

Tuesday, 4th March, 1930

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COUNCIL OF STATE DEBATES

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EIGHTH SESSION

OF THE

SECOND COUNCIL OF STATE, 1930



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COUNCIL OF STATE.

Tuesday, 4th March, 1930.

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

RESOLUTION *RE* ROAD DEVELOPMENT.

THE HONOURABLE MR. J. A. SHILLIDY (Industries and Labour Secretary): Sir, I move :

“ That this Council, after taking into consideration paragraphs 70 to 79 of the Report of the Indian Road Development Committee, recommends to the Governor General in Council that :

- (1) The increase in the import and excise duties on motor spirit from 4 to 6 annas per gallon, introduced by the Indian Finance Act for the current year, shall be maintained for a period of five years in the first instance ;
- (2) The proceeds of the additional duty during the same period after deducting such amounts as may be required for grants-in-aid to users of petrol for aviation purposes according to rules issued by Government on a scale not exceeding the additional duty on petrol actually consumed for such purposes shall be allotted as a block grant for expenditure on road development to be credited to a separate road development account, the unexpended balances of which shall not lapse at the end of the financial year ;
- (3) The annual grant shall be divided as follows :
 - (a) A certain proportion shall be retained by the Government of India as a reserve, and such proportion shall be 10 per cent. for the two years ending March, 1931, and the position shall be reviewed thereafter and the balance, if any, on 31st March, 1931, or any subsequent date of review, which is not required for the purposes approved in paragraph 75 of the Report, shall be distributed among the Governors' provinces and the Government of India in the manner provided for the remainder in sub-clause (b) ;
 - (b) Out of the remainder—
 - (i) An apportionment shall be made among the Governors' provinces in the ratio which the consumption of petrol in each such province bears to the total consumption in India in the preceding calendar year ;
 - (ii) The balance, representing the consumption of petrol in provinces other than Governors' provinces, administered areas and Indian States, shall be allotted as a lump sum to the Government of India ;
- (4) If any part of the amount apportioned to a Governor's province in any financial year remains unexpended at the end of that year, it shall be carried over for expenditure in that province in the following year ;
- (5) Grants shall be made to each Governor's province, up to the amount available for it in each year, for expenditure on schemes approved by the Governor General in Council with the advice of the Standing Committee for Roads. As an exception to this rule, the amount available for Burma may, for the present, be spent on any scheme of road development that is approved by the Local Government with the concurrence of the local Legislature ; but if at any future time the question of road connection with India becomes a live issue, the position shall be reconsidered ;

[Mr. J. A. Shillidy.]

- (6) A Standing Committee for Roads shall be constituted every year after the financial year 1929-30 consisting of one nominated official member of the Legislative Assembly, a second nominated official member, three members elected by the Council of State from their body, and six members elected by the Legislative Assembly from their body. The Member of the Governor General's Executive Council in charge of the Department that deals with roads shall be the Chairman of the Committee; and the members of the Committee who are members of the Legislative Assembly shall form its Finance Sub-Committee which shall be presided over by the Chairman of the Committee if he is a member of the Legislative Assembly, and otherwise by the official member of the Committee who is a member of the Legislative Assembly;
- (7) The functions of the Standing Committee for Roads including that appointed in pursuance of the motion adopted in the Legislative Assembly on the 2nd September, 1929, shall be—
- (i) To consider the annual budget and accounts of the separate road development account of the Government of India;
 - (ii) To consider all proposals submitted by Governments of Governors' provinces to the Government of India, for which grants from the road development account are requested; provided that the function of the Standing Committee and of its Finance Sub-Committee shall be confined to determining whether the scheme is one for which an allotment from the Central Road Development Account should be made;
 - (iii) To advise the Government of India generally on all questions relating to roads and traffic on roads and, in particular, on—
 - (a) any action to be taken by the Government of India on the proceedings of periodical Road Conferences;
 - (b) central research in all matters connected with roads, road construction and maintenance;
 - (c) statistics and intelligence, the preparation and publication of maps, and the collection and dissemination of information relating to road development, administration and finance in India and in other countries;
 - (d) proposals other than those relating to Indian States on which it is desired to incur expenditure out of the portions of the annual grant referred to in clauses (3) (a) and (3) (b) (ii);
- (8) All proposals for expenditure from the annual grant or its accumulated balance shall be transmitted by the Standing Committee to its Finance Sub-Committee for approval before recording its final acceptance; and the Standing Committee shall not record its acceptance to any such proposal unless it has received the approval of the Sub-Committee."

Sir, I think the Report of the Indian Road Development Committee is familiar to all the Members of this Council and it is not necessary for me to go at any great length into it. It has been printed and published for some considerable time and the Council will remember that in April, 1929, on a Resolution by the Honourable Sir Arthur McWatters, this Council elected a panel from which members were to be chosen for the Standing Road Committee. Afterwards, last summer, in Simla, there was a Road Conference to which representatives of Local Governments came. The whole question of the constitution, the method of allocation of funds and the duties of the Standing Road Committee were then discussed at considerable length. I will not say there was complete unanimity, but it was as a result of those discussions that this Resolution which I have read out to you has been framed. To those Members who are conversant with the Report of the Indian Road Committee it will be clear that for each paragraph of this Resolution there is a corresponding resolution in the Indian Road Committee's Report. I need not go through it all, but I might just mention that paragraph (1)] will find its counterpart in paragraph 71 of the Report, paragraph (2) again will find its

