

*Monday,
17th December, 1894*

ABSTRACT OF THE PROCEEDINGS
OF THE
Council of the Governor General of India,

LAWS AND REGULATIONS

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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,

1894

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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 Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14).

The Council met at Government House on Monday, the 17th December, 1894.

PRESENT :

His Excellency the Viceroy and Governor General of India, P.C., LL.D., G.M.S.I., G.M.I.E., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I.

The Hon'ble Sir A. E. Miller, K.T., Q.C.

The Hon'ble Lieutenant-General H. Brackenbury, C.B., R.A.

The Hon'ble Sir C. B. Pritchard, K.C.I.E., C.S.I.

The Hon'ble J. Westland, C.S.I.

The Hon'ble Sir A. P. MacDonnell, K.C.S.I.

The Hon'ble Fazulbhai Vishram.

The Hon'ble C. C. Stevens.

The Hon'ble Sir Luchmessur Singh, K.C.I.E., Maharaja Bahadur of Durbhanga.

The Hon'ble Gangadhar Rao Madhav Chitnavis.

The Hon'ble H. F. Clogstoun, C.S.I.

The Hon'ble P. Playfair.

INDIAN TARIFF ACT, 1894, AMENDMENT BILL.

The Hon'ble MR. WESTLAND moved for leave to introduce a Bill to amend the Indian Tariff Act, 1894. He said :—

“On the 1st of March of this year I had the honor of introducing in this Council a Bill for the renewal of the import-duties, which had been abolished in various stages from 1878 to 1882, and explained that the proposal of the Government was to levy duties, except in a few cases, of five per cent.; that Her Majesty's Government had, in view of the financial position, assented to this course, but that they were not prepared at that time to sanction the inclusion of cotton yarns or cotton fabrics among the articles declared liable to duty. The discussions which took place in this Council during the consideration

of that Bill made it evident that the exclusion of these cotton duties was a policy which was not favoured by the individual members of Your Excellency's Council, but which was, for the time at least, directed by Her Majesty's Government, who, through the mouth of Your Excellency, gave us the assurance that if, after an interval sufficient to judge of the position as affected by the new Tariff Act, the course of exchange, and other circumstances, there were no improvement, they would be prepared to receive a further representation on the subject.

"I need not recount the discussions which have since then taken place on this subject. It has been discussed at length both in the House of Lords and in the House of Commons, and the Government of India have also laid before Her Majesty's Government the ample representations which they received on the matter from various public bodies in India. Finally we received the instructions of Her Majesty's Government on the general question in the Secretary of State's Despatch of 31st May 1894, in which, repeating the undertaking given through Your Excellency on 10th March, that Her Majesty's Government were prepared, if necessity arose, to receive proposals on the subject, he laid down the economic conditions which it would be necessary to observe in any proposals we made.

"I am concerned at present only with the question of the import duties on cotton goods, the imposition of which has now been sanctioned by Her Majesty's Government: the condition which has been attached to this sanction I shall deal with when I take up the second part of the duty which to-day's list of business allots to me.

"Under the circumstances which I have stated, I imagine that the Council will require little explanation of me, in justification of the Bill I ask leave to introduce. I do not intend to anticipate the financial explanations that I shall have to give in this place three months hence. I would merely remind the Council that it was by means which were only temporarily available, that in the estimates which I produced last year the revenue was brought within about 30 lakhs of the expenditure: and that was done by taking the exchange at fourteen pence. It is only by a miracle such as we cannot hope for that we shall be able to base next year's estimate upon so favourable a rate; and, even if we did so, we would, estimating on the basis of last year's figures, have to face a deficit of a crore or a crore and a half at least. I consider it to be as certain as anything can be, that depends upon such an unstable item as exchange, that without the

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aid of the cotton duties we shall not be able to present to the Council in March next such estimates as would meet with the Council's approval.

