

THE  
COUNCIL OF STATE DEBATES

VOLUME II, 1936

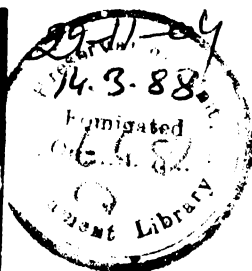
*(21st September to 17th October, 1936)*

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TWELFTH SESSION

OF THE

THIRD COUNCIL OF STATE, 1936



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## COUNCIL OF STATE.

*Thursday, 15th October, 1936.*

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

### SHORT NOTICE QUESTION AND ANSWER.

#### RECOMMENDATIONS OF THE WHEELER COMMITTEE.

180. THE HONOURABLE MR. MAHMOOD SUHRAWARDY: Will the Government of India be pleased to state with reference to my question No. 177 and my supplementary question thereto on the subject of the number of Indian Civil Service officers employed in the Government of India Secretariat, asked on the 17th April, 1936, whether they have now considered the recommendations of the Wheeler Committee Report? If so, when do they propose to give effect to the recommendations embodied therein?

THE HONOURABLE MR. R. M. MAXWELL: The recommendations of the Wheeler Committee are still under consideration.

### INDIAN TEA CESS (AMENDMENT) BILL.

THE HONOURABLE MR. H. DOW (Commerce Secretary): Sir, I move:

"That the Bill further to amend the Indian Tea Cess Act, 1903, for certain purposes, as passed by the Legislative Assembly, be taken into consideration."

Sir, the Bill before us makes four simple changes. In the first instance, the name "Tea Cess Committee" is to be altered to the "Indian Tea Market Expansion Board." That gives a better indication of the real purpose of the Committee and will convey to the public the object on which the cess is being spent. Last year the Tea Cess Act was amended in order to make it possible to levy a maximum of 12 annas per 100 lbs. of tea exported. At the time that Bill was under consideration there was a certain amount of criticism to the effect that the Bill needed many other changes and that an early opportunity should be taken to introduce those, and to a very large extent this Bill represents the attempt of Government to implement the assurances which were then given. The point to which perhaps most attention has been given in public discussion of the Bill is the liberalisation of the constitution of the Committee. The old Committee consisted of 20 members of whom actually there were three Indians. Of these three only one of whom was necessarily an Indian, because appointed by Indian growers, but other interests on the Committee themselves nominated two other Indians, so that there were usually three. If we take the basis on which the cess is

[Mr. H. Dow.]

contributed into consideration, Indian representation, on a cess-paying basis, would be about four out of a Committee of 25. In the Bill as it has come before us the total number of the Committee has been raised to 27 of whom there will be eight Indian members, and it has been further provided that on the Executive Committee of the Tea Market Expansion Board there shall be at least three Indians. I think the whole House will agree that that is a very liberal representation.

The next main feature of the Bill is the raising of the maximum of the cess from 12 annas to Rs. 1-8-0 per 100 lbs. of tea exported. If Honourable Members will cast their minds back to 1932 when the tea industry was in a very bad way indeed owing to low prices, they will remember that three main methods have been applied to remedy matters. The first was by restriction of the exportable allotment: that was done by another Act with which we shall be dealing today. In the second place there has been an effort on the part of the tea industry itself to improve matters by working a voluntary scheme of restriction of production. The third method—and the method which I think is least open to exception on any grounds—is that of propaganda to increase the consumption of tea, and the Tea Cess Committee have for the last few years been conducting a campaign in many countries. They foresee that they will want more money for this campaign and they propose to take power to raise the maximum amount of the cess to Rs. 1-8-0. I should say that this proposal has the support of over 95 per cent. of the industry, including the vast majority both of European growers and of Indian growers.

The only other proposal of any importance is in clause 6 where the Committee are enabled to borrow up to the extent of Rs. 5 lakhs for a period of not more than six months. The reason for this is a very simple one. The income from the tea cess comes in seasonally, and the expenditure is a thing which goes on more or less throughout the whole year. It is therefore proposed to allow the Committee, on the security of the tea cess itself, to borrow the amount of Rs. 5 lakhs by way of temporary accommodation. I do not think there is any other point of importance on which I need detain the House.

Sir, I move.

THE HONOURABLE MR. C. G. ARTHUR (Bengal Chamber of Commerce): Sir, I shall not take up the time of the House with any historical or descriptive observations. I shall content myself with furnishing a few facts on the basis of which I hope the House will accept, without hesitation, the Bill which is now before us.

Tea cess is not a tax imposed by Government on the tea industry; it is a voluntary levy which Government collects through the Customs Department on exported tea.

