

Saturday, 25th August, 1855

**PROCEEDINGS**

**OF THE**

**LEGISLATIVE COUNCIL**

**OF INDIA**

**Vol. I**

**(1854-1855)**

Securities and Shares in the said banks"—and to the Bill "for the repeal of the Usury Laws."

Agreed to.

#### COGNIZANCE OF OFFENCES.

MR. ALLEN moved that the Bill "to enable Magistrates to take cognizance of certain offences without requiring a written complaint" be referred to a Select Committee consisting of Mr. Elliott, Mr. Currie, and Mr. Allen.

Agreed to.

The Council adjourned.

Saturday, August 25, 1855.

#### PRESENT :

The Honorable Sir Lawrence Peel, *Vice-President*,  
in the Chair.

Hon. J. A. Dorin,	D. Elliott, Esq.,
Hon. Maj. Genl. J. Low,	P. W. LeGeyt, Esq.
Hon. J. P. Grant,	and
Hon. B. Peacock,	E. Currie, Esq.

#### SMALL CAUSE COURTS.

THE CLERK reported that he had received, from the Officiating Under-Secretary to the Government of India in the Foreign Department, a copy of a communication from the Secretary to the Chief Commissioner of the Punjab relative to the Bill "for the more easy recovery of small debts and demands."

MR. PEACOCK moved that the above communication be printed.

Agreed to.

#### MUNICIPAL TAXES (BOMBAY).

MR. LEGEYT moved the second reading of the Bill "to alter and amend the Laws relating to certain of the Municipal Taxes in the Presidency Town of Bombay, and to legalize certain proceedings connected with the collection of the Shop and Stall Tax."

MR. ELLIOTT said, he had a few words to offer upon this Bill. The object of it was two-fold—first, to abolish a tax which existed in Bombay under the title of the Shop and Stall Tax; and secondly, to impose a rate upon occupiers of houses and tenements, as a substitute for that tax.

With regard to the first object, when he read in the Statement of Objects and Reasons that the tax had been condemned

equally by the Bench of Justices who constituted the Municipal Body at Bombay, by the Government of Bombay, and the Government of India, he thought that there could be no hesitation in agreeing in the proposal to abolish it. But unfortunately, the proposal was encumbered with another which appeared to him to be objectionable. The tax itself had been imposed under the sanction of law; but that law did not provide for its being levied by distress. The custom, however, had been to levy by distress, until one day somebody who refused to pay, and whose property was distrained for default, brought an action for trespass against the officers employed by the Collector, and the Supreme Court decided that the distress was not legal. Since then, the tax had become defunct. The provisions in this Bill which seemed to him liable to objection, were those which proposed to remedy the defect of the law about to be abolished by giving a power of distress for the purpose of collecting arrears of the tax in question. Considering how objectionable and oppressive the tax had been found to be, he thought that it would be much better to abandon all claim in respect of it from the time the Supreme Court declared that distress for its recovery was illegal. He thought that the provisions to which he referred were very unadvisable; and so strongly did he feel the objection that, if those provisions were retained in the Bill, he should have great difficulty in bringing himself to vote for the second reading; and he should be very glad if the Honorable Mover would withdraw the Bill for the purpose of purging it of these obnoxious provisions.

The second object of the Bill was to provide a substitute for the Shop and Stall Tax by levying a rate upon the occupiers of houses and tenements. The proposition for this new tax proceeded entirely on the assumption that the present house-tax or assessment levied under 33 of George III, was in reality paid by owners, and not by occupiers. The Honorable Mover of the Bill, in his Statement of Objects and Reasons, said:—

"It was thought that such a tax would reach persons who had hitherto been living tax-free, and still enjoying the conveniences and comforts provided by the tax-payers."

