

Tuesday, 16th February, 1926

**THE  
COUNCIL OF STATE DEBATES  
(Official Report)**

**VOLUME VII**

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**FIRST SESSION**

**OF THE**

**SECOND COUNCIL OF STATE, 1926**



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## CONTENTS.

	PAGES.
<b>MONDAY, 8TH FEBRUARY, 1926—</b>	
Members Sworn ... ..	1—2
Bills passed by the Legislative Assembly—Laid on the Table ...	2
<b>TUESDAY, 9TH FEBRUARY, 1926—</b>	
Inauguration of the Second Council of State ... ..	3—8
<b>WEDNESDAY, 10TH FEBRUARY, 1926—</b>	
Member Sworn ... ..	9
Questions and Answers ... ..	10—29
Welcome to Members by the Honourable the President ... ..	29—30
Messages from His Excellency the Governor General <i>re—</i>	
(1) Panel of Chairmen ... ..	30
(2) Presentation and Discussion of the Railway Budget ... ..	30
Committee on Petitions ... ..	31
Appointment of the Honourable Mr. K. C. Roy to the Library Committee.	31
Governor General's Assent to Bills ... ..	31
Bills passed by the Legislative Assembly—Laid on the Table ...	32
Election of a Panel for the Standing Committee on Emigration ...	32
Resolution <i>re</i> Ratification of the Draft Convention of the International Labour Conference concerning Workmen's Compensation for Occupational Diseases—Adopted.	32—37
Resolution <i>re</i> Continuation of the Imposition of a Customs Duty on Lac—Adopted.	37—41
Statement of Business ... ..	41—42
<b>MONDAY, 15TH FEBRUARY, 1926—</b>	
Members Sworn ... ..	42
Questions and Answers ... ..	43—62
Election to the panel of the Standing Committee on Emigration ...	62
Bills passed by the Legislative Assembly—Laid on the Table ...	62
Resolution <i>re</i> the Royal Commission on Agriculture—Adopted ...	62—81
Resolution <i>re</i> Reduction of the travelling and daily allowances of the Members of the Council of State—Discussion postponed <i>sine die</i> .	81—90
Statement of Business ... ..	90
<b>TUESDAY, 16TH FEBRUARY, 1926—</b>	
Member Sworn ... ..	103
Messages from His Excellency the Governor General ... ..	103
Bill passed by the Legislative Assembly—Laid on the Table ...	104
Small Cause Courts (Attachment of Immoveable Property) Bill—Passed.	104—105
Code of Criminal Procedure (Amendment) Bill—Passed ... ..	105
Government Trading Taxation Bill—Passed ... ..	106
Guardians and Wards (Amendment) Bill—Passed ... ..	106—107
Indian Lunacy (Amendment) Bill—Passed ... ..	107—108
<b>WEDNESDAY, 17TH FEBRUARY, 1926—</b>	
Questions and Answers ... ..	109—111

<b>WEDNESDAY, 17TH FEBRUARY, 1926—contd.</b>	
Private Notice Questions and Answers ... ..	111—113
Statement regarding Negotiations with the Union Government of South Africa.	113—115
Resolution <i>re</i> Leader of the Indian Delegation to the League of Nations—Adopted.	115—132
Resolution <i>re</i> Formation of a separate Kannada Province—Negatived	132—144
<b>THURSDAY, 18TH FEBRUARY, 1926—</b>	
Member Sworn ... ..	145
Bills passed by the Legislative Assembly—Laid on the Table ..	145
The Railway Budget for 1926-27 ... ..	145—161
Elections to the Panel for the Standing Committees on Emigration ...	162
Resolution <i>re</i> Appointment of a Royal Commission to inquire into the working of the Indian Constitution—Negatived.	162—215
Election of Panels for Standing Committees ... ..	215
<b>SATURDAY, 20TH FEBRUARY, 1926—</b>	
Questions and Answers ... ..	217—249
Nominations to the Panels for Standing Committees ... ..	220
Bills passed by the Legislative Assembly—Laid on the Table ...	220
General discussion of the Railway Budget ... ..	220—254
Statement of Business ... ..	254
<b>MONDAY, 22ND FEBRUARY, 1926—</b>	
Members Sworn ... ..	255
Statement laid on the Table ... ..	255—257
Indian Medical Education Bill—Introduced ... ..	258
Election of a Panel for the Central Advisory Council for Railways ...	259
<b>TUESDAY, 23RD FEBRUARY, 1926—</b>	
Questions and Answers ... ..	261—262
Code of Civil Procedure (Amendment) Bill—Passed ... ..	262
Indian Naturalization Bill—Passed ... ..	263—265
Steel Industry (Amendment) Bill—Passed ... ..	265—268
Insolvency (Amendment) Bill—Passed ... ..	268—269
Code of Criminal Procedure (Second Amendment) Bill—Passed ...	269—284
Madras Civil Courts (Amendment) Bill—Passed as amended ...	285—286
Resolution <i>re</i> Grant of Supplementary Assistance to the Tin-plate Industry—Adopted.	286—290
Nominations to the Panel for the Central Advisory Council for Railways.	290—291
<b>THURSDAY, 25TH FEBRUARY, 1926—</b>	
Questions and Answers ... ..	293—296
Legal Practitioners (Amendment) Bill—Passed as amended ...	296—297
Promissory Notes Stamp Bill—Passed ... ..	297—298
Indian Trade Unions Bill—Passed as amended ... ..	298—304
Election of a Panel for the Central Advisory Council for Railways ...	305
Nominations to the Panels for Standing Advisory Committees ...	305—306
<b>MONDAY, 1ST MARCH, 1926—</b>	
Questions and Answers ... ..	307—316
Result of the Election to the Central Advisory Council for Railways ...	317