"The necessity of the income derivable from the cotton duties being thus established, it seemed to the Government to be advisable for many reasons that these duties should be introduced as soon as possible, and without waiting for the season when the Financial Estimates come before us in detail. The anticipation of these duties has already, as we are informed, caused considerable orders to be sent to England, and we learn from England also that goods are being shipped in larger quantities than usual, in order that they might arrive before the duties become leviable. To postpone legislation on the subject merely means to divert into the pockets of those importers the profit which I think they would themselves admit properly belongs to the State. There are also other economic disadvantages which arise to us, from a temporary excess of imports. I have no hesitation, therefore, in asking that we may be allowed, under the circumstances, to anticipate the financial arrangements of next year by bringing the proposed duties into effect at once. Even if we are fortunate enough not to require for the balancing of the current year's account the revenue they will bring in, yet we have the heavy deficits of the last two years to make up for, not to talk of the suspension of the famine insurance grant of the current year.

"We have taken the opportunity afforded by the introduction of the cotton duties to revise the Tariff also in some other particulars, keeping in respect of them, however, strictly within the lines of policy explained when the Tariff Bill was introduced in March last. In so far-reaching a subject, it was necessarily impossible to foresee all the difficulties and doubts that would arise in applying the provisions of the Tariff, and, though we have done our best to meet these difficulties, I am bound to admit that in some cases there has been cause for complaint. The main reason for this is that the Tariff is so drawn up as to leave, in some cases, a doubt as to whether certain articles are taxable or not. In a Tariff which has been in force for half-a-century, practice and custom have had the effect of defining pretty clearly the classification for Tariff purposes of the articles which are imported; each variation in the course of trade, each new article which has entered into the list of imports, has, as it presented itself, found its assigned place in the Tariff classification. But when a new Tariff is introduced, after twelve years' abeyance, the changes that have

intermediately taken place in the course of trade present themselves in too great numbers for immediate settlement, and give rise to differences of opinion between the Collector and the payer, or rather to cases in which the latter is not satisfied with the decision of the former.

"I am quite willing to admit that a merchant, who would pay without demur a duty which was clearly imposed upon him by the law, is reasonable in resenting the levy of the same duty when he considers it is imposed upon him only by an interpretation of the law in which he does not concur. However clear the interpretation may be to an officer who is accustomed in his daily duty to deal with questions of classification, the merchant may reasonably claim that the law itself should be set forth in terms which do not leave the question of taxation to considerations which might, even for a short time, be interpreted in one way at one customs port and in another way at another.

"The difficulties and doubts in this respect have mainly arisen out of two causes, and these I shall ask the Council to enable me to remove.

"In the first place, the schedules as they stand at present are statements by classes of the goods that are liable to duty; they make reference to the goods which are free from duty, only when it is necessary to exempt some specified item or items coming under a class which is dutiable. When, therefore, an article is presented to the Collector, the question that has to be decided is, does it, or does it not, fall within one of the specified classes; if it does not, there is no authority to tax it, and it must go free. Now, if the huge variety of articles is considered, and the fact that our Tariff specified 62 classes only, it will easily be seen that there are numerous articles which the importer at least considers do not come within any of the classes, and which he therefore claims should go free. It does not satisfy him to be told that in the trade returns, upon which the Tariff classification was based, the articles in dispute have always been taken within a specified one of these 62 classes.

"In order to remove this cause of variance, we have adopted a principle which is followed by the American Tariff and by several other Tariffs I could name. We carefully specify and define the free headings as well as the taxed ones, and then we add that all unenumerated articles have to pay the general rate of duty. The result is that the contention that some specific article does not fall within any of the Tariff classifications results,

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not in letting it go free, but in subjecting it to taxation. I need not say that this course is adopted only because we believe it carries out the intention of the Legislature, when the matter was under discussion last March. A reference to the discussions in the Council will show that the principle of taxation was that everything should pay duty which there was not some special reason for exempting. This principle is obviously strictly carried out by examining and specifying what ought to be exempt, and then saying that everything else should be taxed. And in fact a mistake in this direction is easily corrected, for the Executive Government has the power of exempting anything that is by law taxable; but a mistake of the opposite kind, the accidental exemption, on a mere technical ground, of some unspecified article while other things of exactly the same character and use are taxed, creates an inequality which cannot be remedied without legislation.