The funds thus raised are used for promoting the sale and increasing the consumption of Indian tea both in India and in other countries. This obligation is embodied in the existing Act, section 5 (2), and is made more explicit by section 6 (a) of the present Bill.

This Bill embodies the wishes of 95 per cent. of the tea industry as the Honourable Mr. Dow said. The remaining minority, whose actual replies I have in my hand, expressed no disagreement with the objects of the levy; the only criticism made by a small section of Indian producers was that they did not consider that the time had come to raise the rate of cess above one rupee.

This Bill, when passed, will not automatically bring about an increase in the rate of tea cess. A referendum will be issued to all producers before any recommendation is made to the Governor General in terms of section 3, and such recommendation will only be accepted if it is supported by an overwhelming majority.

In June, 1935, an unofficial body, called the International Tea Market Expansion Board, was brought into being in London by the Agreement of the Indian Tea Cess Committee, the Ceylon Tea Propaganda Board and the Amsterdam Tea Association, for the purpose of co-ordinating and supervising propaganda campaigns in all countries other than the countries of production. This Board acts as the Agent of the Indian Tea Cess Committee and the other two parent bodies; it is composed of nine members, three representing each parent body. This Board has no power to spend the Tea Cess Fund unless the Indian Tea Cess Committee—or, as it will henceforth be known, the Indian Tea Market Expansion Board—gives it such authority. All schemes and estimates for campaigns throughout the world will be submitted to the new Board, which this Bill proposes to constitute in Calcutta; and to the extent to which they sanction the proposals it will be necessary to raise cess in 1937. The present estimates are that if all the campaign programmes drawn up for 1937 find favour with the new Board some Rs. 38 lakhs will be required for 1937 from India; to raise this amount it will be necessary to increase the rate of tea cess from its present level of 12 annas to Rs. 1-4-0 per 100 lbs. of exported tea.

Two of the biggest campaigns, namely, the United States of America, and the campaign in India, are definitely expanding schemes; and if the encouraging results which 1936 is giving are continued it will be necessary, in due course, to raise still higher the actual rate at which tea cess will be recovered. Therefore it was deemed expedient to provide a reasonable margin in this Bill so as to obviate the necessity of approaching the Legislature again after so short a period and at a time when it is bound to be fully occupied with other business. It has taken two years to get this Bill, in its complete shape, up to its present stage. In April, 1935 an emergency measure was passed merely raising the rate of cess to 12 annas, so as to give the industry the finance it needed while the present Bill was being prepared.

The composition of the Board and of the Executive Committee contained in section 4 of this Bill was arrived at by agreement in the Lower House amongst all parties, and such a decision may reasonably hope to receive, in this House, a similarly unanimous acceptance.

Honourable Members are doubtless aware that the Bill was sponsored in the Assembly by that distinguished retired Indian Civil Servant, Mr. J. A. Milligan, and I have little doubt that it was due to his expert exposition of the terms of the Bill that the Assembly passed it as an agreed

[Mr. C. G. Arthur.]

measure without a division. Sir, those engaged in the tea industry, Indian and European alike, have abundant faith in Mr. Milligan, and it is fortunate for them that they should have so able an ambassador to induce the world to drink more tea, and I feel sure the good wishes of Honourable Members go with Mr. Milligan when he starts out next week for America to continue his propaganda on behalf of this most important Indian industry.

Sir, I support the Motion.

The Motion was adopted.

Clause 2 was added to the Bill.

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

Clauses 6, 7, 8 and 9 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. DOW : Sir, I move :

“That the Bill, as passed by the Legislative Assembly, be passed.”

The Motion was adopted.

#### GENEVA CONVENTION IMPLEMENTING BILL.

THE HONOURABLE MR. J. BARTLEY (Government of India : Nominated Official) : Sir, I move :

“That the Bill to implement Article 28 of the Geneva Convention of the 27th day of July, 1929, as passed by the Legislative Assembly, be taken into consideration.”

A Convention held in Geneva in 1906 and dealing with the activities of the Red Cross Society contained a stipulation that the signatories to the Convention would take steps to prohibit or limit the use of the emblem of a red cross on a white ground to the Red Cross Society itself. That object was achieved by the passing of the English statute—the Geneva Convention Act, 1911, which applied to India. In 1929 a further Convention, which is referred to in the Preamble to the Bill which is before the House, was concluded at Geneva dealing with the amelioration of the condition of the wounded and sick in armies in the field. Article 28 of that Convention imposed upon the signatories to that Convention the obligation to adopt or propose to their legislatures the measures necessary to prevent at all times the use of the emblem or designation of the Red Cross or Geneva Cross and imitations thereof; and secondly, by reason of the compliment paid to Switzerland by the adoption of the inverted federal colours, that is to say, the red cross on a white ground, the signatories were bound to prohibit the use by private individuals or associations, firms or companies, of the arms of the Swiss Confederation, or marks constituting an imitation, whether as trade marks or as parts of such marks, and the use of the white cross on a red ground which are the Swiss federal colours. It was further stipulated that this was to be done within five years after the Convention came into force. The Convention