MONDAY, 1ST MARCH, 1926—*contd.*

Election to the Advisory Publicity Committee of Messrs. Ramadas Pantulu and Khaparde.	317
Elections to the Panels of Departmental Standing Committees	317
General Budget for 1926-27	317-327

## TUESDAY, 2ND MARCH, 1926—

Result of the Elections for the Panels of the Standing Departmental Committees.	329
Contempt of Courts Bill—Passed	330-341
Indian Medical Education Bill—Motion to circulate—Adopted	341-343
Photographic group of the Members of the Council of State	343

## WEDNESDAY, 3RD MARCH, 1926—

Resolution <i>re</i> Import Duty on Artificial Ghee—Withdrawn	345-359
Indian Registration (Amendment) Bill—Passed	359

## SATURDAY, 6TH MARCH, 1926—

Questions and Answers	361-373
General Discussion of the Budget (Part II)	373-422
Statement of Business	422

## MONDAY, 8TH MARCH, 1926—

Questions and Answers	423-424
Resolution <i>re</i> Guarantee of Appointments on State Railways to qualified students of the Madras Engineering College, Lahore, etc.—Negated.	424-438
Resolution <i>re</i> Privileges and Status of Members of the Council of State—Adopted.	438-442

## WEDNESDAY, 10TH MARCH, 1926—

Questions and Answers	443-450
Resolution <i>re</i> Qualifications of Assistant Commissioners of Income-tax—Withdrawn by leave of the Council.	451-458
Resolution <i>re</i> Banking Legislation—Discussion adjourned	458-466

## MONDAY, 15TH MARCH, 1926—

Questions and Answers	467-471
Resolution <i>re</i> Salaries of the two Members of the Judicial Committee of the Privy Council with Indian Experience—Adopted as amended.	471-488
Resolution <i>re</i> Creation of a self-governing Tamil-speaking Province—Discussion adjourned.	489-505

## TUESDAY, 16TH MARCH, 1926—

Statement laid on the Table	507-543
Bills passed by the Legislative Assembly—Laid on the Table	544
Resolution <i>re</i> Reduction of the Exports of Opium—Adopted	544-547
Resolution <i>re</i> Creation of a self-governing Tamil-speaking Province—Negated.	548-562
Statement of Business	562

## WEDNESDAY, 17TH MARCH, 1926—

Questions and Answers	563
Bill passed by the Legislative Assembly—Laid on the table	564
Indian Succession (Amendment) Bill—Introduced	564-565
Message of Gratitude from the Council of State to Their Excellencies the Earl and Countess of Reading—Motion adopted	565-579

## FRIDAY, 19TH MARCH, 1926—

Members Sworn ...	...	...	...	...	...	581
Message from His Excellency the Governor General ...	...	...	...	...	...	581
Bills passed by the Legislative Assembly—Laid on the Table ...	...	...	...	...	...	581—582
Message from the Legislative Assembly ...	...	...	...	...	...	582
Indian Tariff (Amendment) Bill—Passed ...	...	...	...	...	...	582—583
Madras Civil Courts (Second Amendment) Bill—Passed ...	...	...	...	...	...	583—584