counterpart in the same paragraph of the Report, paragraph (3) in paragraph 75, and so on. There are, however, three points to which I think it is necessary to call the attention of this Council. Paragraph (3) (a) states that a certain proportion shall be retained by the Government of India as a reserve and such proportion shall be 10 per cent. The Road Committee recommended in paragraph 75 that this proportion should be one-sixth, and there stated what would be the duties of the Government of India in regard to the money which was to be so allocated to them. At the conference, however, there was considerable difference of opinion as to the amount which should be allotted. Various Local Governments demanded that this should be reduced from one-sixth to one-twelfth, while one Local Government demanded that it should be reduced as low as one-twentieth. As a result of the discussion a figure of one-tenth was arrived at, and it will be seen that it is not final, but has been so fixed for two years ending 31st March, 1931, and the position will be reviewed thereafter. It is not possible at this stage to say what will be the cost of the duties the Government of India will have to undertake, because there are such questions as research, collection and dissemination of information, and it gives us time to see whether this ten per cent. is a correct and fair share for the duties which the Government of India will have to perform.

The next point to which I wish to draw the attention of the House will be found in the second paragraph of the Resolution, which runs :

“ . . . after deducting such amounts as may be required for grants-in-aid to users of petrol for aviation purposes according to rules issued by Government on a scale not exceeding the additional duty on petrol . . . etc.”

The Road Committee were not very certain about this particular question. In paragraph 68 they said :

“ The case of aviation is more difficult but has not yet become a live issue. It is sufficient now to note that aviation spirit is easily distinguishable from motor spirit and being more expensive could probably be exempted from all or a part of the additional duty on motor spirit without inconvenient consequences. Secondly, it is understood that a successful system of aviation is itself partly dependent on an adequate road system.”

The question of exemption has been examined and it has been decided that practically it would not be possible to secure exemption of petrol used for aviation purposes without the risk of very considerable fraud, and it has therefore been necessary to retain aviation spirit within the scope of this tax. As regards the other point which they raised, it was represented during the discussion of the Finance Bill that it was not fair to charge petrol used for aviation purposes and use the money on the development of roads. When that was brought forward the Finance Member stated :

“ I fully recognise that a tax which is intended to be levied on the users of roads for the improvement of roads cannot fairly be levied on people who fly through the air. Therefore our intention is that if we are to observe principles of equity in this matter our action should take the form of ascertaining roughly what is the amount of the tax on petrol used for aviation and using that for the purpose of encouraging the development of aviation on exactly the same principle as we are using the tax on petrol used by cars and lorries for the special improvement of roads.”

I think, Sir, there is no need for me to elaborate this. It is perfectly clear and equitable that the tax which is levied on petrol used for aviation purposes should be used for the development of civil aviation.

The last point that I wish to draw the attention of this Council to will be found in paragraph (7) (ii). In the course of the conference last year there was a considerable amount of discussion as to the precise relations between the

[Mr. J. A. Shillidy.]

Central and Provincial Governments in regard to revenues and subjects. I do not think I need enter into that very intricate question at this stage. The Road Committee in paragraph 76 of their Report had given their opinion :

“ It does not however appear to us to be proper that the Government of India and the Indian Legislature, which will be responsible for imposing this additional duty, should divest themselves of all responsibility for the manner in which the proceeds are spent.”

They go on to say :

“ We do not think that the approval of projects on which grants may be spent in the manner proposed could reasonably be regarded as undue interference in the responsibility of a Local Government for the roads in its province.”

And if there should be any doubt in anybody's mind as to what exactly the Road Committee did mean, I can only refer to the words of the Chairman of the Committee, who, arguing in the Assembly a short time ago upon this very point, stated quite clearly :

“ What we recommended was this, that the control of the Government of India should be limited to only one single consideration, namely, that the schemes which come up from the provinces asking aid for road development should be analysed and tested on one important particular only, namely, whether it is a scheme of such a nature that the Government of India could sanction the money on it from central revenues. That is the only interference of the Government of India.”

And so, we have accordingly laid down in paragraph (7) (ii)

“ provided that the function of the Standing Committee and of its Finance Subcommittee shall be confined to determining whether the scheme is one for which an allotment from the Central Road Development Account should be made.”

Sir, these are all the points to which I think it is necessary for me to draw the attention of the Council.

I move the Resolution.

THE HONOURABLE MR. P. C. DESIKA CHARI (Burma : General) : Sir, if you would permit me, I want to move an amendment to clause (5) of the Resolution.

THE HONOURABLE MR. J. A. SHILLIDY : I rise to a point of order. No notice has been given of this amendment.

THE HONOURABLE THE PRESIDENT : The Rules and Standing Orders do not definitely lay down that notice should be given of an amendment to a Resolution. On the other hand, it is open to any Honourable Member of this Council to object to the moving of an amendment of which two days' notice has not been given. Automatically the Chair does not disallow an amendment of which notice has not been given, but it has to exercise its discretion only in the case where objection is taken. Do I understand that the Honourable Member takes objection to the moving of the amendment ?

THE HONOURABLE MR. J. A. SHILLIDY : Yes, Sir.

THE HONOURABLE THE PRESIDENT : In that case I require a little information to enable me to exercise my discretion. In the first place I should like to know exactly on what date the list of business for this morning was made available to Members, if the Leader of the House could give me information on that point ?