In the Summary annexed to the Statement of Objects and Reasons, again, it appeared that, an increase of the house assessment being one of the substitutes which had been proposed at different times for the Shop and Stall Tax—

"the Bench objected to this measure, remarking that they consider it unfair that the *landlords* should be the only persons charged with the Police and cleanliness of the Island, while persons possessed of personal property to a larger amount, who required the protection of the Police more than the land-owners and residents of wealth, and who were as much interested in the cleanliness of the Island, were almost exempted from taxation."

Now, he did not know on what grounds this assumption was based ; but it seemed to him a very questionable assumption. He took it as certain that, where a community was growing in numbers and wealth—where there was a growing demand for houses, and the supply was less than the demand—it was in the power of landlords to cast the tax upon tenants, by making it form part of the rent. The incidence of the tax depended entirely upon the circumstance whether there was a growing or a declining demand for houses. If there was a declining demand, no doubt the tenant would take advantage of the landlord, and refuse to pay a rent which would cover the tax : if, on the other hand, there was a growing demand, the landlord would be able to obtain a rent which would reimburse the tax. It seemed to him, therefore, that, however the proposed tax might be designated, its real incidence would be guided by circumstances which the law could not affect. Now, in Calcutta, rent was rising, at least, he knew it had risen considerably since he was here formerly, and he imagined that the state of things was much the same in Bombay ; that, in point of fact, the reverse of the assumption that owners were paying the tax now levied there under the Act of Parliament, was the case ; and that to impose the proposed occupancy rate of  $3\frac{1}{2}$  per cent, would be simply to cast that new burthen upon occupiers in addition to what they were already paying on account of the house assessment. It was a fallacy, therefore, to speak of this as a different tax. Treating it, then, as an addition to the house assessment, the whole question appeared to him to be whether there was any necessity for it, under the circumstances—whether it was necessary for the purposes of conservancy. It appeared from the papers printed as annexures to the Bill, that the Government of Bombay considered it to be a measure of the most immediate necessity, for the purpose of supplying the revenue lost to the Municipal Fund by the failure of the Shop and Stall Tax, and the cessation of the surplus fees formerly paid over by the Court of Requests in Bom-

*Mr. Elliott*

bay. Taking this necessity to exist, he was disposed to entertain the measure, but without pledging himself to the adoption of the Bill in its present state. He desired that it should be well considered whether the proposed additional rate upon houses was the best means of meeting the exigency. At present, he was not prepared to say whether it was or was not. That was a question to be inquired into by the Select Committee, aided by such suggestions as might be received from the community of Bombay when the Bill was published. He desired that the Bill should be published in order to elicit such suggestions.

In conclusion, he begged to say he hesitated to vote for the second reading of the Bill, only on account of the provisions for recovering arrears of the Shop and Stall Tax ; and he would put it to the Honorable Member for Bombay whether he would not withdraw the Bill in order to expunge from it those obnoxious provisions.

MR. LE GEYT said, he understood his Honorable friend's objections to be principally directed against that part of Section I which provided that Section IX of Regulation IX of 1827, and Section V of Act XI of 1845, should be repealed, "save as regards the recovering any arrears of the Shop and Stall Tax which may, at the time of the passing of this Act, be due ;"—and thereafter, against the 23rd Section which provided that

"all distresses and sales heretofore made for arrears of the Shop and Stall Tax due from certain persons under the said Act XI of 1845 Section V, shall be deemed to have been made by competent authority, and shall be taken to be valid and legal to all intents and purposes ; and no action, suit, or other proceeding whatever shall be brought or maintained in any Court of Law or Equity against any person whomsoever for anything done in respect of such distress or sale."

These were the two provisions to which he understood his Honorable friend to object ; and the Honorable Member had suggested that he (Mr. LeGeyt) should withdraw the Bill for the purpose of expunging them.