## MONDAY, 22ND MARCH, 1926—

Members Sworn ...	...	...	...	...	...	585
Question and Answer ...	...	...	...	...	...	585
Message from H. E. the Governor General ...	...	...	...	...	...	585—586
Indian Finance Bill—Passed ...	...	...	...	...	...	586—611
Cotton Industry (Statistics) Bill—Passed ...	...	...	...	...	...	611—612
Legal Practitioners (Fees) Bill—Passed ...	...	...	...	...	...	612—613
Code of Civil Procedure (Second Amendment) Bill—Passed ...	...	...	...	...	...	613
Delhi Joint Water Board Bill—Passed ...	...	...	...	...	...	613—614
Indian Income-tax (Amendment) Bill—Passed ...	...	...	...	...	...	614—630
Indian Divorce (Amendment) Bill—Passed ✓...	...	...	...	...	...	630—632
Indian Factories (Amendment) Bill—Passed ...	...	...	...	...	...	632
Transfer of Property (Amendment) Bill—Passed ...	...	...	...	...	...	<del>632</del>

## TUESDAY, 23RD MARCH, 1926—

Questions and Answers ...	...	...	...	...	...	635—641
Resolution <i>re</i> Emigration of Indian Unskilled Labourers to British Guiana—Adopted.	...	...	...	...	...	641—643
Indian Succession (Amendment) Bill—Passed as amended ✓...	...	...	...	...	...	643—644

## THURSDAY, 25TH MARCH, 1926—

Farewell speech delivered to the Council of State and the Legislative Assembly by His Excellency the Viceroy.	...	...	...	...	...	645—649
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# COUNCIL OF STATE.

Tuesday, 16th February, 1926.

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

## MEMBER SWORN.

The Honourable Sir Bijay Chand Mahtab, G.C.I.E., K.C.S.I., I.O.M., Maharajadhiraja Bahadur of Burdwan (Bengal: Nominated Non-Official).

## MESSAGES FROM HIS EXCELLENCY THE GOVERNOR GENERAL.

THE HONOURABLE THE PRESIDENT: I have a Message for the Council from His Excellency the Governor General which runs:

(The Message was received by the Members of the Council standing).

*"In pursuance of the provisions of sub-section (3) of section 67 of the Government of India Act, I hereby direct that the heads of expenditure specified in that sub-section shall be open to discussion by the Council of State when the Budget is under consideration.*

(Sd.) *READING,*  
*Governor General."*

There is a further Message which runs:

(The Message was received by the Members of the Council standing).

*"For the purposes of sub-section (1) of section 67A of the Government of India Act, and in pursuance of Rules 43, 46 and 47 of the Indian Legislative Rules and of Standing Order 70 of the Council of State Standing Orders, I, Rufus Daniel, Earl of Reading, hereby appoint the following days for the presentation to the Council of State and to the Legislative Assembly of the statement of the estimated annual expenditure and revenue of the Governor General in Council in respect of subjects other than Railways and for the subsequent stages in respect thereof in the Council of State and in the Legislative Assembly, namely:—*

<i>Monday, March, 1st</i>	<i>... Presentation in both Chambers.</i>
<i>Thursday, March, 4th</i>	<i>... } General discussion in the Legislative</i>
<i>Friday, March, 5th</i>	<i>... } Assembly.</i>
<i>Saturday, March, 6th</i>	<i>... General discussion in the Council of State.</i>
<i>Monday, March, 8th</i>	<i>... }</i>
<i>Tuesday, March, 9th</i>	<i>... } Voting of Demands for Grants in</i>
<i>Wednesday, March, 10th</i>	<i>... } the Legislative Assembly.</i>
<i>Thursday, March, 11th</i>	<i>... }</i>
<i>Friday, March, 12th</i>	<i>... }</i>

(Sd.) *READING,*  
*Viceroy and Governor General."*

**BILL PASSED BY THE LEGISLATIVE ASSEMBLY LAID ON  
THE TABLE.**

**THE 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 Code of Criminal Procedure, 1898, for a certain purpose which was passed by the Legislative Assembly at its meeting held on the 15th February, 1926.

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**SMALL CAUSE COURTS (ATTACHMENT OF IMMOVEABLE  
PROPERTY) BILL.**

**THE HONOURABLE MR. S. R. DAS (Law Member):** Sir, I move:

"That the Bill to resolve certain doubts as to the powers, in regard to the attachment of immoveable property, of Provincial Small Cause Courts, as passed by the Legislative Assembly, be taken into consideration."