came into force, I think, on the 23rd day of December, 1931, so that we are bound to implement that pledge before the 23rd day of December of this year. It was conceived, I think, that this would actually be done by legislation in the Home Parliament. The Home Parliament, however, has not yet passed the necessary legislation and it falls to us to implement the pledge. It is competent for the Indian Legislature to do what is required, and the present Bill contains provisions which supplement the Geneva Convention Act of 1911 in one small respect,—that is to say, the present Bill contains a prohibition of the use of any imitation of the red cross,—and further provides for the prohibition of the use of the white cross or imitations thereof. The statement of objects and reasons in the Bill indicates one matter to which I should like to draw the attention of the House. It states that the use for commercial or any other purposes whatsoever of the white cross is prohibited. That is a slight exaggeration of the actual terms of the Convention. Honourable Members will find that in clause 3 of the Bill, words have been omitted by an amendment carried in the Lower House and the clause now merely prohibits the use, for the purpose of trade or business, of the emblem of the red cross.

There are two safeguards in the Bill against the danger of any undue hardship. The first is the provision contained in clause 5 which requires that before any prosecution can be launched under the Act, the previous sanction of the Governor General in Council or the Local Government should be obtained. The second safeguard is contained in clause 6, which was introduced into the Bill in the Lower House by an amendment. That clause provides that where a sign or emblem the use of which is prohibited under the Bill has been lawfully used by any person at the time when the Act comes into force, the Act shall not operate to penalise any one who continues such use until a period of two years has expired. This will give any persons who may at present be using these symbols which are now prohibited an opportunity within two years of taking steps to replace them.

Sir, I move.

The Motion was adopted.

Clauses 2 to 6 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. J. BARTLEY: Sir, I move:

"That the Bill, as passed by the Legislative Assembly, be passed."

The Motion was adopted.

## INDIAN RUBBER CONTROL (AMENDMENT) BILL.

THE HONOURABLE MR. H. DOW (Commerce Secretary): Sir, I move:

"That the Bill to amend the Indian Rubber Control Act, 1934, for certain purposes, as passed by the Legislative Assembly, be taken into consideration."



[Mr. H. Dow.]

Sir, the Indian Rubber Control Act was passed in September, 1934, but it has not yet been found possible to bring that Act into operation owing to the fact that it was necessary to frame detailed rules and bye-laws under the Act. This has entailed a good deal of correspondence with the Indian Rubber Licensing Committee and with the Burma Government, and, through them, with the Burma Licensing Committee. These rules and bye-laws are now ready and it was intended to bring them into operation at once. We found ourselves, however, up against a legal difficulty. Under section 13 of the Indian Rubber Control Act, the export allotment can only be made annually, that is to say, the whole allotment for the year has to be notified at once. In actual practice, the International Rubber Regulation Committee have found it convenient to declare these allotments sometimes for two months at a time, sometimes for three months and occasionally for six months. It is therefore proposed to amend section 13 of this Act in order to make it possible for the Indian allotment to be declared for part of a year at a time, following the declarations made by the International Rubber Regulation Committee.

The only other small change is in the definition of "rubber" and consequential amendments to other definitions arising from it. That again is to bring the Indian practice in line with that adopted by the International Rubber Regulation Committee.

Sir, I move.

The Motion was adopted.

Clauses 2, 3 and 4 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. DOW : Sir, I move :

"That the Bill, as passed by the Legislative Assembly, be passed."

The Motion was adopted.

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### BANGALORE MARRIAGE VALIDATION BILL.

THE HONOURABLE MR. J. BARTLEY (Government of India : Nominated Official) : Sir, I move :

"That the Bill to validate certain marriages solemnized in the Civil and Military Station of Bangalore, as passed by the Legislative Assembly, be taken into consideration."

It is unnecessary for me, Sir, to say very much in making this Motion because the facts are stated in the preamble to the Bill which is before the Honourable Members. In a genuine misapprehension this gentleman, Mr. Walter James McDonald Redwood, solemnized certain marriages which he was not specifically authorised to solemnize. There are three licences granted to persons for the solemnization of marriages under the Indian Christian Marriage Act of 1872. One only was issued to this gentleman and he was of opinion that for the marriages it was likely he would be called upon to solemnize this one licence would

suffice. Without realising that he was not licensed to solemnize marriages of the nature referred to in the first paragraph of the preamble, he solemnized certain marriages in the year 1929. This Bill is intended to validate his action.

