COUNCIL OF GOVERNOR GENERAL

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Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Government House on Friday, the 8th March, 1867.

PRESENT:

His Excellency the Viceroy and Governor-General of India, *presiding.*
His Honour the Lieutenant-Governor of Bengal, K.C.S.I.
His Excellency the Commander-in- Chief, G.C.S.I., K.C.B.
The Hon'ble H. Sumner Maine.
The Hon'ble W. Grey.
The Hon'ble G. Noble Taylor.
The Right Hon'ble W. N. Massey.
The Hon'ble Colonel Sir H. M. Durand, C.B., K.C.S.I.
The Hon'ble Mahárájá Dhíraj Mahtab Chand Bahádur, Mahárájá of Burdwan.
The Hon'ble H. B. Riddell.
The Hon'ble E. L. Brandreth.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble C. P. Hobhouse.
The Hon'ble J. Skinner.
The Hon'ble D. Cowie.

CIVIL COURTS (JHÁNSÍ) BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill to define the jurisdiction of the Courts of Civil Judicature in the Jhánsí Division, be taken into consideration. He said that the Committee had made no alteration of importance, but the Hon'ble Mr. Brandreth, who was present at one of its meetings, had stated that Section 19 had not been found to answer well in the Panjáb. That Section provided that:—

"The Deputy Commissioner may direct the business in the Courts subordinate to him holding their sittings at the same place, to be distributed among such Courts in such way as he shall think fit. Provided that no Court shall try any suit in which the amount or value of the claim shall exceed its proper jurisdiction."

That was the rule copied from the Central Provinces Courts' Act, and the same as that laid down in the Code of Civil Procedure; and it seemed to him (MR. MAINE) just and reasonable. For some reason, however, peculiar to the Panjáb, it was said that the rule had not worked well in that Province and that, in fact, it had become a dead letter. There was, however, some difference between the Panjáb and the Central Provinces where the rule had worked satisfactorily; and probably it would be found that in this respect Jhánsí resembled the Central Provinces rather than the Panjáb. MR. MAINE perceived that the Hon'ble Mr. Brandreth had placed on the List of Business a notice of motion for leave to bring in a Bill to empower Deputy Commissioners in the Panjáb to distribute the business in the subordinate Courts. He would suggest that a communication be made to the authorities in Jhánsí and the Central Provinces, as to whether any such change was desirable, and should the reply be in the affirmative, power could then be taken as to that District and those Provinces. MR. MAINE did not however wish to delay the passing of the present Bill, nor, on the other hand, did he wish to introduce a provision such as Mr. Brandreth proposed for the Panjáb without affording the Local Government an opportunity of expressing their opinion on the subject.

The Committee had added, at the suggestion of the High Court of the North-Western Provinces, Sections empowering that Court, in the exercise of its extraordinary original civil jurisdiction, to call up and determine suits instituted in the Jhánsí Courts, to exercise powers of superintendence of such Courts to call for returns and to frame rules of practice.

The Bill, as referred to the Committee, provided that it should come into operation as an Act from the 1st March 1867. The Committee had substituted such day as the Local Government shall declare by notification in the official *Gazette*.

The Hon'ble MR. BRANDRETH said, he had received a note from Major McNeile, at present Commissioner of Delhi, but formerly Commissioner of the Jhánsí Division, in which he mentioned the Bill now before the Council, and stated his opinion that the Deputy Commissioners ought to be allowed to distribute the business of the Courts subordinate to them as they thought fit. No doubt further enquiry ought to be made before such an amendment could be made in the Bill; he would therefore gladly adopt Major McNeile's suggestion if he obtained leave to introduce the Bill to enable Deputy Commissioners in the Panjáb to distribute the business in the subordinate Courts, which

stood his in name in the List of Business for the day. He thought that power should be taken in the Bill to extend it to other Provinces, such, for instance as Ájmír.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill as amended be passed

The Motion was put and agreed to.

ADMINISTRATION OF JUSTICE (DARJÍLING) BILL.

His Honour the LIEUTENANT-GOVERNOR moved that the Report of the Select Committee on the Bill to make further provision for the administration of Justice in the District of Darjíling, be taken into consideration. He said that the Select Committee had very materially altered the scope of the Bill, which was originally intended simply to substitute the Commissioner of Kúch Behár for the Judge of Dináipúr as the proper Court in which Civil and Criminal cases should be heard; but it appeared that there was no longer any necessity for continuing special jurisdiction in Darjíling, or maintaining it on a different footing from that on which all other districts in the Lower Provinces now stood. Of course, therefore, it was advisable to repeal the special Act altogether, and to leave the administration of Civil and Criminal justice in Darjíling to be governed by the Codes of Civil and Criminal Procedure. The only difficulty which arose was as to whether the jurisdiction of the High Court would, under those circumstances, extend to Darjíling, that District not having been, at the time when it was placed under the jurisdiction of the High Court, under the operation of the general Acts and Regulations. Therefore, while proposing to repeal Act X of 1863, the Select Committee had added a clause declaring that the High Court shall have and exercise, with regard to the district of Darjíling, all such jurisdiction and powers as it has and exercises with regard to any other territory. The effect of the Bill would be to place Darjíling exactly on the footing of other Districts, and whatever orders might be necessary to define the position of the Courts, or give authority to the Judges, or to constitute Courts of Small Causes in Darjíling, would be made by the executive authority.

