

Friday, 11th February, 1927

**THE
COUNCIL OF STATE DEBATES**

VOLUME I, 1927

(8th February 1927 to 29th March 1927)

**THIRD SESSION
OF THE
SECOND COUNCIL OF STATE, 1927**



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COUNCIL OF STATE.

Friday, 11th February 1927.

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

MEMBER SWORN:

The Honourable Mr. John Arthur Lang Swan, C.I.E. (Bengal: Nominated Official).

INDIAN LIGHTHOUSE BILL.

THE HONOURABLE MR. G. L. CORBETT (Commerce Secretary): Sir, I move for leave to introduce a Bill to consolidate and amend the law relating to the provision, maintenance and control of lighthouses by the Government in British India.

I hope Honourable Members will find this Bill clear and straightforward when they come to study it. The subject-matter is unusual and rather technical, and for this reason a very full Statement of Objects and Reasons has been prepared, and I hope that this will enable Honourable Members to get a clear view of the scope of the Bill before it is further discussed. I do not think I need supplement this Statement or say anything more at this stage.

Sir, I move.

The motion was adopted.

THE HONOURABLE MR. G. L. CORBETT: Sir, I introduce the Bill.

BENGAL TENANCY (AMENDMENT) BILL.

THE HONOURABLE MR. S. R. DAS (Law Member): Sir, I move that the Bill further to amend the Bengal Tenancy Act, 1885, for a certain purpose, be taken into consideration.

This is a very short measure, and I explained the purport of it when introducing the Bill a few days ago. The object of this Bill is to raise the limit of decrees from which appeals lie to the High Court, in the case of rent suits from Rs. 50 to Rs. 100, in the case of Munsifs, and from Rs. 100 to Rs. 200, in the case of Subordinate or District Judges. It does not interfere with the right of appeal when the judgment deals with any question of rate of rent or question of title.

Sir, I move.

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. S. R. DAS: Sir, I move that the Bill be passed.

The motion was adopted.

PROVIDENT FUNDS (AMENDMENT) BILL.

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH SAHIB BAHADUR (Education, Health and Lands Member): Sir, I move that the Bill further to amend the Provident Funds Act, 1925, for a certain purpose, be taken into consideration.

I have nothing further to add to what I had stated when I sought the leave of the House the other day to introduce this Bill. I will only emphasise that this Bill is designed to afford relief to a poorly paid and deserving class of public servants employed in subordinate services in educational institutions and other bodies which control such institutions. On account of the fewness of their numbers it was not considered a practical proposition to launch into existence a separate Provident Fund scheme for their sole benefit. It was therefore considered necessary to bring them under the purview of the existing law relating to Provident Funds. This object was not attainable unless section 2(d) of the Act was amended, and the Bill therefore seeks to carry out that intention.

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 KHAN BAHADUR SIR MUHAMMAD HABIBULLAH SAHIB BAHADUR: Sir, I move that the Bill be passed.

THE HONOURABLE SIR ARTHUR FROOM (Bombay Chamber of Commerce): Sir, I congratulate the Honourable Member on this small Bill of his, inasmuch as it seeks to extend the benefits of the Provident Funds Act, 1925, to some more employees.

I think it might interest Members of this Council if I tell them briefly what the benefits of the Provident Funds Act of 1925 comprise. The chief of these are:—

- (1) Contributions to the Provident Fund are exempted from income-tax,
- (2) Compulsory deposits in the Fund are immune from attachment,
- (3) Interest on securities held by the Fund is exempt from income-tax,

- (4) The amount standing to the credit of a deceased subscriber is handed over to the widow free from any debt or liability incurred by the deceased or the widow, before the subscriber's death.

The foregoing are some of the benefits of the Provident Funds Act of 1925, and these benefits are now extended, as the Honourable Member has explained to the House, to teachers in educational institutions.