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH (Leader of the House) : It was three or four days ago that this was circulated to Honourable Members.

THE HONOURABLE THE PRESIDENT : There is one more point that bears on the case and that is that it is the custom in the office of the Council to circulate a list of Resolutions as they are admitted by the Chair. It is within my recollection that a circular was issued to Honourable Members giving the terms of this Resolution and I think I am correct in saying that that circular went out at least a week ago.

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH : Yes, that is so, Sir.

THE HONOURABLE THE PRESIDENT : Further, in that circular it is the practice to enter in a column of remarks the date on which the Resolution is to be set down for discussion in the Council. Whether in this particular case there was a note of the date of discussion I am unable to say not having the circular at my disposal at the moment ; but I think in view of the fact that the terms of the Resolution have been in Honourable Members' hands for at least a week, it is not fair to the Mover of the Resolution that I should allow an amendment to be moved of which notice was given to me only two minutes before the meeting, and of which I understand from the Honourable Member, he has not yet had notice at all. The Honourable Member may speak, but I am afraid I cannot allow him to move an amendment to the Resolution now.

THE HONOURABLE MR. P. C. DESIKA CHARI : It is unfortunate that when I got the agenda on Saturday I had no time to give notice of an amendment. In fact I was under the impression that the 3rd was not a holiday and I wanted to give notice of an amendment on the 3rd. But since the amendment is objected to for want of notice I can only say a few words, though I cannot formally move my amendment. I oppose this Resolution and especially clause (5) of the Resolution. There it is stated that :

“As an exception to this (the general) rule, the amount available for Burma may, for the present, be spent on any scheme of road development that is approved by the Local Government with the concurrence of the local legislature.”

Honourable Members are aware that in the original Resolution asking for a Committee to go into the question of road development it was made clear from the outset—and I believe a perusal of the report of the Road Development Committee will make it clear—that the object of this fund to be realised out of an additional duty on petrol was the developing of a scheme of road development connecting the various provinces with each other. It was for the purpose of inter-provincial road development and the fund was not meant for the purposes of normal road construction in the various provinces. Honourable Members are also aware that the Road Committee did not go to Burma and Burma did not participate in any of the proceedings of that Committee.

THE HONOURABLE MR. MAHMOOD SUHRAWARDY (West Bengal : Muhammadan) : Burma sent a representative.

THE HONOURABLE MR. P. C. DESIKA CHARI : Burma sent a representative. I mean the Burma Government might have sent a representative ;

[Mr. P. C. Desika Chari.]

and I believe representation consisted in the fact that Burma did not want to co-operate with the Roads Committee for the purpose for which the Committee was formed.

THE HONOURABLE MR. MAHMOOD SUHRAWARDY: His evidence is there in the Committee's Report, and that is co-operation.

THE HONOURABLE MR. P. C. DESIKA CHARI: As a result of the deliberations of the Committee they came to the conclusion that though the fund which was recommended to be formed by the additional duty on petrol was intended for inter-provincial road development an exception should be made in the case of Burma; in other words, though there is no need to levy this additional duty for the purpose for which it is intended so far as Burma was concerned it was after all decided to levy this duty also in Burma and to use it for a different purpose altogether. That is a purpose which was not in accordance with the general scheme of recommendations made by the Committee; so that we have got a very unusual condition here that a fund formed for one purpose is sought to be devoted to a different purpose. I only want to refute the statement contained here that the road connection between India and Burma is not a live issue and the idea of utilising this fund may be reconsidered at a later date when the road connection between India and Burma becomes a live issue. My submission to the Council is that Burma is absolutely isolated from the rest of India. I have been agitating for railway connection between Burma and India and for some reason or other, mostly for reasons of stringency of money, the railway connection between Burma and India has been unfortunately put off. The people of Burma would at least like to have some sort of connection with India at least by way of road connection. It is a well known fact that wherever roads are formed in Burma large towns spring up; and wherever there is railway communication large towns have been formed; and I say that if there is road connection between India and Burma, all along the inter-provincial road large centres of villages and towns will be formed and the roads are certain to be used; I cannot understand why this question of road connection between India and Burma should be indefinitely postponed till there is evidence of the question of road connection becoming a live issue. I say it is rather putting the cart before the horse. Unless there is road connection the roads would not be very much used and I do not know if in these border tracts people are so alive to what is going on at the centre of the Government as to create agitation to make roads in that quarter. But seeing that this fund is meant for this particular purpose it will be in the fitness of things that Burma is not made an exception and that the fund which is being formed out of which Burma is to get a share should be utilised for the purpose for which it ought to be utilised, that is, for the purpose of road development, which will be a part of the scheme of all-India roads; and unless the funds are utilised for the purpose of a connection with India Burma cannot take part in this scheme of inter-provincial road development. I am therefore obliged to oppose this Resolution because the people would be unnecessarily taxed for one purpose and the funds will be utilised for a different purpose altogether. And the first clause refers to the levy of the tax. An opportunity will be available when this Finance Bill is introduced. But my difficulty is that in the case of these duties, in the case of tariff rates there cannot be a special exemption for a province because it will have other economic complications. So Burma would have to submit to this extra duty on this account. But if Burma has to submit to this duty

it would be fair that the proceeds of the duty should be utilised for the purpose for which it was intended. If this cannot be done the revenue realised may be handed over wholesale without any deductions to the Local Government for the purposes of development. That at least would give Burma the fullest benefit of this taxation if Burma is not to take part in this inter-provincial scheme.