The reason for the saving Clause in the 1st Section might be stated in a very few words. The Shop and Stall Tax under Act XI of 1845 had been generally assessed, and the greater portion of it had been collected up to October of last year. Difficulty, however, was no doubt found in collecting it ; and some people did not pay ; but the greater majority did. In October 1854, when compulsory process under the

shape of distress was declared by the Supreme Court to be illegal, that decision became known, and then every body declined to pay. The tax, therefore, had ceased to be collected only since October last; and it was thought by the Bench of Justices, and also by the Government of Bombay, that it would be exceedingly unfair on those who had paid from 1845 to 1854, that the persons who had refused to pay altogether should be placed in a better position than those who had contributed their share towards the municipal expenses. That was the sole reason for the introduction of the Clause in question; and really, he did not see the force of the objection which his Honorable friend had taken to it. The tax itself had been declared and acknowledged to be an objectionable and an oppressive tax; but still, its proceeds had been used for a good purpose. The greater portion of the tax had been regularly paid by those who had been assessed to it. Payment had been refused by a few who, probably, saw that the law did not admit of summary process, and chose to take their chance of a civil action. The result had proved that they had judged correctly as to the state of the law. He was not informed what the whole amount of the arrears due was; but he believed it did not exceed rupees 30,000 or 40,000. It could not be said that the tax was an illegal one, because the Justices could sue each defaulter individually for what was due from him on account of it; and, therefore, he (Mr. LeGeyt), in pressing the provision in question, was not asking the Council to do anything which the law did not make the defaulters answerable for. He was only asking for an easy and expeditious mode of recovering what was legally due from them.

With regard to Section XXIII, he could not agree in thinking that it would be right to allow such distrains as were made between 1845 and 1854—and several were made and not resisted—to remain subject to an action for trespass against the Magistrate who had issued the process. Yet, if that part of Section XXIII which provided that such process should be deemed to have been legal were removed from the Bill, such suits might be brought, and, as had been shown in October last, damages recovered on them. Therefore, he really thought that the Section was absolutely necessary to protect Justices of the Peace and their officers from a number of frivolous and vexatious suits by litigious persons.

He thought he need scarcely detain the Council by again going over the grounds which he had stated at the last Meeting for the purpose of showing the urgent necessity which existed for the passing of this Bill.

He agreed with what his Honorable friend had said as to the tax falling upon occupiers. It would fall upon occupiers, and was intended to fall upon occupiers. The Honorable Member had referred to a remark in the Statement of Objects and Reasons that it was intended the tax should reach persons who had hitherto been living tax-free. He admitted that that was the idea which prevailed among the majority of landholders in Bombay. According to a principle of political economy, this might be an erroneous idea, and probably it was so; but still, he believed that that principle of political economy would not be found to apply universally throughout Bombay. No doubt, this or any other tax which indirectly affected rent, would fall entirely upon occupiers in localities where the demand for houses was great, either on account of salubrious situation or other local advantages. In such cases, the owners would, doubtless, have it in their power to demand rents which would include the amount of every tax to which they were assessed on account of these houses. But in Bombay, it so happened that a great number of the larger houses, which were formerly occupied by the wealthiest European residents, had of late fallen into disfavor: preference had been given to new houses erected in more favorite sites: and the former were now to be had for almost any rent. In these cases, he thought that the house tax, or a portion of it, would certainly fall upon the owners; for they were not in a position to make their own terms for rent, and were driven to accept almost whatever was offered to them, or let their houses stand empty.

He did not see, however, why this question of political economy need be brought to bear on this particular Bill. The history of the Bill, as he gathered it from the manuscript papers which had been sent to him from Bombay, showed that this occupancy tax had been recommended in substitution of a proposed income tax. It was first proposed by the Committee of Justices in Bombay who were devising a substitute for the Shop and Stall Tax, to levy an income tax which should reach all residents. That proposition was discussed at considerable length; but so many difficulties presented themselves, and so many doubts as to a proper mode of

assessment arose, that it was abandoned. The occupancy tax was proposed instead—originally, he believed, by a gentleman whose professional avocations as Surveyor to the Justices and Court of Petty Sessions, and general intelligence, made him a very competent judge of the propriety of any scheme of municipal taxation. In a letter to the Government of Bombay dated the 25th of April 1854, the Justices wrote as follows :—