The Motion was put and agreed to.

His Honour the LIEUTENANT-GOVERNOR also moved that the Bill as amended be passed.

The Motion was put and agreed to.

TRANSSHIPMENT OF GOODS (BOMBAY) BILL.

The Hon'ble MR. SHAW STEWART moved that the Report of the Select Committee on the Bill to authorize the transshipment, without payment of duty, of goods imported into Bombay by steamers, be taken into consideration. He said that he had a few remarks to make and he was glad to see the Hon'ble Mr. Cowie, who had been a member of the Committee on the Consolidated Custom's Act of 1863 in his place in Council; for MR. SHAW STEWART trustee that the Hon'ble gentleman would bear him out in the observations he was about to make regarding the modifications of the Act of 1863 which this Bill effected. In the Statement of Objects and Reasons, he had stated that Government would lose a certain amount of revenue from the operation of this Bill, but since it had been introduced and published, several communications had been received, expressing doubts whether any revenue was realizable on goods transshipped in harbour, and whether any loss would be caused in the Customs Revenue by the proposed Bill. Those doubts were not altogether unnatural, as the Consolidated Custom's Act did not contain any specific provision on the subject. The Bombay Act of 1852, on which the Consolidated Act of 1863 was in some measure founded, contained a provision (Section 33) which declared that, if any goods brought to any port in any vessel be transshipped in such port, they should in all cases be subject to the same duty as if they had been landed and passed through the Custom House for re-exportation in the vessel into which they might be transshipped. It did not appear from the proceedings of the Select Committee on the Consolidated Custom's Act why any provision of the kind was not included in the Act of 1863, and such a provision would be very desirable. But a careful examination of the Act left no doubt of the intention that the transshipment of goods should be liable to duty. For instance, Section 110 of Act VI of 1863, gave a special permission to consider goods transshipped for removal to ports within British India as warehoused goods. The clear inference was that, whenever goods were transshipped to ports out of British India, they must be considered as landed, and therefore subject to duty. Again Section 182 declared—

> "If two or more vessels belonging to the same owner be at any port in British India at the same time, any articles of marine stores in use or ordinarily shipped for use on board may at the discretion of the officer in charge of the Custom House, be transshipped from one such vessel to any other such vessel without payment of import duty."

clearly meaning that all articles not coming under this description were subject to duty on transshipment. The practice in Bombay had always been to pay full duty on all goods landed, not in bond, and to recover seven-eighths on re-export, one-eighth being considered as the drawback; but it appeared that in Calcutta a different course was followed. Here, when goods were intended for

re-export, they were landed in bond, warehoused and re-shipped free of duty instead of being re-exported on drawback. But, apparently, from the application of the Calcutta Chamber of Commerce, this course was found inconvenient, and the merchants desired to have an easier method of dealing with goods re-exported from Calcutta. This Bill would provide such a course, and it was therefore proposed to extend it to Calcutta and Madras. It would be easy to frame a scale of transshipment fees, ample to cover any loss or extra cost that might be caused to Government, and sufficiently low to suit the wishes of the mercantile community; and to make the transshipment of goods very much simpler than the elaborate system now in force.

His Honour the LIEUTENANT-GOVERNOR wished to ask whether there was any particular reason why the operation of the Act should not be extended generally to all ports in India, as well as to Calcutta, Madras and Bombay—why, for instance, should the Act not apply to such ports as Rangoon and Chittagong? It seemed to him that the same rule should be equally applicable to those ports.

The Hon'ble MR. SHAW STEWART said that it had never been represented that any inconvenience had been suffered in the smaller ports, and he believed the transshipment of goods did not take place except in the larger ports.

His Excellency THE PRESIDENT suggested that, as regarded the minor ports, a short Bill might hereafter be introduced if it were found that the inconvenience complained of in the larger ports were felt in them.

The Hon'ble MR. COWIE was under the impression that the Bill was to apply to sailing vessels as well as to steamers. He thought that the necessity might arise as regarded sailing vessels, but perhaps not so frequently, and he saw no reason why the same rules should not apply to sailing vessels as to steamers.

The Hon'ble MR. SHAW STEWART, in reply to the remark of the Hon'ble Mr. Cowie, said that he found the following sentence in the Report of the Select Committee:—"We do not find any case made out for extending the Bill to goods imported in sailing vessels." Sailing vessels were not generally in such a hurry to discharge their cargo and start on another voyage as steamers were, and the necessity for the law had first arisen out of the case of goods imported by steamers only, no instances having been shown in which its provisions were required for goods imported by sailing vessels.

The Right Hon'ble MR. MASSEY said, the inconvenience with regard to steamers was entirely in consequence of the rapidity with which they required

to work, and there was not the slightest ground for extending the provisions of the Act to sailing vessels. Nor did he think that it was necessary to extend the Act to the minor ports, because cases of transshipment were of rare occurrence there. If a practical necessity should hereafter arise, and proper representations were made to Government to extend the Act to the inferior ports, it could be taken into consideration hereafter as explained by His Excellency the Viceroy. But it was desirable that at present the Act should apply only to the larger ports.

