THE

# COUNCIL OF STATE DEBATES

## Volume VI

***(20th August to 17th September 1925)***

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## SIXTH SESSION

OF THE

## COUNCIL OF STATE, 1925

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# COUNCIL OF STATE.

*Monday, the 31st August, 1925.*

The Council met in the Council Chamber at Eleven of the Clock, the Honourable the President in the Chair.

## QUESTIONS AND ANSWERS.

### Abolition of the Super-tax and Reduction of the Income-Tax.

45. The Honourable Lala SUKHBIR SINHA: With reference to my suggestion made in my Finance Bill comments on the 20th March 1925 for the abolition of super-tax and reduction of income-tax rates, will the Finance Member please state what he is going to do in the next year's Budget and whether he is prepared to make any such remission or reduction ?

The Honourable Mr. A. C. McWATTERS: I am not in a position to make any statement about the next year's Budget.

The Honourable Mr. PHIROZE C. SETHNA: Will Government consider the suggestion in regard to exempting from assessable amounts the amounts paid as profits to Life Insurance policy-holders, as is the case in the United Kingdom of late ?

The Honourable Mr. A. C. McWATTERS: I shall be pleased to have the suggestion considered.

The Honourable Mr. K. C. ROY: May I ask whether the question of income-tax as well as of super-tax is now before the Taxation Inquiry Committee, and will the Honourable Mr. McWatters give an assurance to the House that an opportunity will be given for the Taxation Inquiry Committee's report to be discussed in this House before any orders are passed ?

The Honourable Mr. A. C. McWATTERS: I am not sure whether that arises. The question of abolition of super-tax or reduction of income-tax can hardly be said to be before the Taxation Inquiry Committee. Whether they will make any recommendations in regard to these taxes I am not in a position to say. With regard to the second part of the question, I am not in a position really to make any statement. I have no doubt that any important recommendations of that Committee will be open to discussion in both Houses.

### Assessment to Income-tax of Hindu Joint Families.

46. The Honourable Lala SUKHBIR SINHA: With reference to the same speech, will the Finance Member please state whether he has considered the joint Hindu family question that I raised therein about the assessment of income-tax, and what he is going to do in the matter ?

The Honourable Mr. A. C. McWATTERS: As I have explained to the Honourable Member who put this question, there has been some delay in getting the reply and I should be glad if it could be put down for a later date.

EXCLUSION FROM THE AMOUNT OF INCOME TO BE ASSESSED TO INCOME-TAX OF TAXES PAID TO LOCAL BODIES.

47. THE HONOURABLE LALA SUKHBIR SINHA : Is it a fact that, in the assessment of income-tax, the taxes paid to the local bodies, such as house-tax, professional tax, circumstances and property tax and similar other taxes, are not deducted from the amount of income to be assessed ?

THE HONOURABLE MR. A. C. McWATTERS : The Honourable Member's attention is invited to paragraphs 44 and 49 of the Income-tax Manual.

DEVELOPMENT OF THE SUGAR INDUSTRY.

48. THE HONOURABLE LALA SUKHBIR SINHA : With reference to the Resolution, passed in the Council meeting of 12th March 1924, on the establishment of pioneer sugar factories, will Government be pleased to state what additional funds they have provided for the extension of research work for the development of the sugar industry and what action the Provincial Governments have taken since then to improve and extend sugar cultivation in the country ?

THE HONOURABLE MIAN SIR FAZL-I-HUSAIN : The Sugar Cane Research Station, Coimbatore, which is engaged on work of all-India importance, has been taken under Imperial control and made permanent with effect from the current financial year, and an extension of its activities has also been sanctioned involving, during 1925-26, an additional expenditure of Rs. 1,03,600 including a capital expenditure of Rs. 90,000. The necessary provision for this additional expenditure has been made in the budget of the Imperial Department of Agriculture for the current financial year.

A copy of the Resolution referred to by the Honourable Member, which was adopted by the Council of State on the 12th March 1924, regarding the development of the sugar industry, was forwarded by the Government of India at the end of March 1924 to all Local Governments and the North West Frontier Province Administration for information and such action as might be considered necessary, with the request that the Government of India might be kept informed of any developments. So far, only the Governments of Bombay and Assam have reported the progress made in those provinces in the matter of the improvement and extension of sugarcane cultivation. A copy of their letters and of the replies of other Local Governments on receipt, will be placed in the Library.

BUSINESS DONE IN INDIA BY MARINE INSURANCE COMPANIES.

49. The HONOURABLE SIR DEVA PRASAD SARVADHIKARY : (*a*) Would the Government please state the amount of annual business done in India during the last five years by Marine Insurance Companies, brokers and underwriters having their offices outside India and the methods of their business done in or in respect of India ?

(*b*) Is it a fact that these companies and agencies do not issue policies but issue only cover notes and risk notes and certificates ?

(*c*) Is it a fact that these documents are not stamped in any way and these companies and agencies do not pay an income-tax on such business ?

(*d*) If the answer be in the affirmative would the Government please state what the loss of public revenue is on account of such omission ?

(*e*) Do these companies and agencies keep any deposits with the Government of India ?

(*f*) If not, why not ?

(*g*) Do these companies and agencies invest any portion of their income in India or in Indian securities ?

(*h*) If so, what is the extent of such investment ?

THE HONOURABLE MR. D. T. CHADWICK : (*a*) and (*b*) Government have no information.

(*c*) and (*d*) The information required by the Honourable Member is being collected and will be communicated to him in due course.

(*e*) Inquiries are being made and the result will be communicated to the Honourable Member in due course.

(*f*) Under the new Insurance Bill it is proposed to require Marine Insurance Companies to keep a deposit with the Government of India.

(*g*) and (*h*). No information is available.

THE HONOURABLE MR. PHIROZE C. SETHNA : In regard to part (*a*) of this question, will Government be pleased to say if they propose to introduce any provision in the new law whereby brokers carrying on insurance business of any kind will be required to take out licences so that many of the difficulties which now exist might be removed ?