“ Again, a Committee of the Justices, consisting of J. Warden, Esq., A. Spens, Esq., and Bomanjee Hormusjee, Esq., in a Report to the Bench, dated on the 24th April 1852, on the draft Municipal Act, observed that the facility of taxing landed property has probably aided in establishing a system of throwing a very large portion of the municipal taxation on the land-owners, while persons possessed of personal property to a larger amount (who require the protection of the Police more than the land-owners), and residents of wealth who are as much interested in the cleanliness of the Island, are almost exempted from taxation.

“ In lieu, therefore, of raising the House assessment, this Committee recommended the imposition of a tax which should reach all residents. What that Committee proposed was a tax to be levied directly on incomes; and the ascertainment of each person's means within certain *wide* limits would have been necessary.”

This, as he had stated, was found impracticable, and the proposed Occupation Tax was brought forward, based on the same general principle of a tax upon income, by making all residents bear their share of taxation for local purposes; and, in order to obviate one of the chief difficulties, the already assessed value of the house each rate-payer inhabited, was adopted as the most convenient measure of his income.

He found that the same gentleman, Mr. Conybeare, in his place as a Justice of the Peace, had stated, at a general quarter Sessions, that, in England, a man was generally supposed to pay about 1-10th of his income for house rent. Mr. Conybeare said this might be more or less; where the income was large, the proportion would be rather less; and where it was small, the proportion would be rather greater; but generally, it was a fair estimate to assume. He also said that the Occupancy Tax proposed for Bombay would be about one-third of that proportion. The Council would, therefore, see that this Occupancy Tax was not intended by the proposers of it, or by the framers of the Bill, to have any connection with the house assessment, but that it arose from an entirely different proposition: and that, however it might in some cases fall upon the same class of persons on whom, by the laws

of political economy, the payment of the house assessment actually fell, its principle was a tax on the income of those who were now ostensibly free from the payment of other direct imposts. The question had been very fully discussed by the Committee of Justices and the Government of Bombay whether it would not be better, instead of proposing this tax, to increase the house assessment by  $2\frac{1}{2}$  per cent, allowed by 33 of George III. c. 52, without applying to the Legislature for a new enactment. Opinions were a good deal divided on the question. The majority of the Bench of Justices was very much opposed to the measure, and the proposition was thrown over. Since that, however, the Justices had agreed to that increased tax upon houses for the purpose of meeting the exigencies of a water-rate—an object which was very urgently needed in Bombay, and the necessity for contributing towards which was conceded by all classes of the community: and he believed that very shortly, if it was not already done, the house assessment in Bombay would be raised to  $7\frac{1}{2}$  per cent. So that the Public of Bombay had shown, by coming forward as they had done—for he assumed that the acts of the Bench, constituted as it was in Bombay, might be taken as a fair criterion of the views of the inhabitants at large, when no opposition was manifested by those inhabitants to the proceedings of the Bench—that they were fully sensible of the necessity of municipal improvements, and willing to contribute to their construction. For, besides this increased house assessment of  $7\frac{1}{2}$  per cent, there was the Wheel Tax which produced about a lakh a year, and there would be the Occupancy Tax of  $3\frac{1}{2}$  per cent. He, however, fully concurred with his Honorable friend that the Public of Bombay should still have full opportunity of expressing their views on this tax, as he thought that every class of persons whose property was affected by any proposed taxation should have; and he regretted that the Council had not the legal power of calling before them and examining persons likely to be so affected, and recording their evidence. But he was happy to find, in regard to this particular Bill, that its provisions and principles had been well considered and fully sifted, not only by the proposers of it, the Bench of Justices at Bombay, but by the Government and by the Law Officers of the Government; and, finally, it had been framed by Mr. Lowndes, the professional adviser of the Bench, who was one of the most able Advocates at the

Bombay Bar. It did not, therefore, come before the Legislature as the offspring of a hole-and-corner proceeding; but it was a measure acceded to by a body which might be fairly taken to represent the proposed rate-payers, and had been adopted by that body after mature deliberation and discussion. He therefore hoped that Honorable Members would allow the Bill to be read a second time, when it would be referred to a Select Committee, by whom, he felt sure, all well-grounded objections to it, from whatever quarter, would be cheerfully considered.