The Hon'ble MR. SKINNER thought it would be desirable if a maximum fee were fixed in the second Section, but great difficulty had apparently been experienced in endeavouring to fix the amount. He trusted, however, that the concluding sentence of the preamble might be taken as a pledge on the part of Government to levy as small a fee as was consistent with the necessity of the case.

His Excellency THE PRESIDENT thought that that matter should be left to the discretion of the Executive Government.

The Right Hon'ble MR. MASSEY apprehended that under the Consolidated Customs' Act, a wide discretion was left to Government in such matters : there was no necessity, therefore, for legislation on the subject.

The Hon'ble Mr. SKINNER made the remark as he believed it was usual in such cases to name a maximum fee.

His Honour the LIEUTENANT-GOVERNOR said that, speaking for himself, the fee to be imposed in the port of Calcutta would be settled, as all such matters were, in communication with the leading members of the commercial community.

The Motion was put and agreed to.

The Hon'ble MR. SHAW STEWART said that there were two verbal amendments which it would be necessary to introduce before the Bill was passed : one was the omission of the words " at his discretion and " in the 7th line of Section 1. The Select Committee intended that those words should be struck out, but they had been allowed to remain by an oversight. The other amendment was the insertion of the words " at the port of transshipment, " after the words " payment of duty " in the 13th line of the same Section. It would only be in the port of transshipment that the duty under this Bill would be payable : at the port of final destination the goods would be liable to the same duty as other goods.

The Motions were severally put and agreed to.

The Hon'ble Mr. Shaw Stewart also moved that the Bill as amended by the Select Committee, together with the amendments now adopted, be passed.

The Motion was put and agreed to.

EXEMPTION OF VILLAGES (BOMBAY) BILL.

The Hon'ble Mr. Shaw Stewart asked leave to postpone the presentation of the Report of the Select Committee on the Bill to exempt certain villages in the Bombay Presidency from the operation of the Regulations and Acts in force in that Presidency.

Leave was granted.

REGISTRATION OF BOOKS BILL.

The Hon'ble Mr. Hobhouse asked leave to postpone the presentation of the Report of the Select Committee on the Bill to provide for the preservation of copies of books published in British India, and for the registration of such publications.

Leave was granted.

DISTRIBUTION OF BUSINESS PANJÁB COURTS' BILL.

The Hon'ble Mr. Brandreth, in moving for leave to introduce a Bill to enable Deputy Commissioners in the Panjáb to distribute the business in subordinate Courts, said that there was an Act (XIX of 1865) called the Panjáb Courts' Act, Section 13 of which provided that every suit should be instituted in the Court of the lowest grade competent to try it. That was qualified to some extent by the following Section, which provided that the Deputy Commissioner might direct the business in the Courts subordinate to him, holding their sittings at the same place, to be distributed among such Courts in such way as he should think fit. What he wished to provide for was that the Deputy Commissioner might direct the business, not only in Courts holding their sitting in the same place, but in all Courts subordinate to him, whether holding their sittings in the same place or in any other. Those Sections of the Panjáb Courts' Act continued the same procedure as in Lower Bengal and the North-West Provinces; but they had been considered inconvenient and troublesome in the Panjáb. In the North-West Provinces and Bengal, the limits of the jurisdiction of the subordinate Civil Courts were determined by the number of Civil suits likely to be instituted: a rule, therefore, which required them to dispose of all suits instituted appeared appropriate. But in the Panjáb, the Tahsíl Courts were the Courts of the lowest grade, and their limits were determined with reference to the amount of revenue to be

collected. It was quite impossible that the Tahsíldárs could dispose of all the suits which might be instituted within those revenue limits.

Some years ago enquiries were made as to the relative proportion of Tahsíl work to be made over to the Tahsíldárs, and it was found that forty per cent. was the maximum. That scale was issued in accordance with the direction of His Excellency at the time he held the office of Chief Commissioner of the Panjáb. By that provision, the work was fairly distributed; the Tahsíl Courts were not over-burdened, and the Assistant and Extra Assistant Commissioners had their fair share of work. The primary work of the Tahsíldár was the collection of revenue, and in connection with that work, he had a great variety of work to attend to. That scale of distribution continued until the Panjáb Courts' Act, 1865, was passed. Since that time the civil suits had been instituted in the manner there directed, and consequently the Tahsíldárs had not been able to decide any thing like the number of suits instituted, and the undecided suits had to be transferred to other Courts, to the great inconvenience of the parties concerned. There was just as much necessity for limiting the institution of suits in the Tahsíl Courts now as before Act XIX of 1865 was passed. He would not ask the Council to trust his opinion only, but he had notes from two officers in the Panjáb competent to give opinions on the subject. One was from the Registrar of the Chief Court, who said—

"I don't think that the law which requires suits to be instituted in the Courts of the lowest grade is at all strictly carried out in the Panjáb. In fact it is impracticable to carrry it out."

