

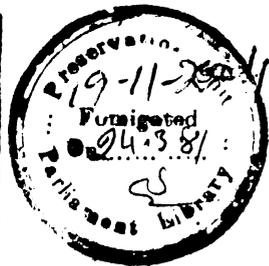
Friday, 2nd September, 1927

THE
COUNCIL OF STATE DEBATES

VOLUME II, 1927

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THIRD SESSION
OF THE
SECOND COUNCIL OF STATE, 1927



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COUNCIL OF STATE.

Friday, 2nd September, 1927.

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

INDIAN SUCCESSION (AMENDMENT) BILL.

THE HONOURABLE MR. S. R. DAS (Law Member): Sir, I move that the Bill further to amend the Indian Succession Act, 1925, and the Married Women's Property Act, 1874, be taken into consideration.

I explained a short time ago at the time of introduction that the object of this Bill is really to enable a married woman, when the deceased is a Christian, to take out letters of administration or probate without the necessity of obtaining the consent of her husband, in order to bring the law into conformity with that prevailing in England. Sir, I move.

THE HONOURABLE THE PRESIDENT: The question is:

"That the Bill further to amend the Indian Succession Act, 1925, and the Married Women's Property Act, 1874, be taken into consideration."

THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY (East Bengal: Non-Muhammadan): Sir, I beg to move:

"That in section 10 proposed to be inserted in the Married Women's Property Act..."

THE HONOURABLE THE PRESIDENT: The Honourable Member's amendment comes a little later. I shall put the question first. The question is:

"That the Bill further to amend the Indian Succession Act, 1925, and the Married Women's Property Act, 1874, be taken into consideration."

The motion was adopted.

Clause 2 was added to the Bill.

THE HONOURABLE THE PRESIDENT: Clause 3. The question is:

"That clause 3 do stand part of the Bill."

The Honourable Mr. Kumarsankar Ray Chaudhury.

THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY: Sir, I beg to move:

"That in section 10 proposed to be inserted in the Married Women's Property Act, 1874, by clause 3 of the Bill, the words 'or the trust estate' be inserted after the word 'deceased' wherever it occurs."

I submit that this is a mere draftsman's mistake and hope that the Honourable the Mover of the Bill will accept it.

THE HONOURABLE MR. S. R. DAS: Sir, I am inclined to think that it is my Honourable friend's mistake and not the draftsman's mistake. I think

[Mr. S. R. Das.]

my Honourable friend will agree that the amendment is unnecessary. I take it that he desires to insert the words "or the trust estate" after the word "deceased" with the object of making the husband liable in case there is loss or damage to the estate of the deceased; but that is unnecessary, because he is liable if there is a breach of trust committed by his wife; and breach of trust, you will find, is defined in the Indian Trusts Act which applies now throughout India as involving also any loss or damage to the trust estate caused by the trustee as also any neglect in getting in the trust property. Therefore, it is unnecessary to insert the words "or the trust estate". The first part, the liability to any breach of trust committed by her, includes all the other matters which are mentioned in order to apply to a case of an executrix who is not a trustee. I trust my Honourable friend will not insist on the amendment.

THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY: I withdraw the amendment.

Clause 3 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 HONOURABLE THE PRESIDENT: The question is:

"That the Bill further to amend the Indian Succession Act, 1925, and the Married Women's Property Act, 1874, be passed."

The motion was adopted.

INDIAN LIMITATION (AMENDMENT) BILL.

THE HONOURABLE MR. S. R. DAS (Law Member): Sir, I move that the Bill further to amend the Indian Limitation Act, 1908, be taken into consideration. I explained the object of this Bill on the last occasion only a short time ago. It refers to certain amendments of section 10 of the Limitation Act and articles 133 and 134 of that Act.

THE HONOURABLE THE PRESIDENT: The question is:

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

**THE HONOURABLE MR. V. RAMADAS PANTULU (Madras: Non-Muham-
madan):** Sir, I beg to move:

"That the Bill further to amend the Indian Limitation Act, 1908, be referred to a Select Committee."