Sir, when the Honourable Member introduced this Bill he referred to it as a very small one. I do not seek to suggest that in making this remark he was apologising for the Bill, but I do suggest that Honourable Members of this Council would have extended it a greater welcome if the Bill had been a larger one. I would explain here that the Provident Funds Act of 1925 is an extraordinarily bad Act. It is an Act of discrimination. It is an Act in a watertight compartment. Why? Because the benefits of that Act extend only to the servants of Government and of semi-Government institutions. In and out of season we have claimed that the benefits of the Provident Funds Act should be extended to private Provident Funds. I do not propose that they should be extended to any sort of fund described as a provident fund, because that might raise a very difficult question in cases of provident funds which are not properly administered. But I do say that the benefits of the Act should be extended to properly constituted provident funds of private companies and other institutions and associations in India. We discussed this at some length at Cawnpore at the meeting of the Associated Chambers of Commerce, and I am glad to say that the Honourable the Finance Member, who was at that meeting, extended to our proposition the greatest sympathy. In fact he said, he undertook on behalf of Government, that this vexed question—an outstanding question of many years—would be looked into by Government; and that is the reason why I am referring to it again in this House to-day. I feel quite sure that the Honourable Sir Muhammad Habibullah will also look into this question. It does seem wrong that a beneficiary Act, like the Provident Funds Act, should be so circumscribed. After all, the Workmen's Compensation Act was not restricted to Government servants,—all employees come under the benefits of the Workmen's Compensation Act,—and I do contend that the Provident Funds Act should be extended to include properly constituted provident funds of private companies and other such like associations.

With these few remarks, Sir, I support the Honourable Sir Muhammad Habibullah's motion that his small Bill be passed.

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH SAHIB BAHADUR: Sir, I have listened with the greatest interest to the remarks made by my Honourable friend. He assured us that the Honourable the Finance Member, who was present at the meeting of the Chambers of Commerce, has already expressed his sympathy with the object which he has in view. If an expression of my sympathy also will infuse into him the hope that the amendment of the Act on the lines indicated by him will be soon undertaken by Government, I can give it.

THE HONOURABLE SIR ARTHUR FROOM: Practical sympathy?

The motion was adopted.

INDIAN LIMITATION (AMENDMENT) BILL.

(AMENDMENT OF SECTIONS 20 AND 21.)

THE HONOURABLE MR. S. R. DAS (Law Member): Sir, I move that the Bill further to amend the Indian Limitation Act, 1908, for certain purposes, as passed by the Legislative Assembly, be taken into consideration.

This also is a very short Bill. Under the present Limitation Act, in the case of any part payment of principal, the fact of the part payment has to be in the handwriting of the person making the part payment as it is to form an acknowledgment which extends the period of limitation; but payment of interest is not required under the present Act to be in the handwriting of the person paying that interest. The Civil Justice Committee recommended that section 20 of the Limitation Act should be amended so as to place the payment of interest on the same footing as part payment of principal. This Bill, Honourable Members will remember, was introduced in the Council of State on the last occasion at its last Session and was passed by the Council of State. When it went before the other House certain objections were taken to the Bill, and it was pointed out that it would be difficult for illiterate persons to acknowledge the fact of payment in their own handwriting, and accordingly the Bill was withdrawn on that occasion and a further amendment was made to the Bill which was passed by this House. That is to say, the new Bill, as amended, provides in clause 2 that:

"Provided that, save in the case of a payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment."

It is no longer necessary that the acknowledgment should be in the handwriting of the person who makes the payment, whether part payment or interest. It is sufficient if it is in writing but only signed by him, and that would include the thumb impression of any person who is unable to sign his name.

A further objection was taken in the other House that some time should be given before this Bill came into operation so as to enable those who have not secured acknowledgments to secure them before this Bill comes into operation, and the present Bill provides that this Act shall apply only in the case of payments made after the 1st January, 1928.

The Bill also deals with the right of the *karta* of a joint Hindu family signing an acknowledgment on behalf of the family. No objection was taken to that portion of the Bill by the other House and it remains in the same position as it was when it was passed by this House on the last occasion.

I move, Sir, that the Bill be taken into consideration.

The motion was adopted.

THE HONOURABLE THE PRESIDENT: The question is:

"That clause 2 do stand part of the Bill."

