

Tuesday, 10th July, 1860

PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA

Vol. VI

(1860)

THE CHAIRMAN then proposed several amendments, which were carried, and which made the Section run as follows:—

“In returning such rents and profits, the gross amount received and receivable during the preceding year, shall be fully stated; but if the person receiving or entitled to receive the same, be himself liable to pay, in respect of the said land, any land revenue to Government or any rent to any superior landlord, he shall state in his return the amount of such revenue and rent, and the name of the person to whom the rent is payable, and he shall be charged with the said Duties on his net rent and profits, whether received or not, after deducting the amount of such rent, or of the rent so payable by him to such superior landlord.

THE CHAIRMAN moved the addition of the following words to the Rule:—

“Or at the option of the assessor he may be charged with the Duties on the net rent and profits, without making any such deduction on account of rent, and in that case he may deduct from the rent payable by him to such superior landlord the amount of Duty paid on the amount of such rent.”

The question being put, the Council divided—

<p><i>Ayes 4.</i> Sir Mordaunt Wells. Mr. Wilson. Sir Bartle Frere. The Chairman.</p>	<p><i>Noes 3.</i> Mr. Sconce. Mr. Forbes. Mr. Harrington.</p>
-------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------

So the Motion was carried, and the Rule, as further amended, was then passed.

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 morning, at 7 o'clock.

Tuesday Morning, July 10, 1860.

PRESENT :

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

<p>Hon'ble Sir H. B. E. Frere, Right Hon'ble J. Wilson, H. B. Harrington, Esq.,</p>	<p>H. Forbes, Esq., A. Sconce, Esq., and Hon'ble Sir M. L. Wells.</p>
---------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------

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.

After a verbal amendment in Rule 6 of Section XCVI, which was divided into two Clauses,

THE CHAIRMAN moved the addition of the following Clauses to the same Rule:—

“Whenever any person shall pay the said duties on the rent or profits of any house or land, without deduction on account of any land revenue or rent payable by him in respect of such house or land, he shall have a right to deduct from any revenue or rent payable by him, as the case may be, a sum equal to the amount of the duty computed upon such revenue or rent.

“A deduction from revenue or rent under the provisions of this Act shall be deemed a payment to Government by the person from whom the deduction is made of the amount so deducted.”

Agreed to.

The postponed Rules 7 and 8 were passed as they stood.

THE CHAIRMAN moved the omission of all the Rules under the head of “Rules as to districts in which persons are chargeable,” and the substitution of the following:—

“Every Body Corporate, Company, or Society shall be charged to the duties contained in this Act by the Collector or Commissioners acting for the place where the head office in India of such Body Corporate, Company, or Society is situate.

“Every person being a house-holder, except persons engaged in any trade, profession, or employment, shall be charged to the said Duties contained in Schedule 2 by the Collector or Commissioners acting for the place where the dwelling house of such person shall be situate.

“Every person engaged in any trade, profession or employment shall be charged to the said Duties contained in the said Schedule 2 by the Collector or Commissioners acting for each place where such trade shall be carried on, or such profession or employment shall be exercised.

“When any trade shall be carried on in India by the manufacture of goods, wares, or merchandize, the assessment thereon shall be at the place of manufacture, although the sale of such goods, wares, or merchandize shall be elsewhere.

“Every person not being a house-holder, nor engaged in any trade, profession or employment, who shall have any place of ordinary residence, shall be charged by the

Collector or Commissioners acting for the place where such person shall ordinarily reside.

"Every person not hereinbefore described shall be charged by the Collector or Commissioners acting for the place where such person shall reside at the beginning of each year.

"Every such charge shall be valid and effectual notwithstanding the subsequent removal of the person so charged from such place.

"Every person not being engaged in any trade, profession, or employment, having two or more houses at which he shall be ordinarily resident, shall be charged by the Collector or Commissioners acting for each place where such houses shall be situate.

