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SECOND COUNCIL OF STATE, 1930



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COUNCIL OF STATE.

Monday, 24th February, 1930.

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 Major-General Sir Thomas Henry Symons, K.B.E., C.S.I., O.B.E., K.H.S. (Director-General, Indian Medical Service).

BILL PASSED BY THE LEGISLATIVE ASSEMBLY LAID ON THE TABLE.

SECRETARY OF THE COUNCIL : Sir, in accordance with rule 25 of the Indian Legislative Rules, I lay on the table copies of a Bill further to amend the Indian Income-tax Act, 1922, for certain purposes, which was passed by the Legislative Assembly at its meeting held on the 20th February, 1930.

MOTION FOR THE ELECTION OF A MEMBER TO THE GOVERNING BODY OF THE INDIAN RESEARCH FUND ASSOCIATION.

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH (Education, Health and Lands Member) : Sir, I move :

“ That this Council do proceed to elect, in such manner as the Honourable the President may direct, one Member to sit on the Governing Body of the Indian Research Fund Association in place of Dr. U. Rama Rau who has ceased to be a Member of this Council. ”

Honourable Members will remember that at the last Session of this House in Simla Government had announced their decision to reorganise the Governing Body of the Indian Research Fund Association to include, among others, one Member from this House. Dr. Rama Rau was accordingly elected to that seat. For certain reasons, of which the House is aware, Dr. Rama Rau has resigned, and it is therefore necessary that his place on the Governing Body of the Indian Research Fund Association should be filled. Hence this motion.

The motion was adopted.

THE HONOURABLE THE PRESIDENT : With reference to this motion which the Council has adopted, I direct that nominations shall be received up to 11 o'clock on the morning of Thursday, the 27th February, and should an election prove necessary it will probably take place that same morning on the conclusion of the business of the Council.

ELECTION OF A PANEL FOR THE CENTRAL ADVISORY COUNCIL FOR RAILWAYS.

THE HONOURABLE MR. J. A. WOODHEAD (Commerce Secretary) : Sir, I move :

“ That this Council do proceed to elect, in such manner as may be approved by the Honourable the President, a panel consisting of 8 members from which 6 shall be selected to serve on the Central Advisory Council for Railways, as provided for in clause 6 of the Resolution adopted by the Legislative Assembly on the 20th September, 1924, on the subject of the separation of Railway Finance.”

The motion was adopted.

THE HONOURABLE THE PRESIDENT : In this case also nominations will be received up till 11 o'clock on the morning of Thursday, the 27th of February, and should an election prove necessary I shall that morning give further direction as to the method of holding the election.

INDIAN PATENTS AND DESIGNS (AMENDMENT) BILL.

THE HONOURABLE MR. J. A. SHILLIDY (Industries and Labour Secretary) : Sir, I move that the Bill further to amend the Indian Patents and Designs Act, 1911, for certain purposes, as passed by the Legislative Assembly, be taken into consideration.

Sir, I trust that the sight of this Bill with its 32 clauses will not strike dismay into the hearts of Members of this Council, but I would hasten to assure them that it is not a contentious Bill. It is very largely a matter of drafting amendments, of amendments consequential on amendments of other sections and generally devised for improving the procedure of the Bill to the greater convenience of applicants, patentees and the public generally. I think, Sir, the Council is aware of the history of the law of patents in this country. In 1888 there was a Patents and Designs Act which remained in force until 1911 when the Indian Patents and Designs Act was passed, following very largely the English Act of 1907. In 1919 a further English amending Act was passed and in 1922 the Empire Patents Conference was held. This gave us the opportunity to go over our Act and revise it in its various sections, and the Bill that is now before us is the result of that examination. As I said before, if you compare the Bill with the Act as it stands and then refer to the Statement of Objects and Reasons there will be no difficulty in understanding the Bill.

There are, however, a few points to which I should like to draw the attention of this Council. By section 14 of the Act the life of a patent is 14 years. The Empire Patent Conference of 1922 recommended an extension to 16 years and that extension to 16 years had already been adopted by the English Patent Act of 1919. The great majority of the Colonies and Protectorates have adopted this term of 16 years. Canada has a term of 18 years ; Australia and New Zealand have terms of 16. If you look at the practice of other foreign countries, Norway has 17 years and Germany has 18 years. In determining the life of a patent, two considerations have to be borne in mind. One is to give sufficient life to a patent to enable a patentee to get reasonable returns from his patent, for his labour and his researches. On the other hand, a patent

is a monopoly and therefore a tax on the public. You do not wish to extend the life of a patent so much as to make it an unfair tax on the public. It is therefore a matter of balancing up these two considerations and following our own experience—what we have discovered from the working of the Act and what we see is the experience of other countries, the term of 16 years has been adopted in this Bill and accepted by the Legislative Assembly after full consideration by the Select Committee there and I hope that this term will commend itself to this Council as a fair and reasonable settlement.