THE HONOURABLE MR. D. T. CHADWICK : The new Bill was circulated for opinion in the beginning of July and any suggestions in regard to it which the Honourable Member may make will be welcomed and carefully considered.

THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY : Is it not a fact that the sea-borne trade of Bengal itself during 1924-25 was valued at 283 crores and the sea-borne trade of other ports is more or less valuable. Is not the interest of the Government involved very large and will not Government take steps to have the matter looked into before the passing of the Insurance Act ?

THE HONOURABLE MR. D. T. CHADWICK : I did not follow the Honourable Member. I do not challenge his figures of the volume of sea-borne trade, but the inquiries I promised about (*c*) and (*d*) of his question are not dependent upon the passing of the new Act.

**REPORT BY KUNWAR MAHARAJ SINGH ON HIS DEPUTATION TO MAURITIUS.**

50. **THE HONOURABLE SIR DEVA PRASAD SARVADHIKARY : Would the Government please state what action is proposed to be taken and when, on the report on Indian emigration to Mauritius by Kunwar Maharaj Bahadur Singh ?**

**THE HONOURABLE MIAN SIR FAZL-I-HUSAIN : The detailed examination of the Report is now in progress, but Government are not yet in a position to say what action will be taken and when final decisions will be arrived at.**

THE HONOURABLE MR. G. A. NATESAN: Will the Government be pleased to state whether, before any action is taken, they will place this matter before the Standing Committee on Emigration?

THE HONOURABLE MIAN SIR FAZL-I-HUSAIN: I shall have that suggestion considered before coming to any decision.

## OUDH COURTS (SUPPLEMENTARY) BILL.

THE HONOURABLE MR. J. CRERAR (Home Secretary): Sir, I move:

'That the Bill to supplement the Oudh Courts Act, 1925, be taken into consideration.'

As I have already had occasion to inform the House, this is a measure of a purely formal character. An enactment has been passed by the Legislative Council of the United Provinces raising the status of the Court of the Chief Commissioner of Oudh to that of a Chief Court. Certain provisions, however, of the local enactment are beyond its competence and require the validation of the Indian Legislature. It is to grant that validation that the present Bill is now submitted to the House. I move, Sir, that the Bill be taken into consideration.

The motion was adopted.

Clause 2 was added to the Bill.

THE HONOURABLE THE PRESIDENT: The question is:

"That this be the Schedule to the Bill."

THE HONOURABLE DR. DWARKANATH MITTER (West Bengal: Non-Muhammadan): Sir, I beg to move:

"That in column 4 of the Schedule after entry (2) of the entries relating to the Code of Civil Procedure, 1908, the following entries be added:—

'(3) In clause 2 (*a*) of section 123 after the words 'High Court' the words 'or Chief Court' shall be inserted.

(4) In clause 2 (*d*) of section 123 after the words 'High Court' the words 'or Chief Court' shall be inserted.

(5) In section 124 after the words 'High Court' wherever they occur the words 'or Chief Court' shall be inserted.

(6) In section 126, clause (*b*), after the words 'High Court' the words 'Chief Court' shall be inserted.'"

The clauses are a necessary consequence of the amendment which has been suggested and which is required to be validated with reference to sections 122 and 123 of the Civil Procedure Code.

They follow as a necessary consequence. If I may just ask the attention of the Honourable Members to the amendments which are sought to be enacted in section 122 of the Code of Civil Procedure, as it now stands, the wording of section 122 is,

"High Courts established under the Indian High Courts Act, 1861, or the Government of India Act, 1915, may, from time to time after previous publication, make rules regulating their own procedure and the procedure of the Civil Courts....."

The words which are sought to be added after the words "Government of India Act, 1915" are "or the Chief Court of Oudh"; that is, the rule-making power is given to the Chief Court of Oudh. In section 123 we have:

"A Committee, to be called the Rule Committee, shall be constituted at the town which is the usual place of sitting of each of the High Courts."

The amendment proposes to add the words " or of the Chief Court " after the words " High Courts ". Then comes sub-clause (*2*) which states :

" Each such Committee shall consist of the following persons, namely :

(*a*) Three judges of the *High Court* established at the town at which such Committee is constituted...."

And my amendment desires to put the words " or Chief Court " after the words " High Court ". It may be said in this behalf that the words " High Court " there may be interpreted with reference to the provisions of the General Clauses Act of 1897, which stands thus :—

" ' High Court ' used with reference to civil proceedings shall mean the highest Civil Court of appeal in the part of British India in which the Act or Regulation containing the expression operates."

Now, " civil proceedings " do not include and cannot include the rule-making power which is given by the Civil Procedure Code to the Judges of the High Courts. Civil proceedings ordinarily mean proceedings in the nature of suits, appeals, applications, and revision petitions, or if they are not suits, section 141 of the Code suggests proceedings in the nature of probate proceedings, or proceedings in the nature of guardian and ward proceedings under the Guardian and Wards Act. But they cannot possibly refer to the function which is given by the Code of Civil Procedure to the Judges of the High Court for adding or altering the rules ; that is a legislative function, that is a function not in connection with civil proceedings which mean proceedings in a Civil Court either in the nature of suits as I have stated, or in the nature of those miscellaneous proceedings which are referred to in section 141 of the Code. It may be said also that those words " 3 Judges of the High Court " have stood for so long in the Code since 1908 when the Civil Procedure Code was enacted. But with reference to that I have to draw the attention of Honourable Members to the fact that up till now, although the Code has been in existence for about 17 years, the rule-making committee under clause (*2*) has not yet been constituted in the High Court of my Province, that is, in Bengal, and I am not aware if it has been constituted in any other Province at all. That is why attention has not been drawn to the difficulty which might arise when a rule-making committee has to be constituted. For the purpose of making my position clear I desire that further addition shall be made of the words " or Chief Court " in clause 2 of section 123. That the Chief Court was not outside the scope of sub-section (*2*) would appear also if you look at the proviso to section 123 which says :—

" Provided that, if the Chief Justice or Chief Judge elects to be himself a member of the Committee...."