And then the Registrar went on to show how the limits of jurisdiction were fixed in the Panjáb, and went on to say—

"Hence, if all the cases under 300 rupees in a pargana are to be instituted in the Tahsíl Court, the influx of cases is far too great for the Tahsíldár to dispose of, and there must be a constant system of transfers, harassing alike to the Courts and to the parties; a rule, therefore, which may work well in Regulation Provinces is quite unsuited for the very different system in force here."

The second note was from Major McNeile, the Commissioner of Delhi, who, after describing the straits to which the district officers were put to dispose of the work, concluded by saying that "in all instances delay and trouble to the parties resulted from an institution in one place and a subsequent trial in another." If necessary, Mr. Brandreth could produce the same testimony probably from every officer in the Panjáb. That no remonstrance before the Bill was passed was received from the Panjáb was attributed to the fact that the Bill as originally introduced was much less stringent than when passed. The

draft Act originally provided that suits of all descriptions should be instituted *ordinarily* in the Court of the lowest grade competent to try them, and the Deputy Commissioners would, in that case, have had the same power of transferring cases as before. The object of the Bill which he now asked leave to introduce, was simply to allow the Deputy Commissioner to distribute the business in the subordinate Courts in any way he might think fit.

The Motion was put and agreed to.

SPECIAL APPEALS (PANJÁB) BILL.

The Hon'ble MR. BRANDRETH, in moving for leave to introduce a Bill to amend the law relating to special appeals in the Panjáb, said that the object of this Bill was to get rid of the anomaly and inconvenience introduced by the Panjáb Chief Court Act No. IV of 1866, into the system of appeals in that Province. In order that the Council might understand the inconvenience of the present system of appeal, it would be necessary for him to explain fully what the former system was, and how that system had been modified by the Chief Court Act. The subject was uninteresting, but as it was one concerning the entire system of appeals in the Chief Court of the Panjáb, and was therefore one of some importance, he would beg the attention of the Council for a few minutes to what he had to say. He had here the Panjáb Procedure Code, the third Section of which related to appeals. The first clause of that Section provided that an appeal should lie to the Deputy Commissioner from the order of an Assistant Commissioner, Extra Assistant, or Tahsíldár, and to the Commissioner from the orders of the Deputy Commissioner. It had been made clear by a subsequent ruling, and had also been recognized in the Panjáb Courts' Act, XIX of 1865, which declared that the Assistants and Extra Assistants here referred to, from whose orders an appeal lay to the Deputy Commissioner, were officers exercising certain powers, as defined under that Act. Clause 4 of the Section of the Panjáb Code to which he had referred, provided that the Judicial Commissioner might admit an appeal from the orders of a Commissioner within three months, if special cause should be shown, or if any particular reason should appear. All the appeals there referred to were regular appeals, that was, appeals on which points both of law and fact might be taken under consideration. No provision had been made for special appeals as defined by the Code of Civil Procedure—Act VIII of 1859—a special appeal being, under that Code, an appeal, not on the facts of the case, but on the ground of the decision being contrary to some law or usage having the force of law. And that there was no such thing as a special appeal in the Panjáb was clear from a circular of the Board of Administration, issued in

1852, to the effect that appellate Courts should exercise plenary jurisdiction with respect to the merits in any case coming before them on appeal. The powers of the Judicial Commissioner regarding appeals had also been further defined in a circular dated 6th March 1859, which provided that, when the order of a Deputy Commissioner had been confirmed in appeal by the Commissioner, as a rule no further appeal would lie to the Judicial Commissioner. These orders under the operation of the Indian Councils' Act, would have the force of law. No special appeal was therefore formerly known to the Panjáb; as a rule the only ground on which an appeal could be preferred to the Judicial Commissioner was that the Commissioner differed from the lower Court, and he was not sure whether, for a country like the Panjáb, where there were no pleaders to explain nice points of special appeal to the suitors, any better system of appeals could be devised.

He now came to the Panjáb Chief Court Act, IV of 1866. Section 17 of that Act provided that all special appeals preferred after the date on which the Chief Court was established, from the decrees of Civil Courts of whatever grade in the Panjáb, should be heard by the Chief Court only; and Section 18 provided that the proceedings in the Chief Court in Civil suits of every description should be regulated by the rules of Civil Procedure in force in the Panjáb. He must now explain in what manner the former system of appeals had been modified by the Chief Court's Act, and in what the anomaly and inconvenience he had spoken of consisted. The first question was, could a special appeal lie from a Court of first instance? The Chief Court of the Panjáb had not yet decided that question. In a communication addressed by the Registrar of that Court to the Government of the Panjáb, the Court remarked that "the use of the words 'all Courts of whatever grade,' in Section 17, seemed to raise a question whether a special appeal would not lie from the decision of a Court of first instance. Practically, unless the facts are admitted, and the matters of law in dispute have been separated from them, the case of a special appeal so preferred cannot arise, and it is in the opinion of the Judges desirable to reserve any decision on the point until the case occurs."