Mr. CURRIE said, he rose merely to ask for information. The objection taken by the Honorable Member for Madras, as he understood it, referred not to Section I or Section XXIII of the Bill, but to the first part of Section XVIII. [Mr. Elliott signified his assent.] He apprehended there could be no objection whatever to Section I which only provided for the arrears of a tax which had been legally imposed. That was a provision which was generally inserted. Nor, he believed, could there be any objection to Section XXIII which merely gave immunity for past acts. The part of the Bill which seemed to him open to objection was the clause of Section XVIII which said—

"In case of the non-payment of any assessment or of any surcharge which shall become due under this Act, or of any assessment or surcharge which shall have become due before the passing of this Act, under Act XI of 1845, Section V, for the period of eight days after payment of the same shall have been demanded, then, upon proof upon oath before any Justice of the Peace that such assessment or surcharge has been duly made, and such demand made, such Justice is hereby authorized and required to levy the same on warrant under his hand, by distress and sale of the defaulter's goods and chattels."

This would make the Act apply retrospectively.

Mr. PEACOCK said, the Honorable Member appeared to him to be rather out of order. When the Honorable Member rose, he thought that he did so merely for the purpose of asking a question; but he was now proceeding to consider the arguments which the Honorable Mover of the Bill had offered in reply to the objection taken by the Honorable Member for Madras to the second reading of the Bill. He (Mr. Peacock) did not object to the Honorable Member being heard; but as the Council was not now sitting in Committee upon the Bill, he thought the Honorable Member was out of order in addressing the Council after the Honorable Mover

of the Bill had been heard in reply. He thought it was very desirable that the proceedings should be regular.

Mr. GRANT said, he thought that, when a Member moved the second reading of a Bill, he might reserve his speech and also close the debate with a reply.

THE VICE-PRESIDENT said, when a Member rose to ask a question, and that question was answered, it was irregular then to keep that matter up by arguments upon that answer. But, unless the debate was closed, the Honorable Member might speak to the question before the Council. He was not aware that the Honorable Member for Bombay was about to close the debate by a reply, but had supposed him to be speaking in explanation; for he himself had wished to say a few words on the subject before the Council; and, therefore, he thought that the Honorable Member might be permitted to proceed, and the debate be considered as still open. The Honorable Member (Mr. LeGeyt) might, if he wished, still close the debate with a reply.

Mr. CURRIE said, his object simply was to ascertain that the objection taken by the Honorable Member for Madras was not to either the 1st or the 23rd Section, as supposed by the Honorable Member for Bombay, but to the 18th.

Mr. ELLIOTT said, the 18th was the Section to which he objected.

Sir LAWRENCE PEELE said, he had a few observations to offer on this Bill. He had waited intentionally to hear the reply of the Honorable Member who had charge of the Bill to the criticism which had been passed on certain parts of it, in order that he might be fully informed of the reasons on which those parts of it were founded. He thought that the 1st, as well as the 18th Section, embodied the principle to which the Honorable Member who had spoken first in the debate (Mr. Elliott) objected. [Sir Lawrence Peel here read the Sections.] He himself did not object to the remedy for the recovery of the arrears. He agreed that, in general, legislation should provide for the future, and not act upon the past. But if he understood the matter aright, no illegality had been imputed to the rate itself; but it had merely been decided that the remedy by distress, which had prevailed in fact, had no legal foundation. Still, though this peculiar remedy had been forced to be discontinued, the right to recover the rate, and the liability to pay it, remained. It was both a moral and a legal obligation, and an honest and