The other point I would like to draw the attention of this Council to is with reference to the amendment of section 21. Section 21 lays down that a patent binds the Crown but Government Departments may use a patent and they may make their own terms with a patentee. If, however, there is any dispute between the patentee and the Government Department, the dispute is to be settled, on a reference, by the Governor General in Council after hearing both parties concerned. Now, in that provision we followed the English Patent Act of 1907. The English Act of 1919, however, introduced this change that, in the event of any dispute between a Government Department and the patentee, the reference should be to a court. Accordingly in clause 15 we have introduced a provision that, in the event of any such dispute, the reference shall be to a High Court, and the High Court may, if it so wishes, either settle the dispute itself or make a reference to arbitrators. I do not think there has been any complaint in the past that the Governor General in Council has failed to give due regard to the rights of the patentee in matters of dispute between the patentee and the departments under him. But, it will be generally agreed that a reference to some body which is in no way interested in the dispute will probably give greater satisfaction to both parties.

There is only one more point to which I should like to refer and that is that under the Act as it stands there is no definite provision made for the cancellation of patents and designs. Section 64 has been so interpreted or rather been used by certain High Courts for that purpose. I think, however, it will be generally agreed that this rather goes beyond the meaning of section 64 which relates to the rectification of the register only. It is desirable, however, that this point should be cleared up and so a new section, 51A, has been introduced definitely for this purpose, to provide for the cancellation of the registration of a design, and it states definitely the reasons for which cancellation is permitted.

Sir, I have no other points to which I need draw the attention of this Council. As I say, the amended Bill is intended to clear up doubts and to make the working of the Act and of the Patents Office quicker and more expeditious.

Sir, I move.

The motion was adopted.

Clauses 2 to 8 were added to the Bill.

THE HONOURABLE THE PRESIDENT : The question is :

“That clause 9 do stand part of the Bill.”

THE HONOURABLE SIR LANCELOT GRAHAM (Secretary, Legislative Department) : Sir, I beg to move :

“That in sub-clause (b) of clause 9 in proposed sub-section (1A), for the word ‘January’ the word ‘July’ be substituted.”

[Sir Lancelot Graham.]

This, Sir, refers to a transitory provision which is being inserted in section 14 of the Act. In the Bill as introduced it was provided that the Act should come into operation from the 1st of January 1930. In the Bill as reported by the Select Committee, that date was altered from the 1st of January 1930 to the 1st of July 1930. This amendment, which I now propose, Sir, is really consequential on the amendment reported by the Select Committee and accepted in another place. Sir, I move. But before, Sir, I move, I might be allowed to draw the notice of Members to the provisions of the new sub-section (1B) which is being inserted in the same section and to explain that it is not necessary to make a corresponding amendment in that sub-section because that sub-section merely provides a date of notice. All persons concerned in contracts relating to patents have had that notice before them for at least a year and consequently there is no need to extend that period of notice.

Sir, I move.

The motion was adopted.

Clause 9, as amended, was added to the Bill.

Clauses 10 to 28 were added to the Bill.

THE HONOURABLE SIR LANCELOT GRAHAM: Sir, the amendment of which I have given notice in this connection is of a purely formal nature. It proceeds to re-number in respect of a clause which was numbered 28A in the Bill as passed in the other House. In accordance with our drafting practice, Sir, I move ~~that~~ that clause be re-numbered as clause 29 and the subsequent clauses be re-numbered consecutively.

Sir, I move.

The motion was adopted.

Clauses 29 to 33, as now re-numbered, were added to the Bill.

THE HONOURABLE SIR LANCELOT GRAHAM: Sir, again I desire to move a purely formal amendment. The Bill has slipped through in another place with the short title of "The Indian Patents and Designs (Amendment) Act, 1929". In order to avoid difficulty to any person who might be looking up the Act in the Statute-book it seems desirable that the correct date should form part of the short title. For that reason, Sir, I move:

"That in sub-clause (1) of clause 1, for the figures '1929' the figures '1930' be substituted."

The motion was adopted.

Clause 1, as amended, was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. J. A. SHILLIDY: Sir, I move that the Bill, as passed by the Legislative Assembly, and as amended by the Council of State, be passed.

The motion was adopted.

DANGEROUS DRUGS BILL.

THE HONOURABLE SIR ARTHUR MCWATTERS (Finance Secretary): Sir, I beg to move that the Bill to centralise and vest in the Governor General in Council the control over certain operations relating to dangerous drugs and to increase and render uniform throughout British India the penalties for offences relating to such operations, as passed by the Legislative Assembly, be taken into consideration.