This Bill is intended to settle a doubt which has recently been raised as to the power of Provincial Small Cause Courts to attach immoveable property before judgment. These Courts have no power to entertain any suits with regard to immoveable property nor have they any power to attach immoveable property in execution of their decrees. They had prior to the Code of Civil Procedure of 1908 no power to attach immoveable property before judgment, but since the passing of the Act of 1908 and very recently a doubt has been raised as to whether the Provincial Small Cause Courts have power to attach immoveable property before judgment. There is no question that they have no such power to attach after judgment. So far as it can be made out, the Legislature when passing the Act of 1908 never intended to give any such power to Provincial Small Cause Courts, but the Committee which framed the Act of 1908 in re-arranging the provisions of the Code of Civil Procedure with regard to the powers of the Small Cause Courts have so arranged a provision that a doubt has been raised as to whether the Small Cause Courts have now been given power to attach before judgment. Recently a Full Bench of the Calcutta High Court had this question before them and by a majority they held that as the Civil Procedure Code was now arranged power seems to have been given to Small Cause Courts so to attach, although the Judges held that there was some doubt as to whether the Legislature really intended that. As a matter of fact, these Courts, as the House is aware, are intended for speedy disposal of small causes, and that is the reason why they have not been given any power to deal with immoveable property which raises generally complicated questions of fact and law. This doubt having been raised, it became necessary to settle it and practically all the High Courts are agreed that the Small Cause Courts should not have power to attach before judgment. Of course, it is a very anomalous position. They have not got power to attach after decree and necessarily they should not have power to attach before decree. This was placed before the Legislative Assembly and they have passed the Bill. Now I move that the Bill, as passed by the Legislative Assembly, be taken into consideration by this House.

The motion was adopted.

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

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

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

The motion was adopted.

## CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

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

"That the Bill further to amend the Code of Criminal Procedure, 1898, as passed by the Legislative Assembly, be taken into consideration."

This is a small Bill comprising four or five separate items, the necessity for which has become apparent in the course of experience of the application of some of the amendments carried out in the Code of Criminal Procedure in 1928. I can hardly say that these items present any single definite principle except this, that it is desirable to remove the administrative inconveniences that have been observed to arise; and the safeguards which it is proposed to set up will operate almost entirely in favour of witnesses and of accused persons. I do not think I need go more into the actual details of the Bill than to illustrate my point in the case of one or two of the provisions of the Bill. Honourable Members will see that it is proposed to repeal sub-section (4) of section 170. The result will be that, while in many cases witnesses are now required to present themselves in court on a day when the accused himself has not been produced and are compelled to go and waste their time, return to their villages and appear on some later date, this harassment and inconvenience will be largely reduced. The effect of another clause is that, when a complaint is filed, it will be necessary for some formal documentary record to be maintained either in the form of a written complaint or, where the complaint is not in writing, by means of an examination of the complainant reduced to writing. Again when a complaint is made in pursuance of section 476 by a court in respect of certain offences against public justice or certain contempts, as the Code at present stands the Magistrate to whom that complaint is referred is practically bound to issue process against the person complained against. Now it may quite conceivably happen, and in fact it has occasionally happened, that if the Magistrate were empowered to direct an inquiry or investigation before actually issuing process, the necessity of bringing the person complained against into court would be obviated. These are instances of the general effect of these amendments. They will, as I have said, operate to reduce the hardship and inconvenience entailed on witnesses and accused persons.

The motion was adopted.

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

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

THE HONOURABLE MR. J. CRERAR: I move that the Bill, as passed by Legislative Assembly, be passed.

The motion was adopted.



## GOVERNMENT TRADING TAXATION BILL.

THE HONOURABLE MR. A. C. McWATTERS (Finance Secretary): I move:

"That the Bill to determine the liability of certain Governments to taxation in British India in respect of trading operations, as passed by the Legislative Assembly, be taken into consideration."

This is a very simple Bill of a non-controversial character. It is the result of a recommendation accepted at the last Imperial Economic Conference in 1923. The principle involved is one which, I am sure, has only to be mentioned to meet with universal acceptance. It is that any Government in the Empire which takes part in trading operations or commercial undertakings in any other part of the Empire should be subjected to the same taxation as any business concern. The proposal to legislate on these lines was referred to all Local Governments and all of them have agreed to it. The Government of India waited to see the form which the corresponding legislation would take in the United Kingdom, and this Bill follows the corresponding provisions of the British Finance Act of last year.