"I may give one illustration of this, which, though it is not the case of an article taxed at the general rate of duty, I select because it arises in connection with the very first article in our schedules,—that of fire-arms. Somebody has invented a gun in which the explosive force is obtained by the release of highly compressed carbonic acid gas. These guns are quite deadly enough for any practical purpose, and ought for any purpose of taxation to be reckoned with fire-arms discharged in the ordinary way, but as the explosion is determined by a mechanical act, and not by combustion of any kind, the arms are not fire-arms and are chargeable with a much lower rate of duty than fire-arms.

"Or take the case of sponges: they were meant to be taxed under the classification of toilet requisites; but unfortunately sponges are used for many purposes besides application to the human body, and this gives occasion to a contention that under the existing Tariff sponges are not always taxable. A similar doubt of the opposite kind has arisen in the case of hops and certain pulses. We omitted all mention of them, with the intention of leaving them free of duty, but the question has arisen whether they are not, under the classification of 'provisions,' taxable at the rate of five per cent. under article 3.

"In these instances and in others we have made the necessary correction in the Tariff, but it is only by actual experience that we can say in how many cases in future similar difficulties will arise. Trade usages and trade nomenclature frequently create differences and difficulties in these points of detail, and the best way to remove them and prevent their interfering with the intended effect of

the law is that which we have adopted, as I have explained above, in common with the American and several other Tariffs.

"The second cause of the difficulties to which I am alluding is the indefiniteness of the lines which divide machinery which is free, articles made of iron which are taxed at one per cent., and hardware and cutlery, including ironmongery, which pays the five per cent. rate of duty. The exemption of machinery was based on the principle that it was undesirable to burden with a five per cent. duty capital employed in the productive industries of the country; but, even while the old Tariff was in force, difficulties were found in restricting the application of the exemption within its intended limits. 'Machinery' is a somewhat wide term, and it gives rise to claims for exemption of 'machines,' which is a still more indefinite and extensive term. We have met this difficulty by giving a somewhat precise definition of machinery, which will, we hope, have the effect of opening the door freely to such articles as represent what may be called the fixed capital employed in productive industries, but will at the same time prevent claims arising for exemption of articles which, though they may bear, in common parlance, the name of machines, have no right to expect entry into India without the same payment of duty which we levy upon nearly all other imported articles. The proposed definition of machinery was circulated to Chambers of Commerce, and other authorities, a short time ago, and has been slightly expanded in consequence of suggestions received.

"These are the two principal directions in which we have amended the Tariff, with the object of making its effect more clear and precise and less liable to question. We hope that the additional clearness which we have imparted to it will remove the difficulties that have arisen in its application, and facilitate and expedite the action both of the Customs officers and of the importing merchants. It will be seen that the inclusion of the free classes, and the more careful definition of the taxable ones, have resulted in increasing the number of articles from 62 to 117, while keeping, as we believe, strictly within the intentions and principle of the original Act.

"We have also, in respect of the other articles of the Tariff of March last, made some amendments in the definitions, chiefly in the direction of expressing them more clearly and removing the chances of doubt as to what they really contain.

"The valuations have also undergone a revision. We receive monthly returns of prices, which in some cases at least are sent also to the Chambers of Commerce, and on the basis of these returns we have examined the valuations in the existing Tariff. The valuations adopted are mostly based on the prices of October, care being taken that nothing special or peculiar to that month has been taken as a permanent or normal value. This revision of valuations is a function which the Executive Government have authority to discharge without special reference to the Legislature, but we have thought it best to combine the operation with the present general revision of the Tariff."