My reason for doing so is that the Bill as framed raises very vital questions which involve very serious consequences to Hindu, Muhammadan and Buddhist religious and charitable trusts. The law as it at present stands may be summarised thus. With regard to a suit to recover properties vested in a trustee for a specific purpose, there is no period of limitation. Properties can be recovered after the lapse of any time; so also with regard to trust properties alienated by the trustee without consideration; they may also be recovered now after the lapse of any time. With regard to trust properties alienated for valua-

ble consideration the period of limitation for recovering them is 12 years from the date of the transfer under article 134 of the Indian Limitation Act. With regard to trespass on endowment properties, the period of limitation is also 12 years. But, Sir, the Privy Council have introduced a very material change by the well known decision in *Vidya Varudhi v. Valuswami Pandithar*, in which they point out that Dharmakarthis of Hindu temples, Mutavallis of mosques and people like that are not trustees in the English sense of the word, that they are mere managers, and no property is vested in trust in them, and therefore they are not within the purview of section 10 and they will not be within the purview of article 134. The consequences of that decision are these. With regard to properties alienated by such managers, whether for consideration or not, the protection of section 10 is not available, and a suit against the alienee of the trust property will be barred by limitation in the ordinary course either by article 144 or some other article. Therefore, section 10 will not protect them. To guard against that, I find this Bill makes a provision by adding a paragraph to section 10 that :

“ For the purposes of this section any property comprised in a Hindu, Muhammadan or Buddhist religious or charitable endowment shall be deemed to be property vested in trust for a specific purpose, and the manager of any such property shall be deemed to be the trustee thereof.”

It is of course beneficial so far and it ought to stand. But this Bill further purports to introduce the same *Explanation* into articles 133 and 134 of the Indian Limitation Act, the effect of which will be very disastrous to Hindu, Moslem and Buddhist endowments.

At present, as the case-law stands with regard to the Hindu, Muhammadan and Buddhist endowment properties, when properties are alienated, they can be recovered back during the lifetime of the alienor and within 12 years from the date of succession by his successor. If an alienor is the manager of a Hindu temple or a Muhammadan mosque, the properties can be got back during the lifetime of the alienor, or within 12 years from the date of his death. Therefore it gives a very extended period of limitation. Knowing as we do, the very unsatisfactory way in which the Hindu and Mussalman trusts are managed and the negligence with which the rights of these are treated, it is undesirable, in my opinion, to curtail the period of limitation which is now available for suits in regard to that class of trust properties. This particular Bill says that the suit should be brought within 12 years from the moment the transfer becomes known to the plaintiff, who is generally the beneficiary or the succeeding manager. That is a very serious infringement of the existing right. Therefore, I think it requires very serious consideration from the Members of this House.

Another objection to this Bill is that it curtails the period of limitation with regard to the recovery of trust moveables to three years. Article 133 which relates to trust moveables was purposely placed in that part of the Schedule which relates to suits of 12 years' limitation by the framers of the Indian Limitation Act. It has been there since the Indian Limitation Act was passed, and even in the English Statutes a difference exists between the trust moveables and the ordinary moveable property with regard to limitation. Some of these moveable properties consist of incomes from various sources like securities and things of that sort. Therefore, if a trustee misappropriates the

[Mr. V. Ramadas Pantulu.]

trust moveable property by alienating it, I really do not see any justification why the trust should be made to lose the property within a short period of three years. Indeed, it would be very disastrous to the interests of the trust. It may be urged that it will not be possible to recover the specific moveable property after three years, but it is well known to the Members of the House that when a suit is brought to recover the moveable property, in the alternative a claim for its value should be made under the Civil Procedure Code. Therefore, the article really deprives the trust of the right to get back the value of properties misappropriated. A man cannot be put into jail for not bringing a specific moveable into the court. He can only be mulcted in damages to the extent of the value of the article. Therefore, the curtailment of the period of limitation means that you cannot recover either damages or its value after three years. Some Members perhaps know that when the remedy is barred, the right is also extinguished under the Indian Limitation Act. In the case of some annuities the endowment may not only lose the incomes for three years but also lose the right itself. Therefore, it is a very serious curtailment. I have not seen in the Statement of Objects and Reasons any reasons as to why a provision which existed from the time the Indian Limitation Act was enacted is sought to be suddenly changed so as to curtail the period of limitation from 12 to 3 years.