Sir, I move.

THE HONOURABLE SIR DAVID DEVADOSS (Nominated : Indian Christians) : Sir, I have much pleasure in supporting this Bill. When a licence is granted to a minister for solemnization of marriages he does not very often look into it to see how far his jurisdiction extends. But the point is not that. The point is, when a bride and bridegroom stand before a minister they do not ask the minister to show them the licence under which he is empowered to solemnize marriages ; and therefore when a minister, *bona fide* thinking he has power to solemnize marriages, does solemnize marriages, the people who are married by him should not suffer nor their progeny. Therefore this Bill seeks to remedy a hardship which was caused not intentionally by anybody but unintentionally. Then, as regards the minister himself, anybody who knows Bangalore would know that there are a number of British subjects living in the Cantonment Station, and when they see a minister solemnizing marriages between two people who are subjects of Mysore might very well think he could solemnize their marriages also. And that is how it was done, not with any intention of evading the law or as a fraud. This minister *bona fide* thought he could solemnize marriages of people of British domicile and not of Mysore domicile alone.

With these words, Sir, I have much pleasure in supporting this Bill.

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. J. BARTLEY : Sir, I move :

“That the Bill, as passed by the Legislative Assembly, be passed.”

The Motion was adopted.

### INDIAN TEA CONTROL (AMENDMENT) BILL.

THE HONOURABLE MR. H. DOW (Commerce Secretary) : Sir, I move :

“That the Bill to amend the Indian Tea Control Act, 1933, for certain purposes, as passed by the Legislative Assembly, be taken into consideration.”

The scheme of control which was introduced by the Act of 1933 will terminate on the 31st March, 1938. The separation of Burma will take effect from the 1st April, 1937. This Bill is entirely consequent on the separation of Burma and is designed to give effect to the existing scheme of tea control in Burma during the year from the 1st April, 1937 to the end of March, 1938.

[Mr. H. Dow.]

It provides for the setting up of a separate licensing authority in Burma and for the declaration of a separate overseas allotment. That is the sole purpose of this Bill.

Sir, I move.

The Motion was adopted.

Clauses 2 to 10 were added to the Bill.

Clauses 11 to 17 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. DOW : Sir, I move :

"That the Bill, as passed by the Legislative Assembly, be passed."

The Motion was adopted.

## RED CROSS SOCIETY (ALLOCATION OF PROPERTY) BILL.

THE HONOURABLE MR. J. BARTLEY (Government of India : Nominated Official) : Sir, I move :

"That the Bill to provide out of the property of the Indian Red Cross Society a Fund to be administered in Burma by a Burma Red Cross Society, and to terminate in Burma the existing functions of the Indian Red Cross Society, as passed by the Legislative Assembly, be taken into consideration."

After the Great War the balance of the sums subscribed by the public for humanitarian purposes and unexpended at the cessation of hostilities was vested in the Indian Red Cross Society by the Act of that name, the Indian Red Cross Society Act, 1920. A branch of this Society known as the Indian Red Cross Society, Burma Branch Committee, discharged the functions of the Society in Burma. Those functions are well known to all the Honourable Members. With the approaching severance of Burma from British India it is proposed that Burma will have its own Red Cross Society. The share contributed by the people of Burma to these funds which were vested in the Indian Red Cross Society was 7 per cent. of the whole. That is the amount which it is now proposed to make over to the Burma Red Cross Society. The amount originally was Rs. 62,41,000, which Honourable Members will find set forth in the statement of objects and reasons. It was subsequently ascertained that by appreciation of investments and so on the sum had increased and whereas calculating on the figure contained in the statement of objects and reasons the Burma Society should receive Rs. 4,37,000, it was subsequently found that Burma was really entitled to Rs. 5,24,800, and this sum will accordingly be transferred. The funds are not Government money; they are the property of the Society. The parent body and the Burma Branch are agreed that this is just and equitable. The settlement has of course no

relation to the financial readjustment that is being arrived at between Burma and India as regards official moneys.

Sir, I move.

The Motion was adopted.

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

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. J. BARTLEY: Sir, I move:

"That the Bill, as passed by the Legislative Assembly, be passed."

The Motion was adopted.

### GENERAL CLAUSES (AMENDMENT) BILL.

THE HONOURABLE MR. J. BARTLEY (Government of India: Nominated Official): Sir, I move:

"That the Bill further to amend the General Clauses Act, 1897, for a certain purpose, as passed by the Legislative Assembly, be taken into consideration."

I need add nothing to the statement which is contained in the statement of objects and reasons in explanation of this very simple Bill, except to say that the proposal has been under consideration for four years, having originated in 1932. The draft was circulated to Local Governments, nearly all of whom consulted their High Courts. The proposal received universal commendation, but certain valuable suggestions reached us and these have been incorporated in the draft.