"Every person having two or more residences, or carrying on any trade, or exercising any profession or employment in different places, or in any place different from the place of his ordinary residence, shall be served with a notice in each of such places, and shall deliver in each of such places the like returns and declarations as he is required to deliver by this Act. Such person shall, in each of his returns, state all the places in which he carries on any trade or exercises any profession or employment, the place of his ordinary residence, and the place where he resided at the beginning of the current year.

"The Duty to be assessed by virtue of this Act in respect of the profits or income arising from possessions, or securities out of British India, whether within any other of Her Majesty's dominions, or not, shall be stated to and assessed by the Collector and Commissioners respectively acting for the place where the persons receiving or entitled to the same shall reside or carry on any trade or profession.

"No person who shall be liable to be charged in different places under this Act shall be liable to any double payment in respect of the same property or source of income.

The Rules were severally agreed to.

THE CHAIRMAN moved the omission of Rule 19 as being provided for by the amendment just carried.

Agreed to.

Rule 25 was passed after verbal amendments.

THE CHAIRMAN moved the introduction of the following new Section after Section CCXX :—

"If any person being legally bound by an oath or solemn affirmation of secrecy under this Act, shall wilfully disclose any matter which by such oath or affirmation he is bound to keep secret, he shall be liable to be imprisoned with or without hard labor for a period not exceeding three years, and shall also be liable to a fine not exceeding five thousand Rupees."

Agreed to.

THE CHAIRMAN moved the omission of Sections CCXXVI to CCXXXVI, and the substitution of the following :—

"Except as otherwise provided, all offences under this Act may be tried by any Magistrate, Joint Magistrate, or person lawfully exercising the powers of a Magistrate, unless the period of imprisonment to which the offender may be liable exceed that which the Magistrate, Joint Magistrate, or other Officer as aforesaid is competent to award under the laws for the time being in force in the Presidency or place in which such Magistrate, Joint Magistrate, or other Officer as aforesaid is employed. When the period of imprisonment provided by this Act exceeds the period that may be awarded by such Magistrate, Joint Magistrate, or other Officer as aforesaid, the offender shall be committed for trial before the Sessions Judge, if the evidence given before such Magistrate, Joint Magistrate, or other Officer as aforesaid shall appear to such Magistrate, Joint Magistrate, or other Officer sufficient for the conviction of the accused.

"Except as aforesaid, all offences declared to be punishable under this Act with fine or forfeiture, or fine and imprisonment, may be tried in the district or place in which the offence was committed, or in which the person charged with the same is apprehended.

"A Magistrate may refer for trial and decision any charge of an offence hereby made punishable by fine only, to any of his Assistants, and in such case every such Assistant may exercise all the powers vested in a Magistrate by any law for the time being in force, subject to all the rules applicable to criminal cases deputed to such Assistant acting judicially.

"The local Government may give general authority to any such Assistant to exercise, without reference by a Magistrate, any of the powers which they are hereby rendered competent to exercise upon reference by a Magistrate, subject to appeal to the Magistrate from any conviction by such Assistant within one month from the date of conviction.

"A Magistrate may at any time call for any of his Assistants any case pending before such Assistants.

"If any offence which by this Act is declared to be punishable with fine and imprisonment, or imprisonment only, shall be committed by a European British subject beyond the local limits of the jurisdiction of Her Majesty's Supreme Courts of Judicature, the offender shall be liable, upon conviction, before one of the said Supreme Courts of Judicature, to the punishment to which by this Act the offender is declared to be liable upon conviction.

"If any offence which by this Act is declared to be punishable with fine or forfeiture, or with fine and imprisonment not exceeding six months, shall be committed by any person within the local limits of the jurisdiction of any Court of judicature established by Royal Charter, such offence shall be punishable upon

summary conviction by any Magistrate of Police of the Presidency Town or Station in which such Court is held.

"No conviction, order, or judgment under the last preceding Section shall be quashed for error of form or procedure, but only on the merits; and it shall not be necessary to state on the face of the conviction, order, or judgment, the evidence on which it proceeds, but the depositions taken, or a copy of them, shall be returned with the conviction, order, or judgment in obedience to any writ of *certiorari*, and if no jurisdiction appears on the face of the conviction, order, or judgment, but the depositions taken supply that defect, the conviction, order, or judgment shall be aided by what so appears in such depositions.