With these words I oppose the motion.

THE HONOURABLE SIR ARTHUR FROOM (Bombay Chamber of Commerce): Sir, I only wish to ask one question of the Honourable Member who has just spoken. Should the Members of this Council take his speech as an argument in favour of the separation of Burma from India ?

THE HONOURABLE MR. P. C. DESIKA CHARI: My speech was only an argument for keeping on the present link. In fact I say that, with a view to keep Burma in India and with a view to continue the present position, the road connection with India is an absolute necessity.

THE HONOURABLE MR. J. A. SHILLIDY: Sir, the Honourable Member has said that in this Resolution we are putting the cart before the horse. After listening to him my only difficulty is to know what particular cart is being put before which particular horse. I am really not quite certain what are his objections.

THE HONOURABLE MR. P. C. DESIKA CHARI: It is a live issue.

THE HONOURABLE MR. J. A. SHILLIDY: One was about the live issue. Then having said that it was a live issue, he asked would it not be fair and just that the whole of the proceeds should be handed over to the Local Government ? That is exactly what is being done.

THE HONOURABLE MR. P. C. DESIKA CHARI: The whole amount without deductions ?

THE HONOURABLE MR. J. A. SHILLIDY: On the other hand, deductions are being made for certain purposes from which Burma will get advantage as much as anybody else. He then went on to say that the money was levied for one purpose and is now going to be used for another. I am not quite certain but I think he tried to suggest that we were doing something contrary to what the Road Committee had recommended. Now, the principles recommended by the Road Committee were as follows :

"Strictly speaking, it might perhaps be correct to confine expenditure from central revenues to projects which may fairly be regarded as benefiting India as a whole, or as aiding the proper administration of a central subject. And ultimately it may be found desirable to restrict grants to roads classed as arterial or to roads, for instance, which are definitely feeders to railways. But until the road system of India takes firmer shape, considerable latitude will probably be found necessary ; and any project in a provincial programme might be approved which is part of a consistent plan of road development."

That, Sir, I think, hardly justifies the very categorical statement of the Honourable Member that the tax was intended from the very outset to be applied purely to the development of inter-provincial roads. He then went on to deal with the problem of Burma. I am not quite sure whether the Honourable

[Mr. J. A. Shillidy.]

Member said or meant that Burma was isolated or not isolated. At one stage he seemed to suggest that it was isolated, at another stage that it was not isolated ; still again that it was so isolated that the money should be handed over to the Local Government. What the Road Committee said was :

“ It has been represented by the Government of Burma that the province of Burma is separated from the rest of India by a wide stretch of hill and forest which is entirely roadless, and that its road system is not likely to be connected with the Indian road system within any calculable time. It follows that road development in Burma is a self-contained problem and has no all-India aspects. Recognising the special circumstances, we consider that for the present the amount apportioned to Burma might be spent on any scheme of road development that is approved by the local Government and the local legislature.”

I find it rather difficult, Sir, after reading that to agree with the Honourable Member that money has been raised with one end in view and is now being spent on a different object. It has been clear from the beginning that, so far as Burma is concerned, this petrol tax was to be left free to be spent by the Local Government with the consent of the local Legislature on any roads which they considered necessary for Burma. I do not think, Sir, I need say anything more. It is rather difficult to speak clearly to the Honourable Member's objections because I find some difficulty in understanding what exactly his objections are.

THE HONOURABLE THE PRESIDENT : I referred just now to the circular which is commonly issued in regard to Resolutions admitted by the President. I now have the circular connected with this particular Resolution in my hand. It sets out in full the Resolution in the terms in which it has been moved this morning. It is dated the 26th February and in the column of remarks are printed the following words : “ To be moved on the 4th March, 1930.” I think, therefore, that the Honourable Member has little cause to complain that the moving of the Resolution this morning has taken him by surprise.

The question is :

“ That the following Resolution be adopted, namely,

‘ This Council, after taking into consideration paragraphs 70 to 79 of the Report of the Indian Road Development Committee, recommends to the Governor General in Council that :

- (1) The increase in the import and excise duties on motor spirit from 4 to 6 annas per gallon, introduced by the Indian Finance Act for the current year, shall be maintained for a period of five years in the first instance ;
- (2) The proceeds of the additional duty during the same period after deducting such amounts as may be required for grants-in-aid to users of petrol for aviation purposes according to rules issued by Government on a scale not exceeding the additional duty on petrol actually consumed for such purposes shall be allotted as a block grant for expenditure on road development to be credited to a separate road development account, the unexpended balances of which shall not lapse at the end of the financial year ;
- (3) The annual grant shall be divided as follows :
 - (a) A certain proportion shall be retained by the Government of India as a reserve and such proportion shall be 10 per cent. for the two years ending March, 1931, and the position shall be reviewed thereafter and the balance, if any, on 31st March, 1931, or any subsequent date of review, which is not required for the purposes approved in paragraph 75 of the Report, shall be distributed among the Governors' provinces and the Government of India in the manner provided for the remainder in sub-clause (b) ;