I move, Sir.

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. J. BARTLEY: Sir, I move:

"That the Bill, as passed by the Legislative Assembly, be passed."

The Motion was adopted.

### CHITTAGONG PORT (AMENDMENT) BILL.

THE HONOURABLE MR. H. DOW (Commerce Secretary): Sir, I move:

"That the Bill further to amend the Chittagong Port Act, 1914, for certain purposes as passed by the Legislative Assembly, be taken into consideration."

[Mr. H. Dow.]

Sir, the Chittagong Port Act was passed in 1914 at the time when Chittagong was a minor port. When in 1928 Chittagong was declared a major port, the Act was merely amended so as to transfer the statutory powers under the Act from the Bengal Government to the Governor General in Council. Since that time various small matters have cropped up in which it has been found desirable to make amendments in the Act, but none of them were of sufficient importance to make it worth while to bring a Bill especially for that purpose. There are a large number of major ports, each working under its own Act, and very naturally from time to time we discover things that are done better under one Act than under another, and we try as far as possible as opportunity offers to bring as much uniformity into the working of these ports as possible. We have now collected what we consider a sufficient number of minor matters to make it worth while to bring this Bill before the Legislature. The principal change that the Bill seeks to make is to render it possible for the Port Commissioners to grant gratuities and compassionate allowances to the relatives of officers or servants who die in the service. It is already possible for the Commissioners to make grants to the retiring officers themselves. The second thing that the Bill seeks to do is to enable the Port Commissioners to establish a welfare fund for the direct or indirect benefit of the Commissioners' employees. There are one or two minor things. It enables the Port Commissioners to keep temporary balances in banks outside Chittagong, and there is a provision making compulsory the levy of the duty on jute exports from Chittagong which is now being levied without Government having power to compel the levy.

Sir, I move.

The Motion was adopted.

Clauses 2 to 9 were added to the Bill.

Clause 10 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. DOW : Sir, I move :

"That the Bill, as passed by the Legislative Assembly, be passed."

The Motion was adopted.

## CODE OF CIVIL PROCEDURE (AMENDMENT) BILL.

(Amendment of section 51, etc.)

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

"That the Bill further to amend the Code of Civil Procedure, 1908, for certain purposes, as passed by the Legislative Assembly, be taken into consideration."

This is the last Bill on our agenda paper but most Honourable Members will agree that it is probably the most important that we have had to consider

today. It owes its inception to a recommendation made by the Royal Commission on Labour which was in the following terms :

“ We recommend that at least so far as industrial workers in receipt of wages or salary amounting to less than Rs. 100 a month are concerned, arrest and imprisonment for debt be abolished except where the debtor has been proved to be both able and unwilling to pay ”.

I do not think I am revealing any secret—in fact those who have studied the actual Report of the Labour Commission will have been able to gather this for themselves—when I say that the limitation to industrial workers which they suggested was not based on any fondness for the principle of imprisonment for debt as applied to other debtors. It was due rather to their anxiety not to go beyond the actual terms of reference to them. It will be generally agreed that the arguments for or against imprisonment for debt are equally applicable to practically all classes of debtors, and, as Honourable Members will observe, the Bill is quite general in its terms.

Now, although this Bill traces its immediate origin to the Labour Commission, it has a long—some would say too long a—history behind it. More than 50 years have passed since the Government of India took up the question of abolishing imprisonment for the debtor who is genuinely unable to pay. They consulted Local Governments during the early “ eighties ” and they resolved in 1886, in spite of considerable differences of opinion among the public, to proceed with legislation for the purpose. The leading advocate of the principle in those days was that distinguished lawyer, Sir Courtenay Ilbert, who was then the Law Member of the Government of India, and the long statement of objects and reasons which he appended to the Bill of 1886 is a remarkable example of lucid forensic exposition and deserves to be rescued from the dusty volumes in which it lies. I wish I could quote from it extensively but I must resist the temptation, and I shall only quote two or three sentences which come at the beginning of the 28th paragraph of that statement. These are as follows :

“ There are in the opinion of the Government of India two principles which ought to be observed in every law of debtor and creditor. The courts ought not to give effect to any pledge by a debtor either of his person or of the bare necessities of life. The debtor ought not to be allowed, by his own action, supplemented by the action of the courts, either to deprive himself of his personal liberty, or to reduce himself to starvation. If he cannot obtain credit except on one or other of these securities, it is better that he should not obtain credit at all ”.

I quote these words because they seem to me to express as briefly as possible the general principle underlying this Bill. It is a principle which has secured fairly general acceptance throughout the world, and in the course of the various discussions that have taken place since these words were penned I have seen no convincing reply to the affirmations which Sir Courtenay Ilbert then made.