The Motion was put and agreed to.

The Hon'ble MR. WESTLAND also introduced the Bill.

The Hon'ble MR. WESTLAND also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English. He said:—"I have to explain that we have modified the usual form of this Motion in omitting the publication in the local Gazettes. The fact is that it will be necessary for me to propose to the Council that all the requisite steps be taken as soon as possible. I have taken measures that the Gazette of India in which this Tariff will be published will be amply distributed at all the customs ports, so that, so far as regards local knowledge of its provisions, publication in the local Gazettes is not absolutely necessary. The local Gazettes only appear, like our own Gazette, once a week, and, if I were to move that the Bill be published in the local Gazettes, it is quite possible that when the Council came to a full discussion of the Bill it would be found that some of these local Gazettes had not had time to publish it."

The Motion was put and agreed to.

COTTON DUTIES BILL.

The Hon'ble MR. WESTLAND also moved for leave to introduce a Bill to provide for the imposition and levy of certain duties on cotton goods. He said:—

"I have now to ask the permission of the Council to supplement the imposition of import duties on cotton goods by introducing a Bill for the levy of excise duties on certain cotton goods manufactured in India.

"I would not be dealing straightforwardly with the Council if I pretended that this measure was recommended by the Government of India on its own

merits. No Government would desire, except under the extremest stress of financial necessity, to impose a duty upon an industry so deserving of any fostering care which the Government can bestow upon it, as the cotton manufacturing industry of India. The proposal I make is therefore not made on its own merits, but as the necessary accompaniment of the fiscal measure which I have already to-day laid before the Council—a fiscal measure which we believe to be rendered necessary by the financial circumstances in which we find ourselves.

“Her Majesty’s Government, representing the supreme authority in the administration of India, and following the instructions of the House of Commons, have stipulated that if we are obliged by stress of finance to impose an import duty on cotton goods, we must deprive it of a protective character by imposing an equivalent duty upon similar goods manufactured in India, to the extent to which these enter into direct competition with goods imported from the United Kingdom. I do not desire to discuss this condition—it is a decision arrived at by an authority which is as capable of pronouncing a judgment on the economic question as the Government of India is, and which has, by the constitution of the Government of India, the authority to enforce it.

“The part which the Government of India have taken in the discussion of the subject has been, in the first place, to lay before Her Majesty’s Government such arguments on the subject as occur to themselves or as were communicated to them by various representative bodies in this country; and in the second place, after receiving the decision of Her Majesty’s Government on the matter which they accept as a fully-instructed decision, to consider in what manner they can carry out the requirements of the House of Commons, while at the same time conserving to the utmost degree consistent with those requirements the interests of manufacturers in this country, and avoiding to the utmost possible extent all interference with the processes of manufacture and production in this country.

“The Bill which I now ask leave to introduce sets forth in legislative form the method in which we propose to carry into effect the results of our considerations.

“The first question, therefore, to which our enquiries were directed was the extent to which Manchester and Indian manufacturers compete. The details of the subject will be found in the papers laid before the Council, but generally it

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may be said that below the class of yarns described as 24s to 30s, the circumstances of production are such as to give India a natural advantage over Manchester, and above that class they are such as to give Manchester a natural advantage over India. The markets for these different classes of goods, the coarser and the finer, are also to a very great extent distinct.

"Both Manchester and India confine themselves for the most part to their respective spheres of industry, and thus to only a limited extent compete with each other, their processes in each case being adapted to their own spheres and not to their competitors'. In fact, if it were not that, by the continuous advance of the Indian manufacturers in skill and in enterprise, they are beginning, by the manufacture of the higher counts, to invade what has hitherto been the province of Manchester, it might be said that the two classes of manufacture and consumption were entirely distinct.