- (b) Out of the remainder—
- (i) An apportionment shall be made among the Governors' provinces in the ratio which the consumption of petrol in each such province bears to the total consumption in India in the preceding calendar year ;
 - (ii) The balance, representing the consumption of petrol in provinces other than Governors' provinces, administered areas and Indian States, shall be allotted as a lump sum to the Government of India ;
- (4) If any part of the amount apportioned to a Governor's province in any financial year remains unexpended at the end of that year, it shall be carried over for expenditure in that province in the following year ;
- (5) Grants shall be made to each Governor's province, up to the amount available for it in each year, for expenditure on schemes approved by the Governor General in Council with the advice of the Standing Committee for Roads. As an exception to this rule, the amount available for Burma may, for the present, be spent on any scheme of road development that is approved by the Local Government with the concurrence of the local Legislature ; but if at any future time the question of road connection with India becomes a live issue, the position shall be reconsidered ;
- (6) A Standing Committee for Roads shall be constituted every year after the financial year 1929-30 consisting of one nominated official member of the Legislative Assembly, a second nominated official member, three members elected by the Council of State from their body, and six members elected by the Legislative Assembly from their body. The Member of the Governor General's Executive Council in charge of the Department that deals with roads shall be the Chairman of the Committee ; and the members of the Committee who are members of the Legislative Assembly shall form its Finance Sub-Committee which shall be presided over by the Chairman of the Committee if he is a member of the Legislative Assembly, and otherwise by the official member of the Committee who is a member of the Legislative Assembly ;
- (7) The functions of the Standing Committee for Roads including that appointed in pursuance of the motion adopted in the Legislative Assembly on the 2nd September, 1929, shall be—
- (i) To consider the annual budget and accounts of the separate road development account of the Government of India ;
 - (ii) To consider all proposals submitted by Governments of Governors' provinces to the Government of India, for which grants from the road development account are requested ; provided that the function of the Standing Committee and of its Finance Sub-Committee shall be confined to determining whether the scheme is one for which an allotment from the Central Road Development Account should be made ;
 - (iii) To advise the Government of India generally on all questions relating to roads and traffic on roads and, in particular, on—
 - (a) any action to be taken by the Government of India on the proceedings of periodical Road Conferences ;
 - (b) central research in all matters connected with roads, road construction and maintenance ;
 - (c) statistics and intelligence, the preparation and publication of maps, and the collection and dissemination of information relating to road development, administration and finance in India and in other countries ;
 - (d) proposals other than those relating to Indian States on which it is desired to incur expenditure out of the portions of the annual grant referred to in clauses (3) (a) and (3) (b) (ii) ;
- (8) All proposals for expenditure from the annual grant or its accumulated balance shall be transmitted by the Standing Committee to its Finance Sub-Committee for approval before recording its final acceptance ; and the Standing Committee shall not record its acceptance to any such proposal unless it has received the approval of the Sub-Committee'."

The motion was adopted.

TRANSFER OF PROPERTY (AMENDMENT) BILL.

THE HONOURABLE SIR LANCELOT GRAHAM (Secretary, Legislative Department): Sir, I move that the Bill to amend the Transfer of Property Act, 1929, for a certain purpose, as passed by the Legislative Assembly, be taken into consideration.

Honourable Members will be aware that, in the last Simla Session, they were parties to the passing of a Bill extensively amending the law relating to the transfer of property. Just about the time or shortly after the passing of that Bill, it was brought to the notice of Government by an officer connected with registration in the Madras Presidency that there was one slight defect in a portion of clause 4 of that Bill which dealt with the subject of notice, especially that part which dealt with the making or constituting of compulsory registration notice, that is to say, where there is an immoveable property and registration in connection with any transfer is compulsory, a document so registered constitutes notice. We had provided against one source of difficulty or possible inequity in our explanation in that section and it was pointed out to us afterwards that there was a second possible source of inequity arising from a case where properties dealt with by one act of transfer were separate properties scattered over different districts. It is to remove that possible cause of inequity that this amending Bill was introduced and passed in the other House.

I now, Sir, move that this Bill 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 the Preamble were added to the Bill.

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

The motion was adopted.

INDIAN SALE OF GOODS BILL.

THE HONOURABLE SIR LANCELOT GRAHAM (Secretary, Legislative Department): Sir, I move that the Bill to define and amend the law relating to the sale of goods, as passed by the Legislative Assembly, be passed.

Honourable Members, Sir, have had this Bill before them for some days. Attached to the Bill in the form as passed by the Legislative Assembly they will find—or they have found, I trust—in the Statement of Objects and Reasons the Report of the Special Committee which was appointed to consider this very important subject. The Special Committee, in preparing their Report, also set out a very complete table of Notes on Clauses. These too have been reproduced as Appendix C and therefore, Sir, I would say that all that I could possibly say on the subject of this Bill has already been far better said in the Report of the Special Committee. I shall therefore, Sir, content myself in moving my motion, with giving the House a short summary of the Report of that Committee.

The law, Sir, relating to the sale of goods is at present contained in Chapter VII of the Indian Contract Act, 1872. At the time when that Act was enacted, the object of codifying the law of sale—or rather of contract generally—was in the words of Sir James Stephen :

“ that of providing a body of law to the Government of the country so expressed that it might be readily understood both by English and Native Government servants without extrinsic help from the English law libraries.”