That is, the proviso to sub-section (*3*). So that it was not the intention of the Legislature when they framed this section that the Chief Court should be outside the scope of this section. I therefore submit that it is a necessary consequence of the amendment to section 122 and section 123 (*1*) that these words " or Chief Court " should be inserted after the words " three Judges of the High Court." Similar arguments or reasons....

THE HONOURABLE THE PRESIDENT : I think it is better that we take the amendments one by one. It does not necessarily follow that if one amendment is accepted that the others will be accepted, or if one is rejected the others also will be rejected.

THE HONOURABLE DR. DWARKANATH MITTER: I have just one word to say. With regard to civil proceedings by way of illustration, I may just refer this House to section 115 of the Code which is the ordinary revision section which says:

"The High Court may call for the record of any case....."

and interfere in revision. There the words "High Court" will certainly be governed by the provisions of the General Clauses Act, but it could not have been the intention, when the Legislature enacted clause (*24*) of section 3 of the General Clauses Act and used the words "High Court" with reference to civil proceedings, to include the law-making or the rule-making power given to Judges under section 121 or 122. That was with reference to proceedings pending in courts of civil jurisdiction. I move:—

"That in column 4 of the Schedule after entry (2) of the entries relating to the Code of Civil Procedure, 1908 the following entry be added:

'(3) In clause (*2*) (*a*) of section 123 after the words 'High Court' the words 'or Chief Court' shall be inserted'".

THE HONOURABLE SIR NARASIMHA SARMA (Law Member): This Bill has been introduced into the Council for giving validity to section 49 (*l*) of the Oudh Courts Act and we have followed exactly the line which has been taken by the Legislature in Oudh. Section 49 (*l*) of the Oudh Courts Act runs as follows:—

"The enactments mentioned in the First Schedule are hereby amended, or, as the case may be, shall be deemed to be amended, to the extent and in the manner specified in the fourth column thereof. The enactments mentioned in the Second Schedule are hereby repealed....."

We have nothing to do with the repealing provision.

Now, the enactments which have been amended under this Act with reference to the Civil Procedure Code which we are considering are sections 122 and 123. They are exactly the sections in respect of which the words "and the Chief Court" are to be inserted after the words "High Court." Inasmuch as the Legislature of the United Provinces of Agra and Oudh has not the requisite power of affecting the jurisdiction of the High Court we have had to bring in this Bill here, and we have followed exactly the course adopted in the United Provinces Legislature and are amending those sections which have been referred to in the Oudh Courts Act. I shall next deal with the wider aspect of the question which has been referred to by my Honourable friend in order to show that the amendments that he has suggested are unnecessary. Part X of the Civil Procedure Code deals with the rule-making power of the High Courts and draws a distinction between one class of High Courts and another for the purpose of making these rules, the distinction being, as to whether those rules should only be made after the constitution and report of the rule-making committee or otherwise.

The Chief Court which has been now constituted in Oudh is a High Court within the meaning of the General Clauses Act. The Chief Courts of Rangoon and the Punjab, when they existed as such, were also High Courts within the meaning of the General Clauses Act. That has to be borne in mind when we are dealing with these sections in Part X. They are High Courts because,

with reference to the areas over which they have jurisdiction, they are the highest Courts with reference to civil proceedings, the highest Civil Courts of appeal in the part of British India in which the Act or Regulation contained in the expression operates. Although they are High Courts the reason why these Chief Courts have been specifically referred to in sections 122 and 123 and not in the other sections is that the High Courts and Courts referred to in section 122 can proceed only after the appointment of committees. That I shall make clear by referring to these two sections. Section 122 runs as follows :—

" High Courts established under the Indian High Courts Act, 1861, or the Government of India Act, 1915' —

and we propose to add also Chief Court of Oudh—

" may from time to time after previous publication make rules regulating their own procedure and the procedure of the Civil Courts subject to their superintendence and may by such rules annul, alter or add to all or any of the rules in the First Schedule."

That is the rule-making power given to these Courts. Section 123 says :—

" A Committee to be called the Rule Committee shall be constituted."

there is no option there—

" at the town which is the usual place of sitting of each of the High Courts....."

We are concerned with the Chief Court of Oudh here. Turning to section 124, Honourable Members will see that it says :—

" Every Rule Committee shall make a report to the High Court established at the town at which it is constituted on any proposal to annul, alter or add to the rules in the First Schedule or to make new rules and before making any rules under section 122 the High Court shall take such report into consideration."

So, High Courts constituted under the High Courts Act of 1861 and the Government of India Act of 1915 and the Chief Court of Oudh will have to appoint rule-making committees and they will have to take the report of such committees into consideration before the rules are framed, whereas in the case of the other High Courts the constitution of a rule-making committee is not compulsory before rules are made. That is provided for by section 125 which runs as follows :—

" High Courts other than the Courts specified in section 122 may exercise the powers conferred by that section in such manner and subject to such conditions as in the case of the Judicial Commissioner of Coorg, the Governor General in Council, and, in other cases, the Local Government, may determine."

So High Courts other than those referred to in section 122 have got the power of making rules equally with them but they have to make them subject to such conditions and limitations as may be imposed by the Local Government or the Governor General in Council. So, Honourable Members will see that the Judicial Commissioner of Coorg and the High Courts similarly situated will be High Courts which need not appoint rule-making committees within the meaning of this part. That is the reason why we have to insert the words " Chief Court " in sections 122 and 123 in order to make the constitution of a rule-making committee compulsory in the case of Oudh. Dr. Mitter suggests that it is also necessary that we should add the words " or Chief Court " after the words " High Courts " wherever they occur in sections 123, 124 and 126.

]Sir Narasimha Sarma.]

Let us take 123. I submit that the addition is absolutely unnecessary for this reason. Section 123 (2) (*a*) which is sought to be amended runs thus:—

"Each such Committee shall consist of the following persons, namely:

three Judges of the High Court established at the town at which such committee is constituted."