"All other offences punishable under this Act, which shall be committed within the local limits of any Court of Judicature established by Royal Charter, shall be punishable by such Court.

"All fines, forfeitures, or penalties imposed under the authority of this Act for offences punishable by any Magistrate, or person lawfully exercising the powers of a Magistrate, or Assistant Magistrate, may, in case of non-payment thereof, be levied by distress and sale of the goods and chattels of the offender by warrant under the hand of any of the abovenamed Officers.

"In case any such fines, forfeitures, or penalties shall not be forthwith paid, any such Officer may order the offender to be apprehended and detained in safe custody until the return can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction of such Officer for his appearance at such place and time as shall be appointed for the return of the warrant of distress.

"If upon the return of such warrant it shall appear that no sufficient distress can be had whereon to levy such fine, forfeiture or penalty, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of such Officer, by the confession of the offender or otherwise, that he has not sufficient goods and chattels whereupon such fine or sum of money could be levied, if a warrant of distress were issued, any such Officer may, by warrant under his hand, commit the offender, provided he is not a European British subject, to prison, there to be imprisoned, according to the discretion of such Officer, for any term not exceeding two calendar months when the amount of fine shall not exceed fifty Rupees, and for any term not exceeding four calendar months when the amount shall not exceed one hundred Rupees, and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid on payment of the amount.

"If the offender shall be a European British subject, the Magistrate shall record the facts and transmit such record to the District Court of the district wherein the offender is convicted, and the amount of the fine, forfeiture, or penalty and the costs (if any) shall be

levied in the manner provided for the execution of decrees of the Civil Court."

Agreed to.

THE CHAIRMAN moved the introduction of the following new Section after Section CCXLVIII:—

"No action or other proceeding shall be had or taken against any Officer for any thing done by him in or relating to the imposition or levying of any tax or duty heretofore imposed or levied, with the sanction of the Governor-General of India in Council, or of the local Government; and every Tax or Duty heretofore assessed or imposed by any such Officer, with such sanction as aforesaid, so far only as concerns such assessment or tax or Duty for the current year, may be levied or collected in the manner heretofore sanctioned by the Governor-General of India in Council or by the local Government."

Agreed to.

THE CHAIRMAN moved the introduction of the following new Section after Section CCXXXVI:—

"Whenever an award of hard labor is made under this Act, the Court shall not commute such labor to the payment of a fine under Regulation II. 1834 of the Bengal Code."

Agreed to.

Section IV provided as follows:—

"Upon every fractional part of one hundred Rupees of the annual value or amount of the property and profits aforesaid, the like proportion of Duty at the respective rates aforesaid shall be charged, but no Duty shall be charged of a lesser denomination than one anna."

Mr. SCONCE moved the omission of the above Section, and the substitution of the following:—

"Upon every fractional part of the annual value of the property and profits aforesaid, which, being less than one hundred Rupees, shall amount to fifty Rupees and upwards, Duty amounting to one-half of the respective rates aforesaid shall be charged. No Duty shall be charged, if the said fractional part do not amount to fifty Rupees."

He said that the object of this amendment was to prevent inconvenience likely to arise by persons being obliged to pay an Income Tax on fractional portions of their income. According to the present Section, a party

would be assessed to the fractional part of even one anna. As this would involve endless trouble and annoyance, he proposed what he believed would not only afford considerable relief to the people, but also prove a much simpler plan, namely, that no Duty should be charged on fractional parts less than fifty Rupees, and that fractional parts between fifty and hundred Rupees should be charged at a fixed half rate. Thus a person drawing five hundred and thirty Rupees would pay the tax on five hundred Rupees only; and a person drawing five hundred and sixty rupees would pay the full rate on five hundred rupees, and a fixed half rate on the remainder.