"The only fear, therefore, that arises to Manchester is that the imposition of a duty of 5 per cent. upon Manchester goods may give such an advantage to the Indian manufacturer in respect of the finer classes of goods, as to enable him, by reason of the difference of taxation, to oust Manchester in an increasing degree from its own sphere of manufacture; and we carry out the condition of non-protection imposed upon us by subjecting to an equivalent excise duty the classes of goods which I have described as primarily belonging to the sphere of non-Indian manufacture.

"We have had some correspondence with Her Majesty's Government as to the precise point where the line should be drawn. The information of the Government of India is that practically nothing below 28s is imported from Manchester, and we, therefore, proposed to limit our tax to counts higher than 24. The Secretary of State, on the other hand, believes, from the information supplied to him, that cloth is imported into India which contains, although in combination with finer yarns, yarns of count 24; and considering Her Majesty's Government pledged to the House of Commons to insist on the avoidance of all protection, desired to make 20s the highest free count. I may explain that there is not the least difficulty in getting the information in question as regards yarns. Yarns are classified by counts, and we know that of the total of imported yarns, only 2 per mille are of count 24 or less. Moreover, as Manchester, though it has the bulk of this trade, has not the mono-

poly of it, the probabilities are that a great part of this 2 per mille represents a portion of the import trade that does not belong to Manchester at all. It is more difficult, however, to gather the exact facts regarding woven fabrics; they are not classified for trade purposes by the counts of the yarn they contain, and it requires an expert examination to decide what the counts of the yarns really are. The fact, therefore, regarding which there is this difference of information between ourselves and the Secretary of State can be solved only by an enquiry of a kind that it is not possible to undertake while a measure like the present one is known to be under consideration, and we have made therefore this arrangement, with the sanction of Her Majesty's Government, that on the first introduction of the Bill we shall fix the line at 20, but we shall take power to raise it to 24, if it is found upon enquiry that woven fabrics imported from Manchester do not, as a matter of fact, contain yarns so coarse.

" Our proposal, therefore, is to levy an excise duty upon all yarns manufactured in mills in India which are above the count of 20, power being taken to exempt up to 24. We do not touch the hand-industry; little or no yarn of the finer counts is now-a-days spun by hand, and what is spun cannot be regarded as competing in the market with mill-spun yarns. Village industry is, however, almost confined to the weaving of yarns, either imported or Indian-manufactured.

" It will be seen from the papers that our first intention was to tax imports of fabrics at 5 per cent., and to tax yarns, both imported and manufactured, at $3\frac{1}{2}$ per cent., these being the rates of the former Tariff. Objection has been raised to this as containing in itself an element of protection, and we now propose to take a 5 per cent. duty all round. The difference in the operation of a 5 per cent. duty upon Manchester and upon India is this. The Indian producer will pay 5 per cent. duty on the yarns, and he will have also to pay something in respect of duty on the stores consumed in manufacture. The Manchester producer has not to pay duty on these stores, but on the other hand he has to pay the duty upon that portion of the value of his fabrics which represents the cost of the conversion of yarn into cloth, and upon the charges of conveyance to India. I do not know which of the two will in this respect have the advantage; in any case the difference will be a very small one.

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“ My discussion of the subject will have shewn the Council that our intention is to tax the production of yarns only,—that is, those of the higher counts,—and to tax cotton fabrics only through the taxation of yarns. It has been a great object with us so to regulate our procedure as to interfere as little as possible with the processes of production. If we tax the yarns, the cotton fabrics which are woven from them will necessarily pay their due share of duty, without our having in any way to touch the weaving departments of the mills. And as regards the taxation of the yarns, the method we have adopted is that of avoiding all interference with the mills themselves and with mill management, and basing our assessments upon monthly returns of production, which we shall lay upon the mill-owners a legal obligation to render to us. We believe we can take steps to prevent incorrect returns being sent to us, and can satisfy ourselves that the returns sent us as a basis of assessment are fairly and truly compiled. The processes of manufacture are such as to require the maintenance in the mills themselves of working-records which afford ample means of testing the returns. The problem set before the manufacturer, when he is producing 20s, for example, is that of producing 16,800 yards of yarn which shall weigh one pound neither more nor less ; and this exact result cannot be attained except by examining and recording the result of each process and adjusting it to a definite standard. Moreover, it must be remembered that the yarns we tax are the finest that are produced in India, and are such as can be manufactured only in mills which are thoroughly well organized and managed. If we draw the dividing line above 20s, the yarn taxed in India will be only about 20 per cent. of the whole production, and if we draw it above 24s, it will be only about 6 per cent. In either case many mills will fall entirely outside the area of taxation, as they do not produce the finer counts at all, and their work and disposal of their produce will therefore be in no way interfered with.