The High Court, with reference to civil proceedings is the Chief Court of Oudh in the present case and the expression "three Judges of the High Court" will mean "three Judges of the Chief Court" because that is the highest Court in Oudh. Therefore there is absolutely no necessity for adding the words "or Chief Court" in clause 2 (*a*). Then clause (*d*) refers to a judge of a Civil Court subordinate to the High Court. Here again the Chief Court of Oudh is the High Court of Oudh under the General Clauses Act. Therefore, a judge of a Civil Court subordinate to the High Court means a judge subordinate to the Chief Court of Oudh, where Oudh is concerned. My Honourable friend referred to the use of the words "Chief Justice" or "Chief Judge" as helping his construction, but the words "Chief Justice" and "Chief Judge" are put in there in order to draw a distinction between the titles conferred upon the principal presiding officers of those Courts. I may state that with regard to the other sections also the position is exactly the same. The distinction between a civil proceeding and the power of legislation to which my Honourable friend referred has no reference at all to these particular clauses. Section 122 confers the power of making rules and we amend it by specifically including the Chief Court of Oudh. I therefore suggest to the House that it is absolutely unnecessary to insert these words in the other places. This question, as I have already said, has been considered by the Legislature in 1908, in 1919 and I think also in 1923 when the Act was amended and on several previous occasions. It has given rise to no difficulty. I believe there is a rule-making committee in Madras, and there are possibly others in some other provinces. It is not quite accurate to say that this power has not been exercised in actual practice by the constitution of rule-making committees.

THE HONOURABLE SAIYID RAZA ALI (United Provinces East: Muhammadan): It appears that there is no difference of any substance between the Honourable Dr. Dwarkanath Mitter and the Honourable the Law Member. After carefully listening to the speech of the Honourable Sir Narasimha Sarma I gather that according to him the amendment involved a question more or less of drafting and he proceeded to argue that having regard to the amendments which are going to be made in sections 122 and 123 it would not be necessary to amend sub-section (2) (*a*) of section 123 or any of the remaining two sections, namely, 124 and 126.

Now the question is a purely legal one, and to me it appears that as there has been no difficulty about the interpretation of these sections action under which has been taken by some of the High Courts including the High Court of Allahabad, there is no likelihood of any very great difficulty arising in the future. Yet this much I must say for the consideration of the official Benches that since we are going to amend sections 122 and 123 and we are

going to invest the Chief Court of Oudh with the same rule-making powers with which the High Courts established under the Act of 1861 or the Act of 1915 are invested, I do not think there will be any harm done if, to further elucidate the point, we accept the amendments of the Honourable Dr. Mitter. If it is clearly made out that those amendments are unnecessary, then no doubt redundant words should not be added to any sections. But the very fact that these two sections are going to be amended, and that further it will not perhaps be possible to accept for this purpose that definition of the High Court which is given in the General Clauses Act, I think it would be safer to have these amendments. In fact, as has been conceded by both the combatants, under section 115 of the Code of Civil Procedure and other sections there is no difficulty, inasmuch as the Chief Court is included in the High Court in the definition given in the General Clauses Act. But I am not quite free from doubt in my mind as to whether the same definition of the High Court can be accepted under Part X of the Civil Procedure Code, especially when you are going to amend two of the sections, namely, 122 and 123. I do not urge that there is no force in the argument placed before the Council by the Honourable Sir Narasimha Sarma, but at the same time I must say that since we are legislating and giving the Chief Court of Oudh rule-making powers, it will be better if we take all the precautions that are necessary and make our meaning quite clear by accepting the Honourable Dr. Mitter's amendment. Coming to the very point, Sir, which according to your ruling is under discussion, it appears that if a High Court is to appoint a Committee, three of its Members should be Judges of the High Court or Chief Court. Dr. Mitter's amendment only makes that point quite clear, whereas according to the Honourable the Law Member, the point is included in the amendment of section 122, namely, if a Committee is to be appointed, three of its Members should be the Judges of the Chief Court of Oudh; I believe that is the argument of my Honourable friend....

THE HONOURABLE SIR NARASIMHA SARMA (Law Member): No. The words used are "three Judges of the High Court established at the town". My suggestion is that the High Court there includes, or is, the Chief Court of Oudh. So the words "three Judges of the High Court" mean three Judges of the Chief Court of Oudh under the General Clauses Act. It is absolutely unnecessary to amend as proposed.

THE HONOURABLE SAIYID RAZA ALI: I am afraid, Sir, I was not quite able to follow the last words of my Honourable friend. The point is this. Will it be necessary, assuming Dr. Mitter's amendments are negatived, or will it not be necessary, for the Chief Court to appoint a Committee three of the members of which should be Judges of the Chief Court?

THE HONOURABLE SIR NARASIMHA SARMA: Yes, it will be.

THE HONOURABLE SAIYID RAZA ALI: If that is so, no doubt much of the wind is taken out of the sails of Dr. Mitter's amendment. But, I submit, since we are legislating, I would rather like to be on the safer side, and on that ground alone I support the amendment proposed by the Honourable Dr. Mitter.