The second question was, supposing it were decided that the first appeal was regular, in which points of law and fact might be taken into consideration, how were second appeals to be disposed of? The Chief Court had disposed of this subject. He held in his hand the general rules for regulating the practice of the Chief Court in its appellate jurisdiction. Rule 18 provided that "a special appeal would lie to the Chief Court from all decisions passed in regular appeal by the subordinate Courts on the ground of the decision being contrary to law," and so on. Where material facts were in dispute, the appeal would lie

to the subordinate appellate Courts in their order of jurisdiction. And Rule 19 provided that "application for the admission of appeals from the decisions and orders of Courts of the fourth and fifth grades," that was of Deputy Commissioners and Assistants with full powers, "including special appeals from the decisions of District Courts, should be presented to the Divisional Court. The Commissioner would forward to the Chief Court all special appeals to be heard in conformity with Section 17 of the Panjáb Chief Court Act." Now, whether Section 17 of the Chief Court Act had been correctly interpreted by the Chief Court; whether special appeals were created by that Section at all, considering that no such appeal existed under the former procedure; whether it might not be considered that such words as these in Section 17 "all special appeals preferred after the date on which the Chief Court is established shall lie to the Chief Court only" ought not to be regarded as having any present effect—those were questions on which it was not necessary for him to express any opinion. It was sufficient for him to show that the Chief Court had held that a special appeal had been created, and that such appeal lay to the Chief Court, in co-existence with another appeal on the facts to another Court. It was by no means clear, from the rule of the Chief Court, what was to be done when both points of law and fact were at issue, but the anomaly and inconvenience which must arise from a system of appeals in accordance with which one part of the same appeal had to be decided by one Court, and another part by another Court, were too obvious to need further comment. Before the Act was passed, the Judicial Commissioner of the Panjáb remonstrated against those Sections. The Hon'ble Mr. Cust, who was in charge of the Bill, mentioned to the Council that the Judicial Commissioner had remonstrated, but he did not state the grounds of that remonstrance: at all events, if those grounds were stated, they did not seem to have been recorded. MR. BRANDRETH was not aware whether those objections were the same as the objections he was now urging. In regard to the provision which required the Commissioner to forward the appeal to the Chief Court, he would observe that it was not always easy to determine whether a special appeal lay or not. He knew that, as Commissioner of the Rawal Pindi Division, which was the office he last held, his time was constantly taken up in sending appeals to the Chief Court on the ground that they were special appeals, and in receiving them back for trial on points of fact, a circumstance which would tend to the special confusion and inconvenience of the appellants.

There were three ways in which the confusion might be got rid of, and he had to consider which of those ways ought to be adopted. The first

way would be to introduce the entire appeal system of the Code of Civil Procedure, Act VIII of 1859. That system prevailed, not only in the Regulation Provinces, but in Oudh, the Central Provinces, and the Jhánsí Division—in fact in all the Provinces except the Panjáb. There was something therefore to be said in favour of introducing that system into the Panjáb. If that were done, the difficulty in regard to second appeals would at once be got rid of. On the other hand, the Lieutenant-Governor of the Panjáb and the Chief Court had deliberately resolved on retaining the present system of appeals. The number of suits instituted in the Panjáb was equal to the whole number in Bengal, and double the number of suits instituted in the North-Western Provinces. Now, if the floodgates of special appeals in the Chief Court were once opened, perhaps fifteen Judges might be required to dispose of them, an expenditure which the Hon'ble Mr. Hobhouse would not like to provide for out of the funds which he hoped to expend in a more beneficial manner in improving the Courts of the lower grades. He (MR. BRANDRETH) could not therefore undertake to introduce that system on his own part. The next system was what was called the Panjáb system, under which no special appeals were allowed; if that system were adopted, the two Judges of the Chief Court might not have sufficient occupation; also the proceedings of the Council with reference to the passing of the Panjáb Chief Court's Act left no doubt that it was intended that a special appeal should in some way lie to the Chief Court. He could not, therefore, advocate that plan. The only remaining plan was merely to alter the wording of Section 17 of the Chief Court's Act to the extent to which he had referred. That could be done by providing that a special appeal should lie from the Court of the Commissioner only, and not from any other Court. The Bill could give, in the first instance, a definition of a special appeal, in which he proposed to go ahead even of Bengal and the North-Western Provinces, in taking the definition of a special appeal from Sir Henry Harington's new Code of Civil Procedure, instead of from Act VIII of 1859. The only provision of the Bill would therefore be that to which he (MR. BRANDRETH) had already referred, that a special appeal should lie to the Chief Court from the Court of the Commissioner only, and not from any other Court. That was the object of the Bill which he now asked leave to introduce.

The Motion was put and agreed to.

ADMINISTRATOR GENERAL'S BILL.

The Hon'ble MR. HOBHOUSE presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to the office and duties of Administrator General.

SÁRAÍS AND PURAOS BILL.

The Hon'ble MR. RIDDELL presented the Report of the Select Committee on the Bill for the regulation of public Saráis and Puraos.

LICENSES' BILL.