THE HONOURABLE MR. V. RAMADAS PANTULU (Madras: Non-Muhammadian): Sir, I agree with the Honourable the Law Member that the change suggested by the new proviso is a very desirable one. Some objection is raised in certain quarters that this proviso unduly restricts the rights of creditors and that the law in England and America is different

from what is laid down in the proviso; but I am satisfied that the condition of debtors in this country is entirely different from the condition of debtors in England and America, and that they require the protection suggested by the proviso. It is a welcome measure.

But I wish to know from the Honourable the Law Member why he has chosen to change the word "fact" which appeared in the old Limitation Act into "acknowledgment". I expect that some trouble might arise from this change of wording, though it is not intentional I think. What I anticipate is this. Under the present Limitation Act if a mortgagee is in possession of the debtor's properties and the debtor has entered into a contract in writing signed by him authorising the mortgagee to appropriate the rents and profits towards the interest, such a contract made in advance of the realisation of rents is now recognised to be a "fact of payment" appearing in his handwriting. Whether it is strictly right or not some High Courts have so interpreted the words "fact of payment"; though the payment is coming in the future still as he has agreed that the payment is to be made by future appropriation the words "fact of payment" have been interpreted to include such future payments also. But I now find, Sir, that the word "fact" is removed and the word "acknowledgment" is introduced in this Bill. I should find it more difficult to say that an "acknowledgment" can be made in advance of payment; so a contract for future payment may not properly be described by the word "acknowledgment"; and it is possible that on future occasions the High Courts might try to nullify the beneficial provisions of sub-section (2) of section 20 by interpreting the word "acknowledgment" as meaning *post facto* acknowledgment, acknowledgment made after the payment is made. So all contracts for the payment of rents and profits in future towards interest may not be covered by the second proviso as they are at present covered. I really do not know why the word "fact" is removed and the word "acknowledgment" is put there. I wish to know something about it from the Honourable the Law Member. Though I do not wish to oppose this beneficial proviso, yet a statement made by the Honourable the Law Member that the law is not altered might perhaps help the courts hereafter, that such is the intention of the Legislature. Though the proceedings of the Council are not relevant legally in considering the section, still they go a long way to help courts to find out the intention of the Legislature. Therefore, if the Honourable Member assures me that no change is intended and the benefits of sub-section (2) which provide for future contracts of payments of rents towards the interest on mortgages are not touched, I shall be satisfied. With these words I support the Bill.

THE HONOURABLE MR. S. R. DAS: Sir, I think I can assure my Honourable friend that no change was intended in the respect that he mentions. After all, even under the old section 20 which is being amended, part payment or payment of interest was intended as an acknowledgment which gave to the creditor a further period of limitation. Where it was a promise before actual payment to make a payment subsequently, it was treated as an acknowledgment of the debt due and as such extended the period of limitation. There has been apart from that decision other conflicting decisions as to the meaning of the words "fact of payment being in the handwriting of the person paying". We have used the words "acknowledgment of payment" because it is the fact of the acknowledgment that extends the period of limitation, acknowledgment of the debt being due which in principle extends the period of limitation. It does

[Mr. S. R. Das.]

not interfere with what amounts to an acknowledgment of the indebtedness as interpreted by the courts. We did not desire to interfere with that in any way. If there is an acknowledgment of debt due then it comes under this section. If the circumstance of payment does not amount to an acknowledgment of the debt due, it is not intended that that should extend the period of limitation.

Clause 2 was added to the Bill.

THE HONOURABLE THE PRESIDENT: The question is:

"That clause 3 stand part of the Bill."

*THE HONOURABLE KUMAR SANKAR ROY CHOUDHURI (East Bengal: Non-Muhammadan): Sir, the purpose of this clause is to make an acknowledgment made by a Hindu widow or coparcener binding upon the reversioners or the other coparceners. My submission is that, unless some such words are added as "except in the case of fraud or collusion", it would be too hard upon the coparceners or the reversioners to be bound by an acknowledgment made by a Hindu widow or the other coparceners. I would therefore suggest that some such words should be added at the beginning of the clause just before clause (a) begins—"except in the case of fraud or collusion".