THE HONOURABLE MR. J. CRERAR (Home Secretary): Sir, when doctors in the law disagree, I feel that it is a great presumption on my part

[Mr. J. Crerar.]

to intervene in this debate at all. As Honourable Members have discovered, the point before them is purely a point of draftsmanship. Draftsmanship is an exceedingly technical and abstruse art in which I for one cannot claim to be an expert; but it may perhaps be of some use to Honourable Members who are in the same predicament as myself if I endeavour to put the issue before the House in the perspective in which it should present itself to an ordinary lay mind. It is, I say, purely a point of draftsmanship, and the question is whether the draftsmen who have operated on these particular provisions of the Civil Procedure Code have discharged their duties correctly. Now for my own part, I have been much impressed by the point which was raised by the Honourable the Law Member. He explained that these very provisions of the Civil Procedure Code had been in point in the year 1908. It is therefore a fair presumption to suppose that the language used was then very carefully considered. They were once more in point in the year 1919 when the Chief Court of the Punjab was raised to the status of a High Court. They were in point for the third time when the Chief Court of Lower Burma was raised to the status of the High Court of Rangoon. They were in point for the fourth time when the Act we are now to supplement was in the hands of the draftsman of the Government of the United Provinces, and again when this Bill was examined by the Legislative Department of the Government of India. They were in point for the sixth time when the provisions of the present Bill were before the draftsman of the Government of India. I submit, therefore, that as this point has been in question all along, it is only a reasonable presumption for us to make that it has been very carefully considered by almost six generations of draftsmen. Now I fully recognise that the purpose of my Honourable and learned friend opposite is to help the Government to improve this Bill: and I desire to make my warmest acknowledgments of that intention, but I must nevertheless associate myself with the opposition to the amendment, because I think that my Honourable and learned friend, with all his learning and all his experience, is nevertheless in this respect in a minority of one to six. I should also like to refer to one other point, a point of substance, raised by the Honourable Dr. Mitter. The whole matter really turns on the reference required in section 123 and the other sections to the general provision of law laid down in the definition of a High Court in the General Clauses Act. That really is the whole substance of the case. Now that definition is as follows. I do not wish to intrude on the delicate ground of legal technicalities, but once more I merely wish to put a plain issue as it presents itself to a plain man. The definition is as follows :—

"'High Court' used with reference to civil proceedings shall mean the highest Civil Court of appeal in the part of British India in which the Act or Regulation containing the expression operates."

The Honourable Dr. Mitter is asking the House to draw a distinction in the matter of civil proceedings, between what I think I may roughly call judicial proceedings and administrative proceedings, and it is necessary for his argument to find that distinction either expressed or implied in the definition, and on this his whole case rests. Now, I venture to think that the definition is drawn in very wide terms indeed and that the real distinction is the very much broader distinction between a High Court engaged in civil proceedings

and a High Court engaged in criminal proceedings. In short, in order to establish my Honourable friends contention, he has to show that a High Court engaged in making rules which are to regulate civil proceedings is not acting "with reference to civil proceedings". It seems to me—my brain is not perhaps sufficiently instructed or sufficiently subtle to see and fully apprehend the point—but it seems to me that the distinction relied on by the Honourable Member is a distinction so extremely fine that it has presented itself as absolutely impalpable to six generations of learned draftsmen.

I now turn to the remarks made by my Honourable and learned friend from the United Provinces. I confess I am still in doubt whether he supports or opposes the amendment, and I find it somewhat difficult to make any concrete reply to his observations. So far as I comprehend him, what is said is this. He is very doubtful whether the Honourable Dr. Mitter's amendments are necessary. Indeed, at times, he was very much inclined to think that they were unnecessary. But, above all things, he advises caution. He says, "Do not let us leave any loophole in the Act which will impair the powers which we intend to confer upon the Chief Court of Oudh." Well, Sir, we do hear a great deal in legal discussions about "greater caution," but I venture to think that this is a caution much greater than what the occasion either demands or justifies. It is really a question of draftsmanship and I think my Honourable and learned friend will agree that superfluity or redundancy is one of those errors which a conscientious draftsman will be particularly anxious to avoid. I venture to take my case a little bit further than that. Caution is all very well, but caution in a matter of this kind may defeat its own end. If you have a general rule of law which is recognised as governing a particular set of circumstances, and if you proceed to legislate and set up certain specific and particular provisions, one consequence is, in accordance with the well known maxim *generalia specialibus excluduntur*, that you may to some extent impeach the credit of the legislation, and therein, I venture to suggest, lies the danger into which we might fall if we accept this amendment. We may, consciously or unconsciously, impeach the credit of that definition of a High Court, which as Honourable Members know,—and it is a very familiar fact to lawyers—governs a very large number of enactments and affects the powers of a considerable number of Courts in India. I submit these considerations by way of caution myself, and, in conclusion, I shall merely turn once more to the consideration which as a layman I venture to address more particularly to the laymen of this House. We all have the greatest respect for Dr. Mitter's legal attainments and experience. We have on frequent occasions—and I myself in particular—derived very great advantage from his contributions to debate. But really, in this case, you have Dr. Mitter against, as I have said, six successions of draftsmen. It is not for me to endeavour to appraise the individuals, because many of them are to me anonymous. But as a layman it seems to me that we are more likely to be correct if we follow the views of six generations of draftsmen and decline to be led, possibly astray, by the amendments which have now been laid before us.

The HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY (West Bengal: Non-Muhammadan): Sir, my support of Dr. Mitter's amendments will not be equivocal like that of the Member hailing from the town which

[Dr. Sir Deva Prasad Sarvadhikary.]