The Right Hon'ble MR. MASSEY introduced the Bill for the licensing of Professions and Trades. He said he had had the advantage of revising the clauses of the Bill in consultation with some of his colleagues, and the result was that some of its provisions had been amended. It had been represented to him that the local taxation in some parts of the country bore rather heavily on the inhabitants, and that it would be desirable and equitable to exempt from the operation of this Bill those portions of the country in which taxes of a local description had been imposed for local objects. He was rather reluctant to make that concession, because it might have a tendency to confuse the limits between local and imperial taxation; but when it was considered that it was very desirable to encourage the objects for which those local taxes were impcsed, he had been induced to consent to a sort of compromise. The result was that an amendment had been made in the Bill, which would enable the Collector, with the previous authorisation of the Governor General in Council, to make an abatement to the extent of the payment on account of local taxation of the same kind. Another question that arose was as to the mode in which profits should be taxed. The Bill provided for special taxation applicable to Joint Stock Companies. As originally drafted, it expressly applied not only to Joint Stock Companies, but to Trading Associations and private Partnerships of all descriptions, and declared that a person who was a member of a licensed Partnership should not be liable as such to pay separately on his own account; but when they came to apply that rule to partnerships of a private character, great difficulties presented themselves: those difficulties were very much attributable to the social and commercial relations of the Natives, and the mode in which they transacted their business, and questions of considerable nicety would constantly arise, as to whether persons were carrying on business separately, or as partners. It had been thought proper, therefore, to recognize no partnerships except Joint Stock Companies, and in order to effect that object, a clause had been inserted which he would read to the Council:—

"On and after the 30th day of April 1867, every Trading Company or Association in British India whose stock or funds is or are divided into shares and transferable, whether such Company or Association be incorporated or not, and whether the principal place of business of such Company or Association be situate in British India or not, shall take out a license and pay for the same such annual sum as is mentioned in Schedule B to this Act annexed.

Provided that, for any such license which shall be granted between the 1st day of November in each year and the 30th day of April next ensuing, there shall be paid only one-half of such sum. When such Company or Association shall have taken out and paid for a license as aforesaid, no person shall be deemed to exercise a trade within the meaning of this Act solely by reason of any share or interest in such Company or Association. All the other provisions of this Act applicable to individuals shall apply, *mutatis mutandis*, to such Companies or Associations."

The effect of that clause would be that no partnership except Joint Stock Companies would be recognized in that capacity, and therefore a member of a private partnership would pay in respect of his trading profits, but the partners would not be required to pay in addition in their aggregate capacity. That, he thought, would be considered an improvement on the Bill.

There were no other provisions which required particular notice. He would reserve any further observations until he had heard what Members had to say whether in regard to the Bill generally, or with respect to its particular provisions.

The Right Hon'ble MR. MASSEY having applied to his Excellency the President to suspend the Rules for the conduct of Business.

The President declared the Rule suspended.

The Right Hon'ble MR. MASSEY then moved that the Bill be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. COWIE said that, at the conference on this Bill to which the Right Hon'ble Member had just referred, he had offered one or two objections to its details, and although he could not say that he met with any support, he would, with His Excellency's permission, repeat those objections in full Council.

He would first express his entire concurence in the change which the Right Hon'ble gentleman had announced, whereby members of a firm would bear the tax individually instead of collectively. As a partner in a mercantile firm, he (MR. COWIE) would have felt ashamed if it had to contribute only £20 per annum to a measure of taxation like the present.

In the first objection to the Schedule, as he was both a trader and a taxpayer, he would at least get credit for sincerity, when he said that the scale of rating did not go high enough. Under the proposed Schedule, a millionaire banker or trader who made his lákhs per annum, whether by dealing in grain,

or cotton, or hundís, would be subject to an annual tax of two hundred rupees only, which he (MR. COWIE) submitted was far too low. Without saying he ought to be taxed in proportion to his wealth, he submitted that, in such cases, rupees 500 per annum would be a very moderate tax. His second objection was the very revese of the first, that the scale of taxation descended too low. Under clause 6 of Schedule A, a domestic servant, or artizan, or petty-trader earning the small sum of rupees seventeen per month would have to bear a tax of rupees four per annum. To such a person, that was a return to the provisions of the income tax,—a tax which found no favour either in that Council or out of it. Nay, it was worse than a return to it, for the Council would remember that, although the income-tax was originally levied on incomes down to rupees 200, these were, after two or three years' experience, absolved, and the minimum chargeable was made 500. MR. COWIE then moved the following amendments separately—

1*st*.—That a new class be introduced before class II of Schedule A, *viz*.—

"Persons whose annual profits shall be assessed at Rs. 25,000 and upwards...Rs. 500."

2*nd*.—That class VI of the Schedule be omitted.

If he was so fortunate as to carry both amendments. though he was not competent to say what the financial result might be, he was much inclined to think it would give more to the Right Hon'ble the Finance Minister than the Schedule as it at present stood.

The Hon'ble MR. SKINNER said it could hardly be expected that a measure of that sort could be completely equitable without a system of enquiry and inquisition which it was desirable to exclude. The Bill was of limited application, but he thought wider limits might have been adopted, and he was quite of the opinion of the Hon'ble Mr. Cowie, that a class whose annual profits should exceed 10,000 Rupees and be less than 25,000 Rupees should be added, which he thought would bring in a considerable revenue. He had much pleasure, therefore, in supporting the amendments of his Hon'ble friend.