The law relating to sale of goods appertains mainly to mercantile transactions and during the last half century conditions in this country relating to trade and business have undergone material changes. The methods of business have largely altered and the passage of time has revealed many defects in the existing law. On various occasions the courts have held that the provisions of the Indian Contract Act are not exhaustive—and indeed they were not intended to be exhaustive—and they have therefore been compelled to import analogies from the decisions of the English courts. To remove these defects and particularly to bring the law enacted more than 50 years ago into line with the requirements of modern business relations an exhaustive examination of the case law bearing on certain portions of the Indian Contract Act was made in the Legislative Department in the years 1926-27 under the supervision of the late Mr. S. R. Das, the Law Member at that time. In 1928 the results of that examination were considered by Sir Dinshaw Mulla, at that time officiating Law Member, and under his guidance a draft Bill was prepared, following very closely the lines of the English Sale of Goods Act, embodying the law relating to sale of goods in a separate enactment. In 1929, that Bill was referred for scrutiny and examination to a Special Committee of experts composed as follows: The Honourable the present Law Member as Chairman aided by Sir Dinshaw Mulla, Mr. Krishnaswamy Ayyar, Advocate General of Madras, and Mr. M. R. Jayakar whose name is well-known to Members of this House. The Committee agreed to the proposal that the law relating to the sale of goods should be embodied in a separate enactment. It generally approved of the draft prepared by Sir Dinshaw Mulla but made certain additions and alterations, and as I have already said, the Report of that Committee is attached to the Bill which is now before the House as a Statement of Objects and Reasons.

In adopting the English Act as the basis of the present Bill, the Special Committee were influenced by the following considerations. In the first place, the English Sale of Goods Act is well known to be a very successful and correct codification of that branch of the mercantile law. From time to time it has been highly praised by the English courts. That Act has been adopted and re-enacted with very slight variations in most of the Colonies and Overseas Dominions and also has been made the basis of the Uniform Sales Act of 1906 in the United States of America. In the second place, the uniformity of law in various countries, particularly in those which have business or trade dealings with one another, is highly desirable.

It must not, however, be supposed that the Special Committee has slavishly followed the English law. The Committee was not unmindful of the special needs and exigencies of this country and whenever it found that a rule obtaining in England such as that relating to market overt was not suitable to Indian conditions, the Committee has not hesitated to reject it. At the same time, the Committee has been at pains to improve on the language of certain provisions of the English Act and to remove ambiguities.

[Sir Lancelot Graham.]

The main principle on which the English Act has been based is that in mercantile matters the certainty of the rule is often of more importance than the substance of the rule and this principle has been kept carefully in view in framing the present Bill. It purports to leave unfettered the freedom of contract and it does not in any way prevent the parties from making any special kind of bargain they please. Its object is to lay down clear rules for the cases where the parties either have no guiding intention, or if they have one, have failed to express it. If they know beforehand what their legal position is, they can provide for their particular wants by express stipulations. The Bill also purports to save particular usages of trade and has provided that such recognised usages can over-ride the provisions of the Bill.

The main points of difference between this Bill and the existing law contained in Chapter VII of the Indian Contract Act are the following: In the first place, it is made clear in the Bill that the question whether a contract for sale of goods does or does not pass the property in the goods from the seller to the buyer must in all cases be determined by the intention of the parties. On this, Sir, the provisions of the existing law in Chapter VII of the Indian Contract Act are, it must be admitted, both vague and conflicting. In the second place, the Bill makes it clear that a contract of sale can be made by a mere offer and acceptance; neither payment nor delivery, which are incidental to the contract, are necessary. In the third place, the existing difficulty of distinguishing between warranties and conditions have been removed in the present Bill. Fourthly, the law relating to sales by ostensible owners which has led to a conflict of decisions has been simplified. That is the provision which was formerly in section 108 of the Indian Contract Act. Fifthly, the provisions relating to delivery to carriers, stoppage in transit and auction sales have been elaborated.

It is from the point of view of the Government of India most gratifying that the Bill has received what without undue vanity I may describe as uniform approval, both in legal and commercial circles. In the other House the Bill was referred to a Select Committee, as a Bill of such magnitude naturally would be, and the Committee approved the lines on which the Bill was drafted and generally agreed with its provisions. The principal change of substance which was made by the Committee in the other House was in regard to the provisions in clauses 27 and 29 relating to sales by ostensible owners. In deference to the opinions of some of the commercial bodies it has been made clear that a sale by a person under a voidable contract passes a good title, if such a contract has not at the time of the sale been avoided by the real owner. This provision, as explained in the Report of the Select Committee, is in consonance with the provisions in the English law and will, it is submitted, be found convenient in practice. This, Sir, is the history of the Bill up to the stage when it has reached this House. I have only to observe that I have not received notice of any amendments and I take it, Sir, that I need not expect any opposition to my motion that this Bill, as passed by the Legislative Assembly, be taken into consideration.

THE HONOURABLE DEWAN BAHADUR K. SUNDARAM CHETTIYAR (Madras: Nominated Official): Sir, I rise to say a few words in support of the Bill which the Honourable Mover has placed for consideration before this House. I need hardly say that this Bill relates to an important branch of mercantile law in which the large bulk of the mercantile population of