Another matter which requires consideration is this. The existing article 134 says that the period of limitation should be 12 years from the date of the transfer to recover trust properties. This Bill says 12 years "when the transfer becomes known to the plaintiff". The Civil Justice Committee was considering the means whereby to curtail the length of the civil proceedings, and therefore they wanted something more definite in the third columns of the articles in the Limitation Act wherever they were vague and involved the adding of a large mass of oral evidence. If you say that the starting point is the date of the transfer of title, or of possession, then it will be something definite. If it is the date of plaintiff's knowledge, in every case the plaintiff may say that he knew it only two years ago and the defendant may say that the plaintiff knew it more than 12 years ago. Therefore, it opens a wide door for voluminous oral evidence. The object of the Civil Justice Committee is actually frustrated by this provision by making it more vague and more elastic and thereby opening the door to more conflicting evidence in cases like these. I notice from the Bill to amend the Transfer of Property Act, which was circulated to all of us, that registration was made a conclusive proof of knowledge at least for those who take the property. It is also proposed to make conveyance compulsory in all cases of transfer. If that is so, then the original article giving it from the date of transfer may stand. Anyhow, this is a matter which ought to be considered. What is most extraordinary is this. With regard to article 134, one set of Judges said that the starting point of limitation should be from the date of transfer; another set of Judges said that it ought to be from the date when the possession of the property was taken; and the third set of Judges said that the article applied only to those cases in which the transfer was accompanied by possession. I find that the Bill does not adopt any of these three views. It takes the fourth view, namely, that the starting point should be from the date of knowledge of the plaintiff. I think there is much to be said.

in favour of the three views already taken by some eminent Judges of the High Courts. One of them was Sir John Wallis, who is now in the Privy Council, the others, Sir Murray Coutts-Trotter, the present Chief Justice of Madras, the late Justice Sir K. Srinivasa Iyenger of Madras and Justice Mukherjee of the Calcutta High Court. From the beneficiary plaintiff's point of view the date of the passing of the possession to the alienor may be most equitable for registration may not be notice of transfer to the beneficiary who seems to recover the properties.

The proper course is to have a separate article to deal with the cases of alienation of Hindu, Muhammadan and Buddhist endowments and not to elub them with alienations of other kinds of trusts now dealt with by articles 133 and 134. The Bill as framed raises very large questions by curtailing valuable rights and creating various other difficulties. I do not think it should be passed in the form in which it is framed. Therefore, I suggest that more thought should be given to it, and with this object I move that it be referred to a Select Committee.

THE HONOURABLE MR. S. R. DAS : Sir, I am prepared to accept the motion moved by the Honourable Mr. Ramadas Pantulu, but I should like to make it clear that the Bill curtails none of the present rights. However, it is a matter that might very well go to the Select Committee so that I may be able to show my learned friend that his apprehensions are really needless.

THE HONOURABLE THE PRESIDENT : The original question was :

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

Since which an amendment has been moved :

"That the Bill be referred to a Select Committee."

The question I have to put is :

"That the Bill be referred to a Select Committee."

The motion was adopted.

INDIAN LIGHTHOUSE BILL.

THE HONOURABLE SIR GEOFFREY CORBETT (Commerce Secretary) : Sir, I move that the Bill to consolidate and amend the law relating to the provision, maintenance and control of lighthouses by the Government in British India, as reported by the Joint Committee, be taken into consideration.