But, in spite of his eloquent advocacy, the Bill evoked keen controversy and it became evident that public opinion was not prepared to go as far as the Government of India desired. In the result, the Bill was greatly modified and it was passed into law in a changed form as the Debtors Act of 1888 which is substantially reproduced in the Code of Civil Procedure as we have it today. The two main changes then made were that imprisonment for debt was abolished in the case of women, and that in the case of other debtors the

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Act gave the courts a discretion, which they had not enjoyed before that date, to refuse to issue a warrant of arrest at the wish of the decree-holder. It also gave them power to order the release of other debtors who were unable to pay. The hope seems to have been entertained by some at that time that these changes would result in an almost complete abolition of the detention in jail of debtors who were honest and unable to pay.

But as the years passed, that hope was not realised by any means generally and, in some provinces at least, a different view was definitely held of the intention of the law, and it continued to be quite a frequent practice to send debtors to jail without the preliminary inquiry which the Code permits but does not make obligatory. Now, in this country, where I think it has been said that a creditor's difficulties are only beginning when he has secured a decree, the power of imprisonment proved itself effective for bringing out money where it had not been forthcoming before, and the conclusion was too readily reached that that money was money which was being wrongfully withheld. The only systematic inquiry on this point was made by a judge who afterwards adorned the Madras High Court, and it showed that in the majority of cases, if the court had held the preliminary inquiry which it was within their power to hold, the debtor would not have been sent to jail at all. I think this is supported by the general experience of officers who have met these debtors actually in jail.

The fact is that, in addition to the quite legitimate desire of creditors to bring pressure on debtors who are concealing their assets and who are perfectly able to pay, there are three other motives which have led creditors to press for the imprisonment of debtors. One of these is to secure payment from assets which are protected by the Code as it stands ; and in this respect I think Honourable Members will agree that the law at present rather tends to take away with one hand what it gives with the other. After giving protection to certain assets which are necessary for the debtor to carry on his life, it also places the court in a position to say that unless he is prepared to surrender these assets he may have to go to prison for six weeks or six months. The second motive is the desire to bring pressure to bear on friends and relatives who are naturally unwilling to see the debtor in jail. And the third motive, which I think is operative in a certain number of cases, is enmity and the desire for revenge on a debtor who, the creditor feels, has defrauded him or whom he may dislike for other reasons.

Now, the Bill seeks to secure in brief that the debtor who is not merely unwilling to pay but who is unable to pay otherwise than by sacrificing the necessities of life shall not be put in prison. Its main provision makes it obligatory on the court to hold the inquiry which the court can, if it thinks fit hold at present, and it limits the power to order imprisonment to those specific cases which Honourable Members will find mentioned in clause 2. I hope they will agree that this clause adequately covers the case of dishonest or recalcitrant debtors. It is no part of the object of this measure to protect debtors of that kind.

I do not think I need say any more in explanation of the clauses of the Bill which are fairly simple and straightforward. It is symptomatic of the change that has taken place in public opinion, that the principle has commended itself to almost all shades of thought in this country. I trust it will commend itself equally to this House.

THE HONOURABLE SIR DAVID DEVADOSS (Nominated : Indian Christians) : Sir, I have much pleasure in supporting this Bill. Students of English literature would know that there was a time when English prisons were full of civil debtors and they were not released for a long time ; many of them died or became too ill to enjoy life afterwards. At present, in England, civil debtors are not sent to jail as in India. So, the present Bill brings the law in India into line with the English law. Under this Bill, a debtor is not entirely freed from the liability to imprisonment. If the court finds that the debtor has been withholding property or has been behaving as mentioned in sub-clauses (b) and (c), then it has power to send a man to jail for six months. No doubt the period has been limited to six months. In some cases, persons are sent to jail, as the Honourable Mr. Clow has observed, out of mere vindictiveness. Sir, I can speak with some confidence of Madras—these Marwaris, as we call them, or money-lenders go about lending money to public servants who get a pay of Rs. 35 or Rs. 40 or Rs. 100, without any security. Their only security is a threat of sending them to jail. In the first place, these people ought not to be allowed to trade upon the simplicity of some of these public servants and then threaten them with imprisonment. The fear of imprisonment, as the Honourable Mr. Clow has rightly observed, induces not only relations and friends but also other people to come to the help of the debtor. Such a state of things is not at all conducive to the benefit of society. A creditor is always protected if he takes care to see that the debtor has some means of repaying the loan. If he takes a chance of lending to a man who has no property and who simply has his person to go upon, it is not proper that the creditor should arrest the person and put him in jail. The result of that is that persons who have got property, and who are able to pay, always resist the arrest. I can mention a number of instances with which as a member of the Bar I had to deal. In one case, they actually shot the officer of the court who went with the plaintiff to arrest the man. The object was simply to prevent the arrest. The man had plenty of money ; he could easily have paid the debt. It is only in such cases that arrests are resisted. In other cases, where the person is unable to pay, he goes to jail. Nobody gets any advantage. The creditor has to pay for his sustenance in the jail and the poor man is deprived of his means of livelihood and his family suffers. That being so, except in cases where the court is satisfied that the debtor is withholding property or is behaving improperly, or after a suit has been filed has made away with the property, the man should not be sent to jail. It is only in these cases that he should be sent to jail. It is only in cases of actual dishonesty or actual fraud that a man should be punished, not when he is actually unable to pay. In circumstances over which he can have no control, the man ought not to be sent to jail.