is the seat of the Court which we are considering. It is unfortunate but it is a fact that legal subtleties are now more in the ascendant than in the past, and Honourable Members would not and ought not to be surprised if a subtle mind like that of my Honourable friend who has moved the amendments were some day to call into question the validity of the rules framed by the Oudh Chief Court, because of the doubts and difficulties that to a mind like his present themselves and that have been voiced but unheeded. I should like to borrow my Honourable friend Saiyid Raza Ali's argument in favour of caution now that we have the opportunity, caution which is needed from more than the mere technical point of draftsmanship. Referring to any standard annotated text-book on the Civil Procedure Code, Honourable Members will find with reference to section 124 of Part X that although doubts, such as are now suggested, did not present themselves to the mind of the legislator, the commentator had to consider the question whether the rule-making power of section 122 did apply to the Chief Court of Burma so long as it was not a High Court, and one school of commentators did hold in the light of the wording of the General Clauses Act that such powers did apply. The commentator had however to intervene in the matter with notes attempting to clear up what to some at least appeared doubtful. I am not aware, as Dr. Mitter has informed the House, that any real question has yet been raised in any of the High Courts with regard to the matter. The reason is obvious. Even a High Court like that of Calcutta, which is always on the look out for all the powers, in addition to their inherent powers, that they can take under the rule-making powers, has, as Dr. Mitter pointed out, and I should like to bear that out, not yet invoked the assistance of a rule-making committee, although the power has been in existence for 17 years. But that is no reason why the rule-making committee should not come into existence any day they think necessary. The Oudh Court might think it necessary to invoke the assistance of a rule-making committee soon, and when it does, it will be only by implication and not by an overt enactment, implication under clause (3) of section 123, to which the Honourable the Law Member has referred, as affording some power. It will be by implication that their Chief Judge will be appointing the 3 members mentioned in the clause. Where is the harm, I ask, in making the matter absolutely clear and beyond doubt? It will be no reflection on the six generations of draftsmen that have been spoken of and that have preceded. These questions are now beginning to be live questions and should be set at rest in advance. Sir, my Honourable friend Mr. Crerar has gratuitously apologised for the Home Department for intervening in law matters. The Home Department has been enjoying a very considerable monopoly with regard to law matters in this House and elsewhere, and therefore, no such apology is necessary. If complete reliance was to be placed upon the wording of section 3 of the General Clauses Act for the purpose and in the way now mentioned, I might have opposed the introduction of any of the amendments proposed by the Honourable Mr. Crerar. What is the wording of that section?

"'High Court,' used with reference to civil proceedings, shall mean the highest Civil Court of appeal in the part of British India in which the Act or Regulation containing the expression operates."

I should ask, and I think that I should ask with some force, why you are

bringing forward this Bill at all to-day. There is the General Clauses Act which says that "High Court" means any Highest Court of Appeal and therefore the Chief Court of Oudh is included in that and you do not want to protect the interests of the Chief Court by any further legislation. I see my Honourable friend Mr. Crerar shaking his head and quite rightly. I should have shaken my head also, if I was not going to be super-subtle with regard to the matter. But lawyers have a method of discovering difficulties which often do not exist in the lay mind and upon which they thrive. I want to guard myself against the evil day when my Honourable friend Dr. Dwarkanath Mitter or some one like him should raise the question if he was permitted by the Bar that is represented here by the Honourable Saiyid Raza Ali, whether the rules were rightly framed considering that the rule-making power was given by implication and not by legislation. From all these points of view the amendment appears to be more than superfluous and I think that that piece of legislation will be all the better for it.

THE HONOURABLE MR. V. RAMADAS PANTULU (Madras: Non-Muhammadan): When the Honourable the Law Member and the Honourable Mr. Crerar spoke I thought that a case for amendment was not made out, but after consideration of some sections of the Code I feel that the amendment is necessary. Section 122 of the Code of Civil Procedure says:—

"High Courts established under the Indian High Courts Act, 1861, or the Government of India Act, 1915, may, from time to time after previous publication, make rules."

So, the "High Courts" which can make rules are High Courts established under the Indian High Courts Act and the Government of India Act.

THE HONOURABLE SIR NARASIMHA SARMA: And the Chief Court now. We are adding it.

THE HONOURABLE MR. V. RAMADAS PANTULU: In section 122?

THE HONOURABLE SIR NARASIMHA SARMA: Yes.

THE HONOURABLE MR. V. RAMADAS PANTULU: Therefore, the section as it was did not give power to the Chief Court of Oudh to make rules as it was not a "High Court". Similarly, sub-section (*1*) of section 123. I think it necessarily follows that the words "Chief Court of Oudh" should be added in later sub-sections.

THE HONOURABLE SIR NARASIMHA SARMA: We are going to add it. That is one of our amendments. We are adding it.

THE HONOURABLE THE PRESIDENT: The Honourable Member will find that both the amendments to which he refers are in the Schedule to the Bill, last column. They are not the amendments moved by the Honourable Dr. Dwarkanath Mitter.

THE HONOURABLE MR. V. RAMADAS PANTULU: I know it. But what the Honourable Dr. Dwarkanath Mitter wants is that in clause (*a*) of sub-section (*2*) of section 123 also the words "or Chief Court" should be inserted. My argument is that when you inserted those words in section 122 and sub-section (*1*) of section 123 there will be room for doubt unless they are inserted in section 123 (*2*) (*a*) also. My point is that if those words were found to be necessary in the earlier portions to which I have referred, it becomes

[Mr. V. Ramadas Pantulu.]

equally necessary that the words should be added also in section 123 (*2*) (*a*). The very fact that they are being added to sections 122 and 123 (*1*) is an argument in favour of Dr. Mitter's amendment. If the Legislature, that is those who were responsible for framing the sections, thought that the words "High Courts" included also the "Chief Court" it did not matter, but so long as they did not think so, and the words "Chief Court" were being added in order to give the rule-making power to the Chief Court of Oudh, it followed as a matter of corollary that, unless those words were added in the places indicated by Dr. Mitter, the difficulty would not be removed. I really do not see how the difficulty raised by my Honourable friend Dr. Mitter is got over by adding those words only in those places where they were added and not in the places wanted by him. Therefore I think in order to obviate the difficulty pointed out by Dr. Mitter and in order to guard against the contingency of some lawyer raising the question that the rules made by the Chief Court of Oudh are *ultra vires*, it would be safer to add those words in the places indicated by Dr. Mitter.

THE HONOURABLE THE PRESIDENT: The question is:—

"That in column 4 of the Schedule after entry (2) of the entries relating to the Code of Civil Procedure, 1908, the following entry be made:

(3) In clause (*a*) of sub-section (*2*) of section 123 after the words 'High Court' the words 'or Chief Court' shall be inserted."

The motion was negatived.

THE HONOURABLE DR. DWARKANATH MITTER: Sir, as the first of my amendments is lost I do not think it will be desirable to press the others.

The Schedule was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. J. CRERAR: Sir, I move that the Bill be passed.