Last February, when I moved that this Bill be referred to a Joint Committee, I gave a full explanation of its scope and its objects. Since then, it has been very carefully examined by the Joint Committee, which has submitted a unanimous report. The Bill is of a rather special and technical nature, and the interests affected were well represented on the Joint Committee. In these circumstances, I do not think that I need detain the House by enumerating in detail the small amendments that were made in the Committee. They were either amendments of a drafting nature, or else matters of administrative detail, which will, we hope, make for the smoother working of the Act.

[Sir Geoffrey Corbett.]

There is, however, one question to which I wish to refer, and that is, the constitutional powers of the Advisory Committee, for which clause 4 of the Bill provides. I wish to make it clear that the Government and the Legislature must retain ultimate responsibility for the lighting of the coasts on which the safety of life and property so much depends. And they must retain ultimate control over expenditure. But subject to this the Government are quite prepared to accept the recommendation that the advice of the Central Advisory Committee should in ordinary cases be accepted. The Bill requires that this Committee "shall consist of persons representing interests affected by the Act or having special knowledge of the subject-matter." The Government fully recognise that a Committee so constituted will carry great authority, and they agree that its advice should ordinarily be accepted. The Government are also quite willing that interests affected should be represented on the Committee in the manner recommended.

Sir, I move.

The motion was adopted.

Clauses 1 to 9 were added to the Bill.

THE HONOURABLE THE PRESIDENT : Clause 10.

THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY (East Bengal: Non-Muhammadan) : Sir, after having consulted the Honourable Member in charge of the Bill, I do not propose to move the amendment* that stands in my name.

Clause 10 was added to the Bill.

Clauses 11 to 22 were added to the Bill.

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 SIR GEOFFREY CORBETT : Before moving that the Bill be passed, I should like to express my appreciation of the very helpful interest that has been taken in it by Shipping and Commercial bodies, British as well as Indian. I can only hope that, when this Bill becomes law, it will be administered, with the assistance of the Advisory Committee, so as to give India a more efficient and a more economical lighthouse service.

Sir, I move that the Bill, as amended by the Joint Committee, be passed.

THE HONOURABLE THE PRESIDENT : The question is :

"That the Bill to consolidate and amend the law relating to the provision, maintenance and control of lighthouses by the Government in British India, as amended by the Joint Committee, be passed."

The motion was adopted.

*(a) That in sub-clause (1) of clause 10 after the words, "two annas per ton", the words "of the ship's tonnage" be added.

(b) That in sub-clause (2) of clause 10 the word "either" be inserted before the words "on its arrival", and the word "or" be substituted for the word "and" occurring before the words "on its departure".

(c) That in the proviso to sub-clause (2) of clause 10 the words "at any port in British India" be inserted after the words "in respect of any ship".

BODIES CORPORATE (JOINT OWNERSHIP) BILL.

THE HONOURABLE MR S. R. DAS (Law Member) : Sir, with regard to the terms of the amendment of which notice has been given, we think that they require serious consideration, and I propose, with your permission, Sir, not to move for the Bill being taken into consideration now.

PRESIDENCY-TOWNS INSOLVENCY (AMENDMENT) BILL.

THE HONOURABLE MR. S. R. DAS (Law Member) : Sir, I move that the Bill further to amend the Presidency-towns Insolvency Act, 1909, for certain purposes, be taken into consideration.

Sir, as is clearly pointed out in the Statement of Objects and Reasons, the amendments proposed in the Bill relate to sections 7 and 36 of the Presidency-towns Insolvency Act, 1909. Section 7, as it now stands, empowers an Insolvency Court to decide all questions of priorities and all other questions whatsoever, whether of law or of fact, which may arise in any case of insolvency coming within the cognisance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case. As will be noticed by Honourable Members the words are in very wide terms.