India is deeply interested. The chief business of merchants lies in sales and purchases and contracts to sell and to purchase. This branch of law deals with an important subject, and the principles of law governing this subject which were embodied in a Code which came into existence more than half a century ago could not be found to be wholly adequate or suitable to the present needs of the country. That being so, this Bill has in my opinion supplied a long-felt want. As the mercantile business is evolving, the principles of law governing it should, in the fitness of things, undergo such modifications and developments as are required, in order to keep pace with the growth and evolution of trade. In applying Chapter VII of the Indian Contract Act, 1872, to the law relating to the sale of goods, the courts in India met with some difficulty in administering it, in order to suit it to the present conditions of India. The difficulties were felt not only by the courts; they were also experienced by the litigant public on account of the vagueness and ambiguity and also the inadequacy of some of the provisions contained in that Chapter. This Bill will, I hope, be found to be very beneficial to the mercantile public of India, and it redounds to the credit of the members of the Special Committee and also the Secretaries who have rendered valuable assistance in bringing this Bill into existence. Sir, I have to say that this Bill contains the principles of law explained in a lucid and elaborate manner. The legal acumen of the Honourable the Law Member and his learned colleagues has manifested itself in the methodical and logical arrangement of the several provisions of this Bill, and I may even say, that some of the complicated principles relating to this subject have been embodied in the rules which are characterised by clarity, brevity and fullness. This Bill has in the main adopted the provisions of the English Sale of Goods Act, with due regard to the present conditions of India and the requirements of the mercantile public. Under the old Act it was a vexed question when the title in the goods passes from the seller to the buyer. But in the present Bill, clauses 20 to 24 have laid down the rules on this subject in the best possible manner, and I hope the formation of such clear rules in this Bill will obviate unnecessary litigation and will also be an effective check on speculative litigation which is ordinarily carried on by taking advantage of the uncertainty or ambiguity in the existing law. Sir, this Bill is in my opinion a substantial improvement on the old law contained in the Indian Contract Act, and has also embodied several important pronouncements of judicial opinion. This is the first of a series of Bills which the Government has undertaken to introduce for the benefit of the mercantile population of India, which, I should think, will hail the introduction of such Bills. I therefore commend this Bill to this House for acceptance. (Applause.)

*THE HONOURABLE MR. NARAYAN PRASAD ASTHANA (United Provinces Northern : Non-Muhammadan) : Sir, in supporting the motion which has been made for taking the Bill into consideration, I have to congratulate the Government on the initiation of this Bill, and I have also to congratulate the Special Committee which met and prepared the Bill in a form as acceptable as that in which it has been presented to-day. The Bill affects the every-day life, I think, of every citizen in India and as such to put it in language which is at once unambiguous as well as lucid is one of the functions of the Legislature. The Indian Contract Act was passed in 1872 and since then much water has flown under the bridge. There has been a great evolution of trade in India as well as with foreign countries; and, as has already been remarked, it was necessary that our legislation should be brought into line with the legislation of foreign countries, and I am glad to

*Speech not corrected by the Honourable Member.

[Mr. Narayan Prasad Asthana.]

find that the Bill has been modelled on British legislation as well as on American legislation. I do not know how far the Honourable Dewan Bahadur Chettiyar's expectations will be realised, because there will be lawyers to interpret the clauses of this Bill. However, if the Bill makes a more satisfactory progress in legislation I hope that the relations of the mercantile agents and of every-day purchasers will be improved and that the Bill, when placed on the Statute-book, will go far to improve trade and to ease the situation of the purchasers.

With these few words, Sir, I commend this Bill to the consideration of the Council.

THE HONOURABLE THE PRESIDENT : The question is :

“ That the Bill to define and amend the law relating to the sale of goods, as passed by the Legislative Assembly, be taken into consideration.”

The motion was adopted.

Clauses 2 and 3 were added to the Bill.

Clauses 4 to 17 were added to the Bill.

Clauses 18 to 24 were added to the Bill.

THE HONOURABLE THE PRESIDENT : The question is :

“ That clause 25 do stand part of the Bill.”

THE HONOURABLE SIR ARTHUR FROOM (Bombay Chamber of Commerce) : Sir, I should like to draw the attention of the Honourable Mover of this Bill to clause 25 which, in my opinion, presents something of an anomaly. If Honourable Members will turn to clause 2 of the Bill, sub-clause (4), they will find that railway receipts are included with other documents and bills of lading as a “ document of title to goods ”. Now, turning to clause 25, sub-clause (1), sub-clause (1) obviously includes both railway receipts and bills of lading, and it provides :

“ Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled.”

It goes on to say :

“ Notwithstanding the delivery of the goods the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.”

That clause I think is perfectly clear. Then we come to sub-clauses (2) and (3) where there are special provisions for bills of lading, presumably in the absence of any such contract as is referred to in sub-clause (1). If Honourable Members will look at sub-clauses (2) and (3), they will see that sub-clause (2) runs :

“ Where goods are shipped and by the bill of lading the goods are deliverable to the order of the seller or his agent, the seller is *prima facie* deemed to reserve the right of disposal.”

And sub-clause (3) provides :

“ Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading to the buyer together, to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honour the bill of exchange and if he wrongfully retains the bill of lading the property in the goods does not pass to him.”

Now, Sir, it appears to me that by the omission of any reference to railway receipts in sub-clauses (2) and (3) of this clause 25, in the absence of any contract referred to in sub-clause (1) the seller of the goods would be led to understand that in case of goods sold F. O. R. (free on rail) the property in the goods passes as soon as they are placed on rail and would be at the risk of the buyer. On the other hand, the High Courts in India have ruled that when a railway receipt is dealt with in a similar manner as bills of lading in sub-clauses (2) and (3) the property in the goods does not pass. I contend, Sir, therefore that in order to clarify this issue it would have appeared advisable to recognise the rulings of the High Courts and to include railway receipts in sub-clauses (2) and (3) of clause 25 of this Bill. I feel somewhat diffident in raising this point with so many eminent lawyers in this House and I understand that in the English law the law relating to railway receipts and bills of lading differs considerably, but what I do contend is that by the absence of any reference to railway receipts in sub-clauses (2) and (3) there is the *implication* that the conditions that are set forward in sub-clauses (2) and (3) do not apply in the case of railway receipts.