MR. WILSON said, his Honorable friend appeared to proceed on the principle of "throwing in the odd money." Instead of the amendment making matters simpler, it appeared to him calculated to complicate and confuse accounts. He saw no reason why a man on the receipt of three hundred and forty-nine Rupees, should pay a tax only on three hundred Rupees, or why a man on the receipt of three hundred and sixty Rupees should not pay the same on the sixty Rupees as he would on the three-hundred Rupees.

MR. FORBES said, the proposition of the Honorable Member for Bengal was calculated rather to relieve the Assessors than the public. He could not agree with the Honorable Member that the Section, as it now stood, was in any way troublesome or inconvenient to the party assessed, for all he had to do was to make a return of his income, and it would be the assessors' duty to charge him accordingly. Thus the trouble of computing the charge would fall on the assessors and not on the party assessed, and he saw no reason for lightening the work of the assessors, who would be paid for doing their duty. It had been frequently urged that the unpopularity of the Income Tax arose from the disinclination of the people to decrease the amount of their incomes, but the present proposition would have no effect whatever in removing this objection, because it would still be necessary that the real income should be

returned to enable the assessor to ascertain whether the fifty Rupee limit proposed by the Honorable Member were exceeded or not. It seemed to him, therefore, that the only result of carrying this motion would be to diminish the Government receipts without any relief to the people from that which was said to constitute their main objection to the tax, namely, the necessity for declaring their incomes. He thought that if we were to impose what was certainly an unpopular tax, we ought to obtain for Government the largest return we could.

THE CHAIRMAN said, when we came to remember that the lowest income that would be taxed was two hundred Rupees, he thought it would be unjust to allow persons drawing five hundred and forty-nine or six hundred and forty-nine Rupees to pay nothing for the fractional parts of their incomes.

The Motion was then put and negatived.

After some trifling amendments in Sections XXII and XXIII—

MR. SCONCE moved the introduction of the following new Section after Section XXIV, the object of which was to enable the Collector and Commissioners, of their own authority, to exercise the functions of the assessors in the event of the absence of the latter:—

"The Collector and Commissioners respectively may, at his or their discretion, exercise any of the functions that may be performed by assessors."

Agreed to.

Section L provided as follows:—

"The assessor, not being a Deputy Collector empowered to make assessments under this Act, shall deliver or transmit the said abstract and lists, signed by himself, together with the returns received by him, to the Collector or Commissioners."

MR. SCONCE moved the omission of the words "not being a Deputy Collector, empowered to make assessments under this Act."

Agreed to.

Mr. SCONCE moved the addition of the following words to the Section:—

“If the assessor be empowered to make assessments under Section XXII of this Act, he shall also deliver or transmit to the Collector an abstract of the assessments so made by him.”

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

Section LV provided as follows:—

“If, on the day appointed, the person shall appear, he shall be heard before the Collector or Commissioners sitting with closed doors, and the assessor shall also, if required, attend. The Collector or Commissioners shall hear the statement of the person, and may inspect any books or papers which he shall voluntarily tender, or question any witness whom he shall produce, but they shall not require the person chargeable to produce any books or proofs besides those which he may choose to tender. An oath or affirmation may be administered to any witness produced by the person, but the person himself shall not be sworn, unless he shall desire it. After such hearing the Collector or Commissioners shall modify, abate, or confirm, the surcharge or charge upon such person, or shall, if they think fit, postpone the case for further hearing. After finally hearing the case, he or they shall decide the amount in which the person ought to be charged or surcharged, and shall assess him in such amount. Such decision and assessment shall be final, subject only to such surcharge in the case of fraud as provided in this Act.”

Mr. SCONCE moved the omission of all the words from the words “After such hearing” to the end of the Section, and the substitution of the following:—

“After such hearing or after any further hearing for which the case may be adjourned, the Collector or Commissioners shall assess the amount at which the person aforesaid shall be charged. Such assessment, if made by the Collector, may be revised, on the application of the person assessed, by the authorities to whom the Collector in matters relating to land revenue is subordinate, under such rules as those authorities are by law competent to prescribe. The assessment, if made by the Commissioners, shall be final. In all cases the assessment shall be subject to any surcharge that may be imposed in case of fraud, as hereinafter provided.”