good citizen would have complied with it. Whether it was a wise course or not to institute no proceedings before any Court for the payment of the assessment, it was not for him to say. He supposed that, though the particular remedy by distress had failed, some remedy by action might have been found, and success in one instance would probably have induced others to do what they were bound to do. But the question was, not whether any other remedy existed, but whether it was not too cumbrous and costly for such small demands. Now, it had, undoubtedly, been a common course of legislation, in providing new and less expensive Courts, or a new and simpler and less expensive procedure in existing Courts, to provide as well for the past and present as for the future; and this course of legislation was not open to the objection of an *ex-post-facto* law, making acts that were unprohibited at the time of their commission penal by force of retrospective legislation.

On the other point, he had merely to observe that it would be competent for a Select Committee to examine into the subject of the local taxation at Bombay: and he thought that that would be the best course. He was not prepared now to enter on the discussion of so knotty a point as that of the exact incidence of a tax like the present—on whom the burthen would ultimately rest. The consumer had not been alluded to in the debate; but it might probably be found that the tax, or a portion of it, would ultimately fall on him. He believed that, in fixing rates or similar local charges on the occupier, nothing had been thought of beyond the ease of ascertaining the party liable to the charge, and the greater facility of collection. Such provisions were to be found in the English Statute Book at a time when Political Economy, as a science, was unknown. For instance, the original Act imposing a Poor Rate laid it on the occupier; and though personal property was liable to be assessed under that Act, yet such difficulties were thought to beset the subject, that the local authorities had quailed under the task, and the Courts had certainly not striven to give effect to the Statute. Yet, when the State required for State purposes a similar impost, the difficulties which had been thought insuperable as to a local assessment, were soon surmounted. No doubt, the necessity in a local assessment, of considering only the local visible personal property, might appear to give a character of inequality to a local rate on personal property. But this objection

was not confined to that kind of property. There might be great difficulties here in tracing and ascertaining the property which an inhabitant possessed, and that difficulty might be so great as to prevent the imposition of the fairest and most equal tax. But into these matters, the Select Committee should inquire. The rate ought certainly not to be double on the same property. It was fit that the owner, as occupier, should be rated when occupier; and it might be prudent and right to tax the owner, in the case of small tenements occupied by poor tenants, and subject to frequent changes; but a tax both on owner and occupier of the same house, when the rate was not distributed between them according to their respective beneficial interests in the same, had certainly the appearance of a double tax on the same property; and if it were viewed, as to the landlord, as a tax on property, then the question might be asked—why was this class of property alone to be so subjected? He did not, therefore, with the imperfect knowledge of the subject which he now possessed, pledge himself to vote for the third reading of the Bill; but he thought that it would be right that the Bill should be read a second time, and considered fully by the Select Committee—which was the principle on which he had proceeded in the debate on the Bill for lighting the town of Calcutta with gas.

Mr. LeGeyt's Motion for the second reading of the Bill was then put, and carried.

Mr. LEGEYT then moved that the Bill be referred to a Select Committee consisting of Mr. Elliott, Mr. Allen, Mr. Currie, and the Mover.

Agreed to.

#### NOTICES OF MOTION.

Mr. CURRIE gave notice that, on Saturday next, he would move for a Select Committee to take into consideration the Projects of Law which have been proposed at different times relating to Cattle Trespass, and to prepare such Bill or Bills as may be necessary with reference thereto.

Also, that he would move the second reading of the Bill "for making better provision for the care of the persons and property of minors, lunatics, and other disqualified persons in the Presidency of Fort William in Bengal."

And of the Bill "to explain and amend Regulation X of 1793, and Regulation LII of 1803."

The Council adjourned.

*Sir Lawrence Peel*