The object of this Bill, Sir, is clearly stated in the Title and the Preamble. It is two-fold. First, to clear up the question of demarcation of functions as between the Central Government and the Provincial Governments in regard to operations connected with certain dangerous drugs and to enable the Central Government to carry out its obligations in regard to such drugs arising from the Geneva Dangerous Drugs Convention of 1925 to which India is a party. The second object is to make uniform and to make more strict the penalties which are imposed in various Provincial Acts for offences connected with these dangerous drugs. The scope of the Bill is really defined by the Geneva Convention, that is to say, it relates only to the drugs which are dealt with in the Convention. These are of three kinds, coca leaf, opium and hemp. The House will see from the first Chapter, which consists entirely of definitions, that we first of all define the simple forms of those drugs, coca leaf, opium and hemp, and then we define separately the derivatives of each of those classes. The derivatives, I may say, are in all cases more dangerous forms of the drugs than the simple forms and the principle on which the Bill proceeds is that as regards the more dangerous forms, which include coca leaf and all its derivatives and the derivatives from hemp and opium, the control of the Central Government extends not merely to the external control over export and import but also covers the whole field of internal control, whereas in regard to the simple forms of opium and hemp drugs, which differ from the others in so far as they are drugs of a fiscal character from which Local Governments obtain considerable revenue and the use of which is not prohibited except for medical purposes—in the case of the more dangerous drugs their use is prohibited except for medical purposes—the control of the Local Government over internal traffic remains, whereas the control of the Central Government is confined to external control of export and import and, in the case of opium, to manufacture, since manufacture of opium is a Central Government monopoly. That explains the form of the Bill. As I have said, the first Chapter is a purely defining Chapter. The second Chapter details the exact control or prohibition in some cases, of the different classes of drugs in accordance with the principles which I have just described. The third Chapter deals with the question of offences. The principle we have adopted there in full agreement with Local Governments is to increase the penalties practically to the maximum rates which have been in force hitherto in any province and to make them uniform for the whole of India. The fourth Chapter is a Chapter dealing purely with procedure and it consists almost entirely of sections taken from the Opium Act which are applied with the necessary modifications to the drugs dealt with in this Bill. Finally, there are the Schedules which are consequential. The application of the principles which I have just described renders necessary a number of amendments not only in the Opium Act, but in the various Provincial Excise Acts. That, Sir, is the description of the Bill and I do not think I need say more at this stage except this that the Bill is really a very important and interesting measure because it represents an agreement with Local Governments

[Sir Arthur McWatters.]

by which they have parted with powers with which they are vested under the law in order to enable the Central Government to exercise its international function of regulating the traffic in dangerous drugs. We are indebted very much to the co-operation of Local Governments in this matter. I may say finally that the Bill is entirely non-contentious and has been received without criticism in any quarter.

Sir, I move.

The motion was adopted.

THE HONOURABLE THE PRESIDENT : I will put the clauses to the Council in the groups which form the Chapters of the Bill.

Clauses 2 and 3 were added to the Bill.

Clauses 4, 5, 6, 7, 8 and 9 were added to the Bill.

Clauses 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 were added to the Bill.

Clauses 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35 were added to the Bill.

Clauses 36, 37, 38, 39, 40 and 41 were added to the Bill.

Schedules I and II were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE SIR ARTHUR MCWATTERS : Sir, I move that the Bill, as passed by the Legislative Assembly, be passed.

The motion was adopted.

SPECIAL MARRIAGE (AMENDMENT) BILL.

THE HONOURABLE MR. H. G. HAIG (Home Secretary) : Sir, I move that the Bill further to amend the Special Marriage Act, 1872, for certain purposes, be taken into consideration.

When this Bill was introduced in the Council last week I explained briefly the objects of what is a very simple measure and I do not propose to occupy the time of the Council by re-stating what I then said. The Bill is intended merely to remedy an administrative defect and I do not think that it raises any question which could be regarded in any way as controversial.

Sir, I move.

The motion was adopted.

Clauses 2 and 3 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. H. G. HAIG : Sir, I move that the Bill be passed.

The motion was adopted.

REPEALING AND AMENDING BILL.

THE HONOURABLE SIR LANCELOT GRAHAM (Sécretary, Legislative Department): Sir, I move that the Bill to amend certain enactments and to repeal certain other enactments be taken into consideration.

In asking for leave to introduce this Bill a few days ago, Sir, I explained to the House the nature of the Bill and I pointed out that this was merely what I may call a cleaning up measure in our Statute-book, an operation which we undertake either once or twice a year. The actual details of these operations are sufficiently set out in the Statement of Objects and Reasons and I do not think it necessary, Sir, to trouble the Council with a recital of those details.

Sir, I move.

The motion was adopted.

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

The First and Second Schedules were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE SIR LANCELOT GRAHAM: Sir, I move that the Bill be passed.

The motion was adopted.

PRISONS (AMENDMENT) BILL.

THE HONOURABLE MR. H. G. HAIG (Home Secretary): Sir, I move that the Bill further to amend the Prisons Act, 1894, for a certain purpose, be taken into consideration.

As I explained last week when the Bill was being introduced, this is a measure of an administrative character intended to simplify the arrangements for the segregation of adolescents in jails. The proposal is to substitute the word "twenty-one" for the word "eighteen" in clause (2) of section 27 of the Prisons Act. The effect of this will be to relieve the jail authorities from the necessity of forming separate classes for adolescents between the ages of 18 and 21. It is a measure which has the support of Local Governments and is clearly one that is extremely desirable from the administrative point of view.

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. H. G. HAIG: Sir, I move that the Bill be passed.

The motion was adopted.

The Council then adjourned till Eleven of the Clock on Thursday, the 27th February, 1930;