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

THE HONOURABLE MR. A. C. McWATTERS: I move that the Bill, as passed by the Legislative Assembly, be passed.

The motion was adopted.

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## GUARDIANS AND WARDS (AMENDMENT) BILL.

THE HONOURABLE MR. S. R. DAS (Law Member): I move:

"That the Bill further to amend the Guardians and Wards Act, 1890, as passed by the Legislative Assembly, be taken into consideration."

This is a very short Bill introduced with a view to carry out one of the recommendations of the Civil Justice Committee. I cannot do better than read from an extract from that Committee with reference to this matter. The Committee says:

"Section 4 of the Guardians and Wards Act (VIII of 1890), defines the Court as 'the District Court having jurisdiction to entertain an application under the Act for an order appointing or declaring a person as guardian and in any matter relating to the ward the District Court having jurisdiction in the place where the ward for the time being ordinarily resides.' By that Act jurisdiction in guardian and wards cases is given exclusively to the District Judge and an appeal lies to the High Court against his orders in a variety of matters, such as the appointment and declaration of guardians and their removal or discharge, the custody of minors and the regulation of the conduct or proceedings of the guardian.

Applications under the Act often relate to estates whose value is much less than the pecuniary jurisdiction of Munsifs. They are sometimes filed with the sole object of stopping a marriage, securing the custody of a minor or harassing a woman who is managing her infant's estate as natural guardian or for other ulterior purposes unconnected with the welfare of the minor and often in order to allow of alienation of immovable property to pay ancestral debts. The guardian when appointed is put on terms and in the discharge of his duties under the bond executed by him, he files accounts and from time to time seeks the directions of the court on various matters. The hearing and determination of these applications naturally take time and interfere with other more important work of the District Judge,

Section 19 of the Central Provinces Act, and section 30 of the Punjab Courts Act provide for the transfer of proceedings under the Guardians and Wards Act, 1890, to any subordinate Judge according to the general or special order of the Judicial Commissioner and High Court respectively. The absence of similar provisions in the Civil Courts Acts of other Provinces has nothing to do with the propriety or desirability of the devolution of the District Judge's powers at the present day to lower judicial tribunals under his control. Here again we consider there is no objection to contested cases being heard by senior subordinate Judges. The power already exists under the Punjab and Central Provinces Acts, and we consider that it should be used when necessary and provision made in the other Civil Courts Acts for similar powers of transfer."

Well, instead of making provision in other Civil Courts Acts it has been thought better to amend the Guardians and Wards Act itself and provide for the recommendation of the Civil Justice Committee. This is a very short Bill. It enables the High Courts and the District Courts to empower courts subordinate to the District Court to hear applications under the Guardians and Wards Act. It also empowers the District Court to transfer from one Subordinate Court to itself or to another Subordinate Court any of these applications. It means a saving of a good deal of time by the taking of a number of minor applications by Subordinate Courts instead of having them made in the District Court or the High Court.

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 the 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.

## INDIAN LUNACY (AMENDMENT) BILL.

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

"That the Bill further to amend the Indian Lunacy Act, 1912, as passed by the Legislative Assembly, be taken into consideration."

The object of this Bill is to remove a defect which exists in our present law relating to lunacy to which attention has been drawn by one of the most eminent alienists in India. Under sections 5 and 6 of the existing Act before a lunatic can, in certain circumstances, be received into an asylum it is necessary for a reception order to be made by a Magistrate, and petition can be made for such a reception order by the persons specified in clause 6 of the Bill, the husband or wife of the alleged lunatic or any other relative of his. Coming to a later provision of the Act, section 82, we see in what circumstances lunatics may be discharged. It is provided in that section that a lunatic may be discharged on the petition of the person on whose petition the original reception order was made. Now considerable inconvenience has been experienced because, if the person who originally made the petition for a reception order is dead or cannot be found, action cannot be taken under this section. The object of the Bill therefore is to lay down a procedure, which Honourable Members will observe, is very carefully regulated and safeguarded, by which a Magistrate may make what is known

[Mr. J. Crerar.]

as a substitution order. That is to say, if the person who originally made the petition cannot be found, or for various reasons it is impracticable or inexpedient that action should be taken on his petition, then another fit and proper person may be substituted after due inquiry. That will greatly facilitate and render more elastic the procedure for the discharge of a lunatic. That is the object of the measure.

The motion was adopted.

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

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

THE HONOURABLE MR. J. CRERAR: I move, Sir, 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 Wednesday, the 17th February, 1926.

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