THE HONOURABLE SIR MANECKJI DADABHOY (Central Provinces: Nominated Non-Official): Sir, I am unable to understand the anxiety of my friend there in his desire to add the words "fraud or collusion" to the clause. The real object of this clause, as I understand it, is to give a full measure of protection to a party dealing with a limited owner against a reversioner. It is essentially necessary that, where a liability has been incurred by a widow or a qualified owner under Hindu law, the acknowledgment passed on behalf of such qualified owner by a duly authorised agent should bind the reversioner. It is merely an equitable thing to do; otherwise in many cases gross injustice would be perpetrated. I see that the clause is extremely pertinent. This matter has been the subject of many conflicting decisions in the various High Courts in the past, and I am glad that once for all this proposition is now to be settled by legislation.

THE HONOURABLE LALA SUKHBIR SINHA (United Provinces Northern: Non-Muhammadan): Sir, I also oppose this amendment as I think that the owner, a widow, is full proprietor and has full powers and she must have the right of acknowledgment of payment as a real owner. Her right should not be objected to. Until she is removed from the property or from her rights, she must have full power for acknowledgment of payments.

THE HONOURABLE MR. S. R. DAS: Sir, I do not think there is any ground for the apprehension of the Honourable Kumar Sankar Roy Choudhuri because fraud or collusion always vitiates a transaction; it is unnecessary to put that down in this clause. If this acknowledgment is obtained by fraud or collusion, that acknowledgment will have no effect whatever, provided the fraud or collusion is proved. But it is wholly unnecessary to put that in the Bill itself.

Clause 3 was added to the Bill.

Clause 4 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

*Speech not corrected by the Honourable Member.

THE HONOURABLE MR. S. R. DAS: Sir, I move that the Bill, as passed by the Legislative Assembly, be passed.

The motion was adopted.

INDIAN REGISTRATION (AMENDMENT) BILL.

THE HONOURABLE MR. S. R. DAS (Law Member): Sir, I move that the Bill further to amend the Indian Registration Act, 1908, for a certain purpose, as passed by the Legislative Assembly, be taken into consideration.

This Bill is intended to get rid of the effect of a recent Privy Council decision which held that an agreement for sale which recites the payment of earnest money or part payment of principal needed registration and could not be used in a suit for specific performance or for the purpose of evidence unless it was registered. Until that decision was given and from the year 1877 when the Registration Act was first passed, numerous transactions have taken place on the basis of the understanding that an agreement for sale which created no interest in land did not require registration. The Bill is intended to make it quite clear that such an agreement need not be registered.

*THE HONOURABLE KUMAR SANKAR ROY CHOUDHURI (East Bengal: Non-Muhammadian): Sir, I want an explanation from my Honourable friend the Law Member. I should like to know what will be the effect upon the charge created in respect of any advance of the purchase money paid. That was, I think, the basis of the decision of the Privy Council. That point ought to be made quite clear.

THE HONOURABLE MR. S. R. DAS: Sir, I do not think there is any difficulty with regard to that point. That is a charge created by the Statute itself. It is the Transfer of the Property Act itself which creates that charge. The fact that the payment is recited in the agreement for sale does not create the charge. The charge is created by the Statute, and, so far as that charge is concerned, this Bill in no way affects it. All that it says is that the document need not be registered. It deals only with the recital of the payment of earnest money in the agreement for sale. It does not affect the point that my friend has raised.

THE HONOURABLE THE PRESIDENT: The question is:

"That the Bill further to amend the Indian Registration Act, 1908, for a certain purpose, as passed by the Legislative Assembly, be taken into consideration."

The motion was adopted.

Clause 1 was added to the Bill.

Clause 2 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. S. R. DAS: Sir, I move that the Bill, as passed by the Legislative Assembly, be passed.

The motion was adopted.

*Speech not corrected by the Honourable Member.

MADRAS SALT (AMENDMENT) BILL.

THE HONOURABLE MR. A. F. L. BRAYNE (Finance Secretary): Sir, I move, that the Bill further to amend the Madras Salt Act, 1889, for a certain purpose, be taken into consideration.