He said that the object of this amendment was to provide that assessments made by Collectors should be open to appeal. He need hardly say that in

the towns of many districts people drawing large incomes would be subject to be surcharged, and if the Collector who would assess them was to be allowed to exercise his own judgment in surcharging where he believed incomes to be understated, it seemed to him (Mr. Sconce) highly essential that the authority proposed to be vested in the Collector should be subject to some supervision. He might add that the Lieutenant-Governor of Bengal entirely agreed in this proposition. In a letter which he had received from the Secretary to the Government of Bengal, it was observed:—

“With reference to your letter of the 13th ultimo, No. 42, I am directed to state on the first of the two points on which you ask the opinion of the Lieutenant-Governor, namely, the agency by which assessments are to be made under the Income Tax Act, that the Lieutenant-Governor agrees with you in opinion that the Collector's orders ought not, in all cases, to be conclusive and final, and if they are made so, he anticipates much inequality and dissatisfaction, many glaring mistakes and great discredit to Government. The right of appeal should, he thinks, remain in these cases exactly as in all others. The Lieutenant-Governor's late experience of the working of the Indigo Act is, I am to observe, very unfavorable to the general conduct of cases wherein there can be no appeal.”

The terms of the amendment which he ventured to submit to the Council were drawn conformably to the Revenue law in Bengal, and would permit the superior revenue authorities to revise the proceedings of their subordinates in these as in other cases. It would be observed that it was not intended by the amendment to touch the assessments of Collectors in Presidency Towns, where the assessments would be made by two or more Commissioners.

SIR MORDAUNT WELLS said, he entertained a very strong objection to the amendment proposed by the Honorable Member for Bengal. If there was one system in the Judicial administration of India, which was more scouted than another, it was the present system of appeals in the Mofussil Courts. A great number of evils sprang from it, and nothing was more desired both by Natives and Europeans than

the abolition of the existing system of appeals. Appeals as at present carried on, on questions of fact, were positively a curse to the country. The Collector was an Officer occupying a position of great responsibility, and his authority should be upheld. He (Sir Mordaunt Wells) was more inclined to place confidence in the decisions of Collectors acquainted as they were with the people of their districts, than in those of a Board composed of members who perhaps possessed no local knowledge. If appeals were allowed and one of them succeeded, the native character was such that every one would appeal, and it would be impossible to collect the tax. He for one should be sorry to see the authority of the Collector diminished in any way by this Act.

MR. WILSON said, he did not understand the wish of the Lieutenant-Governor to be to diminish in any way the authority of the Collector as it now stood. The only object of the amendment was to place this revenue on the same footing as any other revenue; and he should not wish to take upon himself the responsibility of saying that a recommendation coming from so high an authority as the Lieutenant-Governor on such a matter should not be attended to. He entirely agreed with his Honorable and learned friend as to the inconvenience arising from the system of appeals, but he thought that such a consideration should give way to that of justice. It must be remembered that decisions of the Collectors were simply proposed to be made subject to revision under the same rules as in other revenue matters, which he supposed were very stringent and precise. The Lieutenant-Governor was of opinion, from the experience which he had had of the working of the late Indigo Act, that great injustice would be done by refusing appeals in any case. You might stifle appeals if you wished, but you could not get over dissatisfaction. He (Mr. Wilson) saw no reason why the revenue to be raised by this Bill should be placed on a different footing from any other revenue.

Sir Mordaunt Wells

MR. FORBES said, he was not opposed to the system of appeals generally, but the difficulty he felt with regard to the question now before the Council, was the difference of circumstances in the several Presidencies. For instance, in the Southern Presidency, the whole of the appeals would be concentrated in one single Board. There was no intermediate step between Collectors and the Board of Revenue, such as existed in Bengal. If a Collector received promotion, it was to take his seat at once as one of the three Members of the Board of Revenue. It was this circumstance which made the Collectors of Madras a superior set of Officers, that is, more experienced and consequently more fit to be trusted, than the Collectors in any of the other Presidencies. Although, therefore, some inconvenience was likely to arise from the amendment, it was an inconvenience which, he quite agreed with the Right Honorable gentleman, ought not to be an impediment in the way of substantial justice.