With these words, Sir, I have much pleasure in supporting the Motion of the Honourable Mr. Clow.



**\*THE HONOURABLE MR. P. N. SAPRU** (United Provinces Southern : Non-Muhammadan) : Sir, I have great pleasure in supporting the Bill which has been introduced by the Honourable Mr. Clow. Sir, the Bill is a step in the right direction. It will protect honest debtors. Detention in civil prison will be reserved hereafter only for those debtors who prove to be recalcitrant or fraudulent. It makes it obligatory on the court to inquire whether the debtor has the means to pay. It is discretionary with the court now to inquire whether he has or has not the means to pay. This discretionary power of the court has been taken away. Sir, I would have liked sub-clause (i) of clause 2 to have been different. It says that the court shall make an exception in the case of those who are likely to abscond or leave the local limits of the jurisdiction of the court. Sir, it would have been better if this proviso had not been included in the Bill, for a creditor is likely to make an affidavit that the debtor is likely to abscond or leave the local limits of the jurisdiction of the court and if the debtor is not present, the court may be misled by the affidavit of the creditor.

**THE HONOURABLE MR. BIJAY KUMAR BASU** (Bengal : Nominated Non-Official) : False affidavit?

**THE HONOURABLE MR. P. N. SAPRU** : The court will have no material before it on which to find out whether it is false or not. If the debtor is not present there, the court will naturally assume the affidavit to be true. So, I do not quite like this proviso. I think the Bill would have been better without this proviso. On the more general question of imprisonment for debts, my own view is that it is a relic of barbaric times. Sir, a creditor advances money on security of property or leases. By putting the debtor in prison we are depriving him of the means of paying the debt. If you deprive the debtor of his liberty, then you also deprive him of the means of paying the debt. Therefore, Sir, it is a relic of barbaric times and I think the sooner imprisonment for debt is abolished, the better for the jurisprudence of this country. This is a Bill in the right direction, as I have already said, and I have much pleasure in supporting it.

**\*THE HONOURABLE SAIYED MOHAMED PADSHAH SAHIB BAHADUR** (Madras : Muhammadan) : Sir, I also give my support to this Bill. As has been observed by the Honourable Members who have preceded me, this is a reform which is long overdue. Experience has shown that the permission given to the courts to make this inquiry and see whether the debtor is actually unable to pay the debts to his creditor is a thing which is more often not held by the court at all. Since most of the courts in this country are over-worked, they are anxious not to add to their work, and in their anxiety to dispose of cases before them the courts without holding any such inquiry order the detention of the debtor in jail. Sir, my Honourable friend Mr. Sapru was perfectly justified in saying that there is no justification whatever for any creditor to demand the arrest and detention in jail of a person to whom the former has advanced a loan. If any money-lender advances a loan to anybody it is for the purpose of getting it back with some profit. He would not advance a loan with a view to deprive a debtor of his liberty, and any honest creditor who is anxious only to get back his money, I presume with some profit, will

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\* Not corrected by the Honourable Member.

advance the money only when he knows the debtor is in a position to pay it back. But, if knowing, as has been observed by my friend Sir David Devadoss, that the man is not in a position to repay the loan, the money-lender tempts the man with scanty means to take loans and incur unnecessary expenses, if a man goes about like this tempting people, that man has no right to demand that in case of failure on the part of the debtor to pay back the money he should be detained in jail. I think it is high time that people who go about tempting people to take loans just in order to earn profits were taught a lesson, so that the public may be saved from the rapacity of money-lenders. I hope that this Bill will prove to have a very salutary effect and will induce in these Marwaris a sense of responsibility.