The Right Hon'ble MR. MASSEY said, with reference to the Hon'ble Mr. Cowie's observations, he should on the part of Government accept the boon which Mr. Cowie was willing to offer them. If, in the opinion of that gentleman and the class which he represented, a fair tax was not provided in the Bill with reference to that class, he (MR. MASSEY) would be happy to accept from them £50 instead of £20. If Hon'ble Members concurred, he would be very willing to consent to the addition of a class by which all persons whose incomes were 25,000 Rupees and upwards should pay 500 Rupees. But he could not accept that boon as a compensation for the loss of revenue which the Government would suffer by the removal of the last class, *viz*., those

whese profits varied from 200 Rupees to 500 Rupees. The Hon'ble Mr. Cowie had referred to the income-tax, which, he said, commenced at incomes of 200 Rupees, but was subsequently abandoned as being oppressive. But he (MR. MASSEY) thought there was a wide difference between the mode in which the income-tax pressed and the operation of this Bill. The income-tax began at £20 at two per cent., and this was the rate up to £50. But in assessing only two per cent. on this class of incomes, it was expressly stated by Mr. Wilson that the reason was that by the then proposed license tax, this class of incomes was to be further assessed at four Rupees, which was equivalent to another two per cent., and what was the effect of that? a payment of sixteen shillings against eight, just twice the maximum sum leviable under this Bill. The Hon'ble Mr. Cowie thought the scale went too low, but he (MR. MASSEY) should have thought that the objection should have been the other way. In local taxation of a similar description the point of departure was very much lower than in this Bill. He would refer also to the License Bill drafted by the late Mr. Wilson, which commenced with a tax of one Rupee. But it should be considered what persons were included in class 6 of the Bill—the man deriving an income, from the profits of his business, of from Rupees 200 to Rupees 500, and he was asked for four Rupees. That was a point far above the working classes of this country, and would not affect those who, it might be considered, ought not to be farther taxed. The object was that the tax should not fall on that great class who now bore the burden of the salt tax. An artizan, or servant of the superior class, who earned from Rupees 200 to Rupees 500 a year, was on the same scale as a workman in England earning from 35 to 50 shillings: the English workman had no immunity from taxation, and he never claimed any; he contributed to the Excise and Customs, which fell heavily on the labouring classes. In point of fact, with the exception always of artizans and servants of the lower class whose wages were under 200 Rupees a year, the working population of India were well able to pay four Rupees annually. The petty-traders would in fact escape the tax altogether, as they would always charge it to their customers: the wealthier consumers and not the traders would pay the tax, and the same observation applied to the next higher class. Those classes where chiefly composed of traders who would get their tax out of their customers. He considered that any scheme of taxation calculated to bear only on what were called the rich would involve a principle of confiscation. If you recognized the immunity of what were called the poor, and declared that what were called the rich classes should be exclusively taxed, you would adopt a dangerous principle which he should be very sorry to introduce in this country. A tax commencing at an income of Rupees 200 stood entirely clear of what might be called the labouring classes. He took that point of departure, not on account of the title of the poor to be exempted from taxation, but because they were already

subject to a heavy tax, *viz.*, the salt tax. Therefore, considering that the poor contributed their fair proportion of revenue, and that the classes above them did not contribute at all, the Government were of opinion that those classes should be required to make a fair contribution. With these observations he trusted that the Council would support him in resisting the Hon'ble Mr. Cowie's second amendment.

The Hon'ble MR. COWIE asked if the Right Hon'ble. Mr. Massey would meet him with this concession, to make the minimum profits on which persons should be taxed 300 rupees instead of 200 rupees.

The Right Hon'ble. MR. MASSEY could not make the concession as the point had been well considered.

The Hon'ble MR. SKINNER suggested that the lowest rate of taxation might be reduced to two rupees instead of four rupees as it now stood.

The Right Hon'ble MR. MASSEY thought the sum sufficiently low as it stood.

The Hon'ble MR. RIDDELL appealed to the Right Hon'ble Mr. Massey against the concession made in favour of those paying municipal taxes, such a concession ought not on any principle to be made. For instance, a license tax, say in Calcutta, was now paid by every member of a legal firm, but not by any one drawing a salary. If, therefore, the concession were granted, not only would the municipal fund be benefitted at the expense of the revenue, but one class would be benefitted as against another. Persons drawing moderate salaries would suffer most; they were not liable to a license tax in the town, but they would be liable under this Bill. Those exercising trades would therefore in many cases be exempted. For example, a firm of four persons now exercising a legal profession would pay nothing, for they now each paid fifty rupees to the municipality, which would amount to 200 rupees, and they would therefore pay nothing under this Bill. Again there was an Act lately passed for the Panjáb to enable Municipal Committees to levy any tax they liked, and he did not think they would forego the opportunity of at once imposing a license tax within their respective jurisdictions and thus forestall the Government.

The Hon'ble MR. MAINE said that the Section was so framed that the concession to which Mr. Riddell referred could not come into operation without the previous consent of the Governor General in Council, who would weigh carefully the arguments for and against it, in each case.