SIR MORDAUNT WELLS said that the remarks of the Honorable Member for Madras tended rather to strengthen his (Sir Mordaunt Wells') view of the case. The Honorable Member had shown the practical difficulty of carrying out the amendment, as, in permitting appeals, we should, in fact, be doing an injustice to officers entrusted with most important duties. If an appeal were allowed in one case, there would be an appeal in almost every case, and then there would be appeals in arrears for two years, as in the Sudder Court. Delay in collecting the Income Tax would be highly detrimental. But why should an appeal be allowed in such cases? There was no reason adduced for it. The parties who would come under the Income Tax would in certain districts do everything in their power to embarrass the Government; and he (Sir Mordaunt Wells) strongly urged on the Government not to give them a right to appeal from the decision of the Collector.

MR. HARRINGTON said, he had a few remarks to make, which would

probably remove the objections entertained by the Honorable and learned Judge to the motion of the Honorable Member for Bengal. The amendment did not propose to give an appeal as a right. The words used were "may be revised," not "shall be revised." The rule was therefore permissive only, not imperative. Under the Revenue Rules to which reference had been made, the Commissioner might at once reject an application for revision, if no sufficient grounds were shown in support of it. He (Mr. Harington) quite agreed with the Right Honorable gentleman that, in the face of the very decided opinion expressed by the Lieutenant-Governor of Bengal, who, it was generally believed, was by no means favorable to appeals, they ought not to reject the amendment proposed on his recommendation by the Honorable Member for Bengal.

MR. SCONCE said, his Honorable and learned friend had pronounced appeals to be "curses." Speaking in the same broad sense, he (Mr. Sconce) would call them "blessings," for, if we had no appeals, we had better have no Courts of first instance. He must confess he had a great leaning against absolute power, and he should do all he could to limit it.

THE CHAIRMAN said, two cases appeared to him to be provided for in the Bill. If a person did not make a return, the Collector had the power to assess him in any sum which appeared to him fair, and as a penalty for not making the return, he was liable to a fine of two hundred Rupees. In case he made a false return, the Collector either surcharged him, or, if he considered there was sufficient proof to convict the party of having wilfully made a false return, then he sent him before a Magistrate, who had the power of making him pay three times the amount at which he ought to have been assessed, and in addition inflict on him a fine of five hundred Rupees. Now it appeared to him (the Chairman) that the penalty for not making a return was very small, for a person would rather pay two hundred Rupees than run the risk of making a false return, for which he would be liable to pay three times the amount at which he would be assessed, besides a fine

of five hundred Rupees. For instance, a person whose income was one thousand Rupees a year, would care very little to pay a fine of two hundred Rupees for not making his return, and would always omit to make it. He therefore thought the penalty ought to be severer than provided for by the Section. Then again a person was not bound to produce his books before the Collector if the Assessor had overcharged him. All he had to do was to appear before the Collector with a number of witnesses to prove that he had been overcharged, but the party himself would not be put on his oath unless he wished it. Then, with regard to appeals, he (the Chairman) did not see why a Collector should not be entrusted to decide what amount he should surcharge a person, when the Magistrate had the power, in case of a false return, to make the person pay treble the amount, besides a fine of five hundred Rupees. How was the Magistrate to know more than the Collector what was the treble amount.

MR. WILSON said that the reason why parties were not required to produce any books or papers was that the Commissioner had the power to fix the assessment at what he conceived proper, and it lay on the party himself to produce evidence, if he pleased, to reduce that assessment.

THE CHAIRMAN thought that this would give encouragement to the fabrication of accounts.

After some further discussion the 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 morning, at 7 o'clock.

Wednesday Morning, July 11, 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.,
	and
	Hon'ble Sir M. L. Wells.

INCOME TAX.

The Order of the Day being read for the adjourned Committee of the whole