THE HONOURABLE SAIYID RAZA ALI (United Provinces East: Muhammadan): On behalf of the people of Oudh I rise to give my hearty support to the motion that the Bill be passed. This, Sir, is no occasion to go into the history of the judicial administration of Oudh, but let me say this much that, though administratively the United Provinces of Agra and Oudh, as the very name indicates, comprise Oudh as well as the districts which used to be known as the North-Western Provinces, for the purposes of judicial administration we have got two High Courts within the meaning of the General Clauses Act, namely, the High Court situated at Allahabad and the Judicial Commissioner's Court situated at Lucknow. The people of Oudh have been sore over the point that they were relegated in the matter of judicial administration to an inferior Court and their aspirations from the early seventies have been in the direction of their highest Court being converted into a High Court. Unfortunately the time is not yet ripe when those aspirations can be fulfilled. This is mainly due to the small size of Oudh which consists of 12 districts only. Yet, I must acknowledge on their behalf their sense of deep gratitude to Government who have taken action in the direction of giving them, if not

the best, at any rate the second best, that can be given, namely, a Chief Court at Lucknow. Sir, feelings in the past have run high. The ideal of both the provinces has no doubt been a united High Court for the entire United Provinces. The time is not unfortunately yet when steps can be taken to bring about that amalgamation ; but I am very glad and indeed grateful to Government that the traditions which the judicial system of Oudh inherited from its predecessors in the early sixties have continued up to the present time, namely, that no efforts have been made to take away the separate Court which has been the unique pride of the people of Oudh for the past 50 years and more. As I have submitted they are deeply grateful and look forward to the time when the Chief Court which is going to be set up in Oudh within the next two months will be raised to the status of a chartered High Court. The difficulty, at which I hinted, namely, the smallness of the province, need not, after all in the fulness of time, offer any formidable obstacles, as it will be possible to evacuate from the Agra province some of the western districts and amalgamate them with Oudh and give the amalgamated area a united chartered High Court at Lucknow.

THE HONOURABLE THE PRESIDENT : The question is :

"That the Bill to supplement the Oudh Courts Act, 1925, be passed."

The motion was adopted.

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## CRIMINAL TRIBES (AMENDMENT) BILL.

THE HONOURABLE MR. J. CRERAR (Home Secretary) : Sir, I move :

12 NOON. "That the Bill to amend the Criminal Tribes Act, 1924, be taken into consideration."

This is a small measure necessitated to cure a small imperfection or at any rate ambiguity in the existing Act. Honourable Members, whose attention has on two or three previous occasions been drawn to our legislation relating to criminal tribes will remember that, when Local Governments find it necessary to notify a tribe or individual members of a tribe as being a criminal tribe or members of a criminal tribe, thereafter they have several courses open to them. If the tribe or the individuals of the tribe concerned are a very serious danger to public security under section 11 of the Act, they may be restricted in their movements or settled in another place of residence. If action is taken under this section to settle the tribe or the members of a tribe in a place of residence elsewhere than within the jurisdiction of the province that originally made the notification, it is already provided in the Act that the provisions of the Local Government within whose jurisdiction the tribe or the members thereof have been settled shall apply as if that Government had originally taken action. But there are certain minor forms of restraint provided for. Under section 10, the Local Government may have decided only to direct the registered members to report themselves and to notify any changes of residences or absence of residences. If action is taken under section 10(*b*), all that is obligatory upon the member of the criminal tribe is to notify his residence. He may change his residence without obtaining permission. He is only required to notify. It is obviously necessary in order to give complete effect to the intention of this section that if a member of a criminal tribe,

[Mr. J. Crerar.]

for example, moves from the Punjab to the United Provinces, he shall while, in the United Provinces, be required to notify his residence to the authorities in that province duly constituted and appointed for the purpose. That is the sole purpose of the Bill and I think Honourable Members will readily perceive its necessity and its utility.

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

THE HONOURABLE MR. J. CRERAR: I move that the Bill be passed.

The motion was adopted.

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## COTTON TRANSPORT (AMENDMENT) BILL.

THE HONOURABLE MR. D. T. CHADWICK (Commerce Secretary): Sir, I beg to move:

"That the Bill to amend the Cotton Transport Act, 1923, be taken into consideration."

This is a very small Bill, which I bring to the notice of the House. There is actually only one point of substance. I hesitate to say it has anything to do with drafting. It is intended to deal with a small difficulty which has arisen in the practical working of what has proved to be a very useful and very beneficent Act which was passed by this Council only two years ago. Perhaps the House will remember that, as a result of one of the recommendations of the Indian Cotton Committee, power was vested in Local Governments to control and restrict the transport of raw cotton, cotton waste, *kapas* and other forms of raw cotton which the Committee found were being transported from many parts of the country for the sole purpose of mixing with better types of raw cotton. After much consideration in the country, after full debates here and in the Assembly, the Cotton Transport Act was passed. It has been put in force in parts of Bombay, and its working has generally been extremely well reported upon. But in that Act most sections deal with the control of the transport of cotton by rail. That is a central subject and beyond the purview of Local Governments. The Act conferred full powers on the Local Governments to make what rules they considered feasible and necessary for the control of the transport of cotton by road, river or sea.

The Cotton Committee itself was doubtful whether the cotton transported by road could be effectively controlled. However, the Act left that point entirely to the Local Governments. Yet as the Act left the Assembly and the Council of State, section 3(*1*) read as follows:—

"The Local Government may for the purpose of maintaining the quality or the reputation of the cotton grown in any area in the province by notification in the local official Gazette prohibit the import of cotton or a specific kind of cotton into that area save under a license."

The effect of a notification under this section is to prohibit entirely the import of cotton into a protected area by all means of transport, *i.e.*, whether it be by rail, road, river or sea. The House will see that such a prohibition is absolute and complete—it leaves the Local Government no discretion, no option. A Local Government, if it notifies an area, has to control every form of transport of cotton. That has proved a difficulty : and the suggestion that we now put before the House in this Bill is to insert into the clause which I have just read some words allowing the discretion to Local Governments to prohibit by notification the import of cotton or a specified kind of cotton into an area by rail, road, river and sea or by any one or more of such routes. This is the operative part of the Bill. The remaining clauses are merely consequential upon that amendment. I commend the motion to the House.

