

Tuesday, 23rd February, 1937

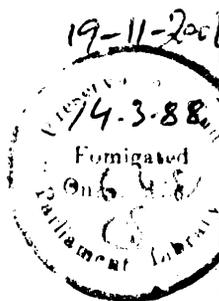
THE  
COUNCIL OF STATE DEBATES

VOLUME I, 1937

*(16th February to 8th April, 1937)*

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FIRST SESSION  
OF THE  
FOURTH COUNCIL OF STATE, 1937



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# COUNCIL OF STATE.

*Tuesday, 23rd February, 1937.*

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

## MEMBERS SWORN.

His Excellency General Sir Robert Archibald Cassels