Sir, this is not a controversial Bill. I congratulate the Honourable the Law Member on having introduced this Bill before the Central Legislature and I congratulate the Honourable Sir Lancelot Graham for bringing the Bill before this House. It is a Bill which appears to me to be one which has been wanted for a long time and we all welcome it wholeheartedly. For that reason I have been loath to delay the passing of the Bill by introducing an amendment to clarify the issue which I have just described as one presenting some difficulties in regard to railway receipts. I am very glad to see the Honourable the Law Member in this House to-day. Perhaps he, with the Honourable Sir Lancelot Graham, would assist me in my difficulty in this matter with an explanation and if they find my contention has weight behind it, it would be possible to put the matter right at some later date. I have nothing further to say, Sir, but I will wait and listen with interest to what the Honourable the Law Member, or perhaps the Honourable Sir Lancelot Graham or perhaps both of them, has to say in reply to my contention.

THE HONOURABLE SIR BROJENDRA MITTER (Law Member): Sir, Sir Arthur Froom was courteous enough to mention to me a few days ago the point which he has advanced in this House and I have had an opportunity of examining it. Sir, clause 25 of the Bill is a reproduction of section 19 of the English Sale of Goods Act. Section 19 of the English Act has been considered in a number of reported cases and the net result of judicial decisions is that the first paragraph lays down the general rule applicable to all documents of title, whether bill of lading, railway receipt or other documents mentioned in clause 4. Sub-clauses (2) and (3) are merely particular instances of the general rule which is contained in sub-clause (1). Therefore, if any document of title is omitted from sub-clauses (2) and (3) it does not follow that such document of title does not come under the operation of sub-clause (1). Sub-clauses (2) and (3) deal merely with particular instances. If Honourable Members will look at sub-clause (2) they will find that all it says is this :

“The seller is *prima facie* deemed to reserve the right of disposal.”

That is to say, an illustration is given of the reservation of the right of disposal. Sir, in this connection I will draw the attention of the House to what Halsbury says with regard to this clause. He says :

“The right of disposal is known as *jus disponendi*. This has reference to the Sale of Goods Act, 1893. Section 19 (1) is a general provision not confined to cases of shipment,—notwithstanding that sub-clauses (2) and (3) are so confined.”

[Sir Brojendra Mitter.]

Therefore, cases which do not come under sub-clauses (2) and (3) would be governed by sub-clause (1).

Similarly, in the great work on Sale of Goods by Benjamin, we find :

“The first of the sub-sections is of general application and is not confined to cases of sea carriage. Illustrations of reservation of right of disposal in cases which would fall under this clause have already been given.”

Therefore, my submission is this, that to the lawyer there is no anomaly because railway receipt would come under sub-clause (1). But when I say that, I also feel, that when a commercial man of the standing of Sir Arthur Froom entertains a doubt, this is a matter which requires further consideration. It may be that to the lawyer there is no doubt or ambiguity ; but the Sale of Goods Act will concern not merely the lawyer but the commercial man also. We want to ensure that no doubt is entertained by commercial men, even if lawyers may not entertain any doubt. From this point of view, it is necessary that the matter should be further examined. Sir, all I can say at the present moment is this, that I shall at the earliest possible opportunity examine this point in the light of the criticism which Sir Arthur Froom has made and, if necessary, shall introduce a small amending Bill to make the point clear, which to my mind is not ambiguous, but, which, to other minds, may appear ambiguous.

THE HONOURABLE SIR ARTHUR FROOM : Thank you very much.

Clause 25 was added to the Bill.

Clauses 26 to 30 were added to the Bill.

Clauses 31 to 44 were added to the Bill.

Clauses 45 to 54 were added to the Bill.

Clauses 55 to 61 were added to the Bill.

Clauses 62 to 66 were added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

THE HONOURABLE SIR LANCELOT GRAHAM : Sir, I move that the Bill to define and amend the law relating to the sale of goods, as passed by the Legislative Assembly, be passed.

The motion was adopted.

INDIAN CONTRACT (AMENDMENT) BILL.

THE HONOURABLE SIR LANCELOT GRAHAM (Secretary, Legislative Department) : Sir, the third Bill which I have the honour to present to this House to-day is really a pendant to the measure which the House has just accepted. Clauses 27 and 29 of the Bill which the House has just passed deal with sales by ostensible owners and reproduce in a rather different form section 108 of the Indian Contract Act. The position as regards pawn by ostensible owners obviously should be precisely the same as sale by ostensible owners and what this Bill does is to insert in the proper place in the Indian Contract Act, by an amendment of section 178 of that Act, provisions governing transactions of pledge by ostensible owners cognate to those provided in clauses

27 and 29 of the Bill which we have just passed relating to sale by ostensible owners.

Sir, I move that the Bill to amend the Indian Contract Act, 1872, as passed by the Legislative Assembly, 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 the Preamble were added to the Bill.

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

The motion was adopted.

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH (Leader of the House): Sir, there is no business to be transacted to-morrow. There is, therefore, no necessity of a meeting of the Council.

The Council then adjourned till Eleven of the Clock on Thursday, the 6th March, 1930.