“ We provide that yarns which are intended for export either shall not pay any duty at all, or, if they have paid it, that the full amount shall be refunded.

“ As we do not propose the present measure for the sake of the revenue we intend to derive from it, we do not attempt to justify it by shewing the amount of revenue it will bring in, nor can it legitimately be attacked on the ground that the revenue is too small to warrant the steps we take. The gross revenue I expect from excise duties is only about seven lakhs, and if the dividing line is raised to 24, only about two and a half lakhs ; but the revenue with

respect to which and for the raising of which the Bill is introduced, is that derived from the cotton duties as a whole. This I estimated last March at an annual sum of Rx. 1,350,000, and it would be considerably increased if based upon later figures.

"It remains for me to make some remarks on the manner in which we propose to deal with mills established outside British India. Those in Berar we need not reckon with; these territories are subject to our direct administration, and whatever law we apply to British India we can apply also to Berar.

"In Native States there are only one or two cases as yet with regard to which the question is of any practical importance, and the chief of these are the mills established in the territories of His Highness the Nizam. Our present information is that the yarns produced at these mills are consumed within the Nizam's own territories and do not enter British India at all. If that is the case, the question does not affect us, and is one for settlement by the Nizam's Government. But so far as regards this class of mills the existing law gives us ample power. We can under the Tariff Act declare the territory of any Native Chief to be foreign territory, and thereupon all imports from it become subject to the ordinary duties levied upon goods imported by sea. But to make things perfectly clear we have repeated that provision in the present Bill, and have thus taken power, even without subjecting to duty all imports from any such States, to levy the duties upon all cotton goods so imported, and, if it is necessary, to prohibit importation except by specified routes. If we are burdening our own manufacturers in order to avoid protecting them against Manchester, we shall certainly take steps to prevent the protection, against our own manufacturers, of goods manufactured outside British India."

The Motion was put and agreed to.

The Hon'ble MR. WESTLAND also introduced the Bill.

The Hon'ble MR. PLAYFAIR said :—"I beg leave to reserve my remarks on the Bill introduced by the Hon'ble Mr. Westland until I have had an opportunity of examining it."

The Hon'ble MR. WESTLAND also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English. He said :—"I have already explained the reasons for the shortness of this Motion,

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but I may state that, as a matter of fact, the mill-owners and the Chamber of Commerce of Bombay have in their possession at the present moment the Bill now laid before the Council. I have taken every possible step to keep them informed of the measures which are being taken here. I may also mention that, with Your Excellency's permission, I shall move for a Select Committee on Thursday next. The Hon'ble Mr. Playfair says that he intends to reserve his remarks until that day. It was with the intention of affording every opportunity for the examination of the Bill before discussion upon it in this Council took place that I have taken these special measures to communicate the substance of the Bill to the people interested in it in Bombay, and that I have put off for three days the Motion that the Bill should be placed before a Select Committee."

The Motion was put and agreed to.

The Council adjourned to Thursday, the 20th December, 1894.

CALCUTTA ;
The 17th December, 1894. }

J. M. MACPHERSON,
Offg. Secretary to the Govt. of India,
Legislative Department.