The motion was adopted.

Clauses 2, 3, 4, 5 and 6 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. D. T. CHADWICK : Sir, I move that the Bill be passed.

The motion was adopted.

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## REPEALING AND AMENDING BILL.

THE HONOURABLE SIR NARASIMHA SARMA (Law Member) : Sir, I beg to move :

"That the Bill to amend certain enactments and to repeal certain other enactments be taken into consideration."

I have already stated that this Bill is a purely formal one when asking for leave to move for the introduction of the Bill. The only point of substance, is the amendment in the Indian Mines Act which would carry out the intentions of the Legislature by making it clear that the shorter term of imprisonment which was provided for in the Act of 1887 is to be retained instead of the heavier sentence which is provided for in the Act of 1923. That is clearly in favour of the subject and carries out the real intention of the Legislature. There is nothing else to add, and I ask that the Bill be taken into consideration.

The motion was adopted.

Clauses 2, 3 and 4 were added to the Bill.

Clause 1 was added to the Bill.

The First and Second Schedules were added to the Bill.

The Title and the Preamble were added to the Bill.

THE HONOURABLE SIR NARASIMHA SARMA : Sir, I beg to move that the Bill be passed.

The motion was adopted.

## MADRAS, BENGAL AND BOMBAY CHILDREN (SUPPLEMENTARY) BILL.

THE HONOURABLE MR. J. CRERAR (Home Secretary): Sir, I move:

"That the Bill to supplement certain provisions of the Madras Children Act, 1920, of the Bengal Children Act, 1922, and of the Bombay Children Act, 1924, be taken into consideration."

The immediate point for consideration is, as Honourable Members will observe, really speaking small, and I do not therefore propose to detain the House very long. Incidentally, it invites their attention to what I think Honourable Members will all unanimously agree is a very notable advance made in three of the provinces of India in the direction of social legislation for the protection of children. It needs no words of mine to commend that body of legislation to the House. Among the provisions in these three Provincial Acts there is a provision which will also commend itself to this House, which is that the Act places certain children under the control of Courts or empowers certain Courts to inflict sentences for offences committed in connection with children, and it also provides that in respect of such orders, if they are passed by Presidency Magistrates or a Sessions Court, an appeal shall lie to the High Court. Well these penal enactments, as I am sure Honourable Members will agree, are very salutary, but Local Governments are probably well advised in insisting that in certain circumstances an appeal ought to lie to the High Court. They included those provisions in their enactments, but as they affect the jurisdiction of the High Courts concerned, they require the sanction of the Indian Legislature. It is for that sanction that I now ask the House.

THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY (West Bengal: Non-Muhammadan): Sir, in giving my support to this motion I desire on behalf of my province to associate myself very whole-heartedly with what has fallen from the Honourable Mr. Crerar. We have long been trying to place social legislation on sound lines, and it is after long and painful struggles that we have succeeded in doing so. Temperance societies, purity societies, the Vigilance Association and various other such bodies have often been looked upon as these bodies are apt to be looked upon in certain quarters, as so many faddists and hot beds of hobbies, and it has been more than hinted that it is no business of theirs to intervene in the province of legislation. That day is now gone by, and a fresh era of social service as well as social service legislation, without which we are frequently and rightly told that no real political advance or economic improvement is possible, is dawning. Our regret, Sir, is that we cannot take matters any further than legislation. We want homes for these children, we want proper places for education and training and not "reformatories" for these children if they are to grow up into useful and innocent citizenship. For the present it is a matter for thanks that some legislation has been achieved, and let us hope that as a necessary corollary institutions of the kind that have been suggested will come into existence early to make full fruition of legislation possible.

THE HONOURABLE THE PRESIDENT: The question is:

"That the Bill to supplement certain provisions of the Madras Children Act, 1920, of the Bengal Children Act, 1922, and of the Bombay Children Act, 1924, be taken into consideration."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. J. CRERAR: I move that the Bill be passed.

The motion was adopted.

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## INDIAN PORTS (AMENDMENT) BILL.

THE HONOURABLE MR. D. T. CHADWICK (Commerce Secretary): Sir, I beg to move:

"That the Bill further to amend the Indian Ports Act, 1908, be taken into consideration."

Under section 31 (*1*) of the Indian Ports Act, the Government can notify that no vessel of not less than 200 tons measurement shall enter, leave or be moved in any specified port without having on board a pilot, harbour master or assistant of the Port Officer or harbour master. That power is obviously very necessary and useful. However, there are ports and ports. Some ports are restricted in water space. In some ports like Bombay there is a fair amount of room. Therefore, the Act as constituted at present says that this section shall not apply to native vessels entering, leaving or being moved in the port of Bombay. Section 31 (*1*) that I have just referred to applies to most of our major ports, Karachi, Calcutta and the like. Karachi also claims that it has a certain amount of space available, and that it is unnecessary to compel small native sailing craft to have on board a pilot or harbour master before they enter or leave or move from one place to another within harbour limits, provided that the sailing craft is less than 500 tons. Accordingly, the Karachi Port Trustees supported by the Bombay Government have requested that this section should be amended in this sense. That would mean that Bombay and Karachi would appear by name in the section. It seems a right power to take to exempt in certain ports these small native craft from the obligation of having a pilot on board before they move. But it also seems unnecessary, from the point of view of drafting, to mention each port by name in the Act. Therefore, we have placed this amendment before you asking you to confer power upon the Governor General in Council that where section 31 (*1*) of the Act is applied to a port, the Governor General in Council may also have the power in regard to any specified port to exempt by notification from this provision sailing vessels of any measurement to be specified in such notification.

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. D. T. CHADWICK: I beg to move that the Bill be passed.

The motion was adopted.

The Council then adjourned till Eleven of the Clock on Tuesday, the 1st September, 1925.