It is a generally accepted principle that the cost of preventive establishment and the cost of collection of the salt duty should not be charged to private manufacturers of salt, i.e., owners of factories working under licence from Government. These charges are properly debited to Government as part of the cost of administration of the salt duty. It is necessary, however, that the interests of Government should be protected and that a certain limitation should exist in Government's liability to meet these charges. The manufacturer, for example, of salt on an uneconomic basis might turn out very little salt, and at the same time it might require a very considerable preventive establishment; or he might run his factories in such a careless manner that special precautions might be necessary. Therefore, it was decided in 1889, when the original Bill was passed, that the liability of Government should be limited to 5 per cent. of the salt revenue collected at the factory in the previous year. This limit was all right so long as the duty was Rs. 2-8-0 per maund and the cost of preventive establishment was small, but the duty is now Rs. 1-4-0 per maund and the pay and allowances of the preventive establishments have increased very considerably since the War, with the result that this 5 per cent. no longer represents a proper proportion of the charge, and with the result also that a number of factories in Madras have been obliged to pay the excess over 5 per cent. Some of them, I understand, are liable to extinction if this percentage continues. It is, therefore, proposed, in order to avoid frequent amendments in the Act, that the Central Board of Revenue should be given the power to prescribe the percentage which would represent the proper charge which Government should bear.

Sir, I move that the Bill be taken into consideration.

THE HONOURABLE MR. V. RAMADAS PANTULU (Madras: Non-Muhammadian): Sir, it is somewhat difficult for me to accord my support to any measure which leaves taxation to the Executive. This Bill proposes that the Central Board of Revenue is to fix the limits of this new cess. It is some time since the duty on salt was reduced to Rs. 1-4-0 per maund, and I wish that my friend who moved for the consideration of the Bill had given us some facts to show what deficit he found in the difference between the 5 per cent. duty and the actual extra establishment charges in this period. The Statement of Objects and Reasons is laconic, and the speech which the Honourable Member made is more laconic; and it is a large order to ask this House to entrust the Central Board of Revenue with the power of fixing the maximum limit of this percentage of duty. It must be remembered that any fee which the licensee pays will ultimately fall on the consumer, and it will have the effect of putting up the retail prices of salt. The endeavour of the Legislature has been to press upon the Government the desirability of reducing the duty on salt so as to make it cheaper to the consumer, and I am not sure that even the Rs. 1-4-0 per maund duty is not felt to be heavy, and I am sure that the public is in favour of a further reduction of duty on salt. In these circumstances, unless we have more facts and figures, unless it is imperatively necessary to have an additional cess imposed upon the licensees, and unless we are

satisfied that the deficit is so large that the Government cannot meet it, it is somewhat difficult for me to accede to this Bill. It seems to be a very difficult measure to agree to immediately, and I now find that my friend proposes to also move that the Bill be passed. I wish to know whether it was circulated for opinion to Local Governments or to any persons interested in the administration of the Salt Department, and what opinions were received from the various Local Governments. I would also appeal to my friend to see whether he could not put off the final motion for passing the Bill for some time or agree to a small Committee to consider the desirability of this measure. In essence and principle it is vicious, because it entrusts the power of imposing the cess to the Executive, secondly, because we have not got the necessary facts to show that the deficit is so large that the Government cannot manage to meet the charge, and, thirdly, because its indirect effect will be to put up the price of salt. For these reasons, Sir, I am unable to accord my support to this motion.

THE HONOURABLE MR. A. F. L. BRAYNE: I am not sure, Sir, that the Honourable Mr. Pantulu has quite understood the purpose of this Bill. I have already stated that Government accept liability for all charges on preventive establishment, except in the most exceptional circumstances. The proposal to refer the Bill to Select Committee would only lead to considerable further delay. Do I understand the Honourable Mr. Pantulu to suggest that the relief which Government propose to give to the manufacturers of salt in Madras should be postponed? This charge is now being imposed entirely against the intention of the Government. There is no question of any increase in the cost of preventive establishment.

THE HONOURABLE THE PRESIDENT: The question is:

"That the Bill further to amend the Madras Salt Act, 1889, for a certain purpose, 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. A. F. L. BRAYNE: Sir, I move that the Bill be passed.

The motion was adopted.

The Council then adjourned till Eleven of the Clock on Monday, the 14th February, 1927.