

Wednesday, 11th July, 1860

PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF INDIA

Vol. VI

(1860)

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

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, Professions, Trades, and Offices," the Council resolved itself into a Committee for the further consideration of the Bill.

Mr. HARRINGTON said that, at the time the Committee adjourned yesterday, they were discussing an amendment proposed by the Honorable Member for Bengal in Section LV of the Bill, the object of which was to allow a revision by the superior revenue authorities of certain orders passed by the Collectors. It had since occurred to him that it would greatly reduce the number of applications for the revision proposed to be allowed, and thus to some extent remove the objections which were felt by some Honorable Members to such revision, if, in accordance with a suggestion which had fallen from the Chair yesterday, some words were added to the preceding Section, limiting the revision in cases falling under Section XLVI of the Bill, and he begged therefore to propose the addition of the following Clause to Section LIV—

"But no person who shall have been charged on an assessment made under Section XLVII shall be heard against such charge if he shall have been served with a notice in the manner prescribed by this Act, unless he can satisfy the Collector or Commissioners that his failure to make the return within the period allowed in such notice was not unavoidable."

Agreed to.

The adjourned debate on Mr. Sconce's Motion to amend Section LV was resumed.

After some conversation, the Motion was by leave withdrawn; and the Section was passed after an amendment, on the Motion of the Chairman, the effect of which was to render the decision and assessment of the Collector or Commissioners under that Section final, subject not only to surcharge in case of fraud, but also to such revision as might be provided in the Act.

The CHAIRMAN then moved the addition of the following Clauses to the above Section :—

"Clause 2.—For the purpose of correcting any mistake in law or for deciding any point specially referred by the Collector, 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 the land revenue is subordinate, if they think fit so to do, under such rules as those authorities shall from time to time prescribe.

"Clause 3.—Before any revision shall be made, the applicant shall deposit with the revising authorities such amount as they may require to be deposited for the purpose of covering costs as hereinafter mentioned.

"Clause 4.—Pending the revision, the applicant shall be liable to pay the Duty aforesaid as if no such application had been made, subject to a refund of such amount as the revising authorities shall direct.

"Clause 5.—If the revising authorities consider the application for the revision to have been frivolous or vexatious, they may order the applicant to pay such amount of costs as they may think reasonable, and such amount shall be retained out of the amount deposited on account of costs."

SIR MORDAUNT WELLS said, he had no hesitation in saying that the amendment of his Honorable and learned friend entirely met his objections, as it was calculated to strengthen the hands of the Collector.

The Clauses were severally carried, and the Section as amended then passed.

Section LIX provided that assessments made by the Collector or Special Commissioners should be final, subject only to surcharge in case of fraud.

MR. SCONCE moved the omission of this Section and the substitution of the following :—

"If the person surcharged shall object to the assessment, such assessment, if made by the Collector, may be revised as provided in Section LV of this Act; or if made by a Special Commissioner, may be revised by any number, not less than two, of the Commissioners aforesaid."

In proposing the amendment, he said that it would suit the change made by the previous amendment.

MR. WILSON said, he thought there should be no appeal at all in cases where persons of their own accord applied to be assessed by the Collector or Special Commissioner for the sake of secrecy. Having made their election, they should be obliged to abide by it.

After some further discussion, the Motion was put and negatived.

A verbal amendment was carried in Section XXIV, on the Motion of Mr. Wilson, the effect of which was to

enable the Government, wherever they thought necessary, to appoint Military Officers and other Europeans, besides Deputy Collectors, to act as assessors.

Sections XCIV and XCV were transposed so as to stand after Section LXIII.

Mr. WILSON moved the omission of Rule 35 of Section XCVII as being already provided for by Rules 31 and 32 of the same Section.

Agreed to.

Section CCXVIII was passed after a verbal amendment.

Sections CCXIX and CCXX were passed after amendments, the effect of which was to increase the penalty for wilfully neglecting or refusing to deliver lists, returns, &c.

Section CXXI (which proposed to authorize the Collector or Commissioners to settle differences between parties respecting deductions to be made on account of Duties) was omitted on the Motion of Sir Barnes Peacock, who thought that parties should be left to settle such matters between themselves.

Mr. WILSON then moved that the Bill be reprinted as amended.

Agreed to.

The consideration of the Bill was adjourned 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.

Thursday, July 12, 1860.

No Member of the Council was this day present.

Saturday, July 14, 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.,
son,	and
H. B. Harrington, Esq.,	Hon'ble Sir M. L. Wells.

PUBLIC CONVEYANCES.

THE CLERK presented a Petition from the Inhabitants of Calcutta

concerning the Bill "for regulating Public Conveyances in the Towns of Calcutta, Madras, and Bombay, and the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca."

Mr. SCONCE moved that the above Petition be referred to the Select Committee on the Bill.

Agreed to.

INCOME TAX.

THE CLERK also presented a Petition from Proprietors of permanently settled estates in Bengal, Behar and Orissa, against the Bill "for imposing Duties on Profits arising from Property, Professions, Trades, and Offices."

PAPER CURRENCY.

THE CLERK reported to the Council that he had received, by transfer from the Financial Department, a copy of a Despatch from the Secretary of State, on the subject of the introduction of a Paper Currency for India.

Mr. WILSON moved that the above communication be printed.

Agreed to.

DEBTORS AND CREDITORS.

The Order of the Day being read for the second reading of the Bill "for facilitating arrangements between Debtors and Creditors"—

SIR MORDAUNT WELLS said, he had already so fully explained the objects of this Bill, that he would not trouble the Council with any further observations in respect to it. He would only mention that the Bill, as it now stood, applied only to Bengal; and as he thought it desirable that its provisions should be extended to the other Presidencies also, he proposed, before moving the second reading of the Bill, that the words "at Fort St. George or at Bombay" be inserted after the word "Bengal," in the 10th line of Section I.

THE VICE-PRESIDENT, in putting the question, said that he thought it very desirable that the other Presidencies should have the benefit of