commissioner in Oude might not have had the authority of law for what they did, but he (Mr. Harrington) did not wish it to go forth, that those Officers had acted in direct opposition to a vote of the Council, when the fact was that it was not until the Bill for licensing Trades and Professions brought in by him had obtained a second reading, as already noticed, whereby the principle of the Bill was affirmed, that they introduced their measures of taxation, which were based to a great extent upon his (Mr. Harrington's) Bill. He thought it only fair to the Lieutenant-Governor of the Punjab and the Chief Commissioner in Oude that he should make this statement.

He (Mr. Harrington) considered that this Council and the public were greatly indebted to the Honorable and learned Vice-President for what had justly been called his very clear exposition of the law as regarded the power of legislating for what were called the Non-Regulation Provinces. There could be no doubt that very great misapprehension prevailed upon the subject. It was supposed by many that in the Non-Regulation Provinces the chief civil authority could make any laws he pleased. What had just fallen from the Honorable and learned Vice-President showed that this was

a mistake. Frequent complaints had been made against the Government for not placing the North-Western Provinces under the Non-Regulation system. His name had been mixed up with those complaints. Very recently a complaint of this nature had appeared in a paper enjoying a very large circulation. Now what did the Council suppose was the origin of the complaint? Why, the dearness of grain in a particular district, and the inability of the ruling power under the Regulations to make it cheaper; whereas it was contended by those who made the complaint that, had the district been Non-Regulation, instead of subject to the Regulations, the local authorities could have interfered and compelled the grain merchants to sell at what might be deemed a reasonable price. Ho (Mr. Harington) very much doubted whether the Right Honorable Gentleman opposite would concur in these views.

THE CHAIRMAN said that the Bill brought in by the Honorable Member for the North-Western Provinces, who was at that time a Member of Government, was of read a third time, nor did it receive the Governor-General's assent and become law. Ho thought it proper to make this observation, because he thought it ought to be understood that no local Government had a right to make any law or to act upon a law introduced into this Council, whether it was read a second time or not, before it was read a third time and passed and had received the Governor-General's assent. Under the explanation given by the Member of the Executive Government that in reality no oppression had taken place, he would not object to the proposition of the Right Honorable Gentleman; something must also be done to indemnify the Officers of Government who had, he had no doubt, acted in good faith, although in an erroneous assumption of power. With this view he would suggest that the Clerk of the Council be requested to draw up an indemnity Clause to be inserted in this Bill.

THE CHAIRMAN'S Motion was then put and carried, and the Section as amended passed.

Sections CXXLIX and CCL were passed as they stood.

Section CCLI was passed after a verbal amendment in Clause 7.

Section CCLII was passed after amendments.

The further consideration of the Bill was 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 7 o'clock in the morning.

Tuesday Morning, July 3, 1860.

PRESENT :

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

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

LICENSING OF TRADES AND PROFESSIONS.

MR. WILSON moved that the Council resolve itself into a Committee on the Bill "for the Licensing of Arts, Trades, and Professions," and that the Committee be instructed to consider the Bill in the amended form in which it had been recommended by the Select Committee to be passed.

Agreed to.

Section I was passed after verbal amendments.

Section II provided as follows:—

"From and after the said day of every person who shall carry on any lawful Art, Trade, or Profession as hereinafter described shall be required to take out such License as is in Schedule A to this Act annexed directed, namely:—

"Every person who shall carry on any Art or Trade, having for its object the procurement of gain to such person:

"Every Company or Association or body of persons who shall carry on any Art or Trade as aforesaid, whether constituted a Company by Act of Parliament, Royal Charter, Letter Patent, or Act of the Legislative Council