Section 36, on the other hand, empowers the Court *inter alia* to summon before it any person "supposed to be indebted to the insolvent" and to require such person to produce before it any documents in his custody or power relating to the insolvent, his dealings or property. If, on such examination of such person, the Court is satisfied that he is indebted to the insolvent, it may, on the application of the Official Assignee, order him to pay to the Official Assignee, the amount in which he is indebted. This section taken alone does not empower the Court to inquire into and decide a claim which is not admitted. The Calcutta High Court and also the Bombay High Court have always interpreted this section to mean that it is only when a debt to the insolvent is admitted that an order is made for payment by the debtor to the Official Assignee. The Madras High Court has read section 36 along with section 7, the terms of which, as I have already pointed out, are very wide, and they have gone into cases of disputed claims, and the object of this amendment is to make it quite clear that the Calcutta and the Bombay High Courts' practice is the correct one, and to make it quite clear that it is only in cases where a debt is admitted that the Insolvency Court is empowered to order the debtor to pay the debt to the Official Assignee. The reason why the Calcutta and the Bombay High Courts have always taken that attitude is really a matter of practical convenience. In an ordinary suit where a man claims money that is due to him and when the defendant disputes the claim, he is entitled to put in a written statement. He is also entitled to see and inspect the documents on which the plaintiff relies. When the case comes before the Court, he is entitled to cross-examine the plaintiff or the witnesses for the plaintiff; but under the insolvency proceedings, where a debt is disputed, there is no procedure of that description at all. What happens under section 36

[Mr. S. R. Das.]

is that the man who is alleged to be indebted to the insolvent's estate is summoned, he is examined and cross-examined, and if upon that the Court is satisfied that he is indebted he is ordered to pay. That is to say, he does not get a proper trial, he does not get the advantage of the procedure which he is entitled to, if the case was in an ordinary Civil Court, with the result that the Court orders him to pay the money without giving him an opportunity to cross-examine the insolvent or his witnesses. Even in a small matter, like a small claim which comes up before a Small Cause Court, the defendant is entitled to see the documents upon which the plaintiff relies, and he is entitled to cross-examine the plaintiff. It is only right that where a claim is disputed, the defendant should be given an opportunity to show that he is in the right which he cannot do under the procedure in the Insolvency Court. That is the reason why the Calcutta and the Bombay High Courts have never made an order with reference to a claim which has been disputed by the debtor. I may also mention, as a matter of fact, that this proposal was submitted to the High Court of Madras. The Madras High Court has agreed to follow the procedure of the Calcutta and the Bombay High Courts. To make this quite clear, this Bill has been introduced for the purpose of saying that it is only in cases where the debtor admits the claim and where no further proceeding is necessary, that the Insolvency Court is empowered to order him to pay.

The amendments proposed by clauses 3 and 5 of the Bill are intended to make it clear that a debtor, when he files his petition for insolvency and the petition is admitted, must at the same time also file with the Official Assignee all his books of account and a list of his debtors and creditors. That is sometimes done by the rules of the High Court, but recently there was a decision of the Calcutta High Court doubting whether the rule of that Court which requires an applicant to file his list of debtors and creditors and his books of account is *intra vires* of the Insolvency Act. In order to make that quite clear this amendment of the Insolvency Act has been introduced so that there may be no doubt that the Court can make rules as to how these accounts are to be produced, when they are to be produced, and in what form they are to be produced and so on.

Those are the amendments proposed by the Bill. Sir, I move.

THE HONOURABLE THE PRESIDENT : The question is :

“That the Bill further to amend the Presidency-towns Insolvency Act, 1909, for certain purposes, be taken into consideration.”

The motion was adopted.

Clauses 2, 3, 4 and 5 were 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.

REPEALING BILL.

THE HONOURABLE MR. S. R. DAS (Law Member): Sir, I move that the Bill to repeal certain enactments, as passed by the Legislative Assembly, be taken into consideration.

This is a formal Bill to repeal such enactments as have become spent or repealed by other Acts or without express specific repeal are for some reason or other no longer in force. It is really a formal Bill in order to assist the production of the new edition of the Unrepealed General Acts which has now been taken in hand.

I move, Sir.

The motion was adopted.

Clauses 2 and 3 were added to the Bill.

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

The motion was adopted.

The Council then adjourned till Eleven of the Clock on Monday, the 5th September, 1927.