**THE HONOURABLE RAJA GHAZANFAR ALI KHAN** (West Punjab : Muhammadan) : Sir, although the present Bill applies to all judgment debtors, as we are aware the Bill is the outcome of the recommendations of the Royal Commission on Labour in India. I agree that this Bill will afford great relief to the labourers, but I would submit that this is not enough. I would take this opportunity of making a request to the Government to bring forward some Bill by which the wages of the labourer which are below one hundred rupees a month will not be liable to attachment by the civil courts in execution of a decree for debt. I know that labourers, particularly those working in the Khewra salt mines, have their wages attached by a decree in execution of a certain debt.

**THE HONOURABLE THE PRESIDENT** : You are going beyond the recommendations of the Royal Commission.

**THE HONOURABLE RAJA GHAZANFAR ALI KHAN** : Well, Sir, I must confess that I cannot say definitely whether the Royal Commission did or did not recommend it. But, after all, the Royal Commission are not the last word on the subject. It is always open to the Government to consider in what ways they can give legitimate relief to the labourers. If a labourer's earnings are Rs. 50 a month and he has to maintain a large family of children and helpless women, it is a great hardship upon him if he finds that his wages have suddenly been attached.

**THE HONOURABLE THE PRESIDENT** : Do you think that he will be able to borrow any money at all ?

**THE HONOURABLE RAJA GHAZANFAR ALI KHAN** : Sir, it will not be an unprecedented measure, because certain incomes are already exempt from attachment in execution of a decree for debt. For instance, an agriculturist's land, produce, bullocks, plough and other implements are already exempt from attachment in execution of a decree for debt. Therefore I would appeal to my Honourable friend who is in charge of this Bill to kindly consider whether he can recommend to Government to bring forward some measure by which the labourers will be given the benefit of their wages not being attached by a civil court in execution of a decree for debt.

Sir, I support the Bill.

**THE HONOURABLE MR. R. M. MAXWELL** (Home Secretary) : Sir, the Honourable Mr. Sapru raised one point in regard to sub-clause (i) of clause (a) of section 2, where it is provided that the court may take action against

[Mr. R. M. Maxwell.]

a debtor if it is satisfied he is likely to abscond or leave the local limits of the jurisdiction of the court. At first sight that would appear to be a rather valid criticism of the provisions of the Bill. But if we consider more attentively the manner in which the Bill is drafted, I think that objection will fall to the ground. It will be noticed that the substantive provision of clause 2 of the Bill is a negative provision. It lays down definitely that execution by detention shall not be ordered unless certain things happen. That therefore is the position. The court may not order detention unless it is satisfied of certain things. Now, the argument is that the creditor might come forward with an affidavit setting out that the debtor was likely to abscond. Nobody can prove that an affidavit that something is likely to happen is true or false. Likelihood is a matter of conjecture and it is just as difficult for a creditor to prove that it is likely to happen as it is easy for the debtor to prove that it is unlikely. All that the creditor could do would be to come before the court to say that the debtor had made preparations to leave the jurisdiction of the court, or at any rate he must produce some substantive reason for asking the court to depart from the injunction that detention shall not be ordered. The burden of proof will be on the creditor. But we have also a further provision in this clause that the judgment debtor has to have an opportunity of showing cause why he should not be detained. Therefore, if the creditor comes forward and says the debtor is packing up to go away, the debtor can produce evidence to the contrary. And it is extremely unlikely that the creditor would be able to mislead the court into ordering detention in a case in which it was not really justified and in which there was not strong evidence to show that the debtor was intending to defraud the creditor in some way.

THE HONOURABLE MR. A. G. CLOW : I want to thank the Honourable Members who have supported the Bill and to say one word in reply to what fell from my Honourable friend Raja Ghazanfar Ali Khan. He suggested that it was time we were starting to protect from attachment the wages of labourers. He has possibly overlooked certain provisions which already exist in section 60 of the Civil Procedure Code, where the wages of labourers and domestic servants which are payable in money or kind are exempt from attachment, and a limited exemption is also given to attachment of salaries of certain other persons. But there is another Bill in another place which is designed to extend this protection and to make it more effective, and I hope in due course it will reach this Council.

THE HONOURABLE THE PRESIDENT : The Question is :

“That the Bill further to amend the Code of Civil Procedure, 1908, for certain purposes, as passed by the Legislative Assembly, be taken into consideration.”

The Motion was adopted.

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

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. A. G. CLOW : Sir, I move :

“ That the Bill, as passed by the Legislative Assembly, be passed.”

I would merely say that the passing of this Bill will form a very fitting termination to the work of a Council which has assisted in a large measure in increasing the amount of protection given to the less fortunate classes of the community. (Applause.)

The Motion was adopted.

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THE HONOURABLE KUNWAR SIR JAGDISH PRASAD (Leader of the House) : Sir, I suggest that we meet now on Saturday, the day after tomorrow.

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The Council then adjourned till Eleven of the Clock on Saturday, the 17th October, 1936.