His Excellency the COMMANDER-IN-CHIEF said there was a strong argument in favour of the Hon'ble Mr. Riddell's statement, in what was mentioned

by the Right Hon'ble Mr. Massey, when resisting the second amendment of the Hon'ble Mr. Cowie—*viz.*, that one reason why the Government could not sanction the remission of the tax in the case of the 6th class was, that the small traders would in their dealings with their customers generally recover the greater portion, if not the whole of, the tax, which fell on them. HIS EXCELLENCY'S own opinion was that they would probably recover a great deal more than the amount of their tax. That seemed to him to stregthen the Hon'ble Mr. Riddell's argument, because people living on small fixed incomes, such as clerks, would have no such means of relief as traders. That was evidently a reason why such classes were exempted in the schemes of municipal taxation, and it appeared desirable that the Hon'ble Mr. Riddell's objection should be allowed its full weight.

The Right Hon'ble MR. MASSEY said that it was true, as observed by the Hon'ble Mr. Maine, that there was a discretionary power given to grant those concessions, but if that clause stood in the Bill, it would be impossible to resist any application for exemption to the extent of municipal taxation of a simlar description; to do so would be throwing on Government an invidious responsibility which they were not inclined to assume. He had yielded with reluctance to its insertion, and was far from being convinced of the sufficiency of the plea in its behalf. Applications for exemption had at first assumed a much more formidable shape, for they had been asked altogeher to exempt the Presidency towns. They could not make so large an exemption, but made a compromise by deducting from their contribution the amount the tax-payers contributed to existing license taxes. He had only to state the solitary reason which induced him to consent to the exemption as proposed now. Considering that money raised by local taxation was not squandered, but that it had been and would be spent in works of improvement and utility, such as sanitary objects, the formation of roads, and other things which it was desirable to encourage; and considering also that municipal taxation had been imposed at the express instance of Government, he thought that some case had been made out for a limited exemption. In that limited form, he was still willing to make the concession, and he hoped the Hon'ble Mr. Riddell would consent to the indulgence.

The Hon'ble MR. SHAW STEWART said that his vote on the Hon'ble Mr. Riddell's amendment would depend on fate of the Hon'ble Mr. Cowie's first amendment. He (MR. SHAW STEWART) thought that, if the higher class of Rupees 500 licenses were imposed, his objection to the abatement of licenses on account of municipal taxation would be very much lessened.

The Hon'ble MR. RIDDELL still thought that the exemption ought not to be made, but he left it to the Right Hon'ble Mr. Massey to consider the propriety of doing so, and would not press his objection.

The Hon'ble MR. HOBHOUSE said it seemed to him that the possible exemption of those paying municipal taxes would operate in this way. When a person paid a particular municipal license tax, the exact amount of that tax, and no more, would be deducted from the Imperial tax, and the difference would be paid to Government. To take the case put by the Hon'ble Mr. Riddell, that when there were four persons, members of a legal firm in Calcutta, then the whole of the tax would disappear by the exemption; but he (MR. HOBHOUSE) did not understand the law in that way at all. Under this Bill, each of those persons would have to pay Rupees 200; so that only Rupees 200 out of Rupees 800 would be exempted. It did not seem that the whole tax would be lost, but only that portion paid to the municipality. It seemed fair that those persons who paid a license tax for a good purpose should be exempted to that extent. He would take another instance of the operation of the law in Calcutta. Under the third head of the first class of the Schedule, every Company would have to pay Rupees 500, and under the municipal law they would have to pay Rupees 100; it would seem hard that that Company should have to pay the Imperial tax in addition to the municipal tax when others would not. He should wish, before the Council quitted that subject, to know whether the terms of the Section "it shall be lawful for the Government to exempt" were considered to be imperative, and whether it was not intended that it should be so.

The Hon'ble MR. MAINE said that the terms of the Section were certainly not imperative.

The Hon'ble MR. COWIE'S first amendment was then put and agreed to.

The second amendment was put and lost.

The Hon'ble MR. MAINE, with the permission of His Excellency the President, moved the following amendments:—

That the words "the list, or such part or parts thereof as he shall think fit, shall be filed" be inserted after the word "and" in line 8 of Section 11.

Also that the following words be added at the end of Section 20, *viz.*, "but in determining under which of the classes mentioned in the said Schedule A any such person shall be assessed, the Collector shall take into consideration the amount of the pay which such person shall receive in respect of such office employment or commission."

Also that class I of Schedule A be converted into Schedule B, and that the present Schedule B be called Schedule C.

The Motions were severally put and agreed to.

The Right Hon'ble MR. MASSEY moved the insertion, in the interpretation Section, of a clause to the effect that the word "profits" under this Act should mean the gross profits.

The Hon'ble MR. COWIE asked what would be the effect of that interpretation in the case of merchants and traders? A merchant made certain gross profits, but out of that he would have to pay establishment and other charges.

The Right Hon'ble MR. MASSEY thought that it would be impossible to get at a man's nett profits; to require that would be unfair to the Collector. But if the Hon'ble Mr. Cowie should say that, to tax the gross profits would be unfair, he would not press his motion.

The Hon'ble MR. COWIE certainly thought that the nett and not the gross profits should be the measure of taxation.

The amendment was then withdrawn.

The Right Hon'ble MR. MASSEY then moved that the Bill with the amendments adopted be passed.

The Motion was put and agreed to.

The Council adjourned till the 15th March, 1867.

WHITLEY STOKES,
Asstt. Secy. to the Govt. of India,
Home Dept. (Legislative).

CALCUTTA,
The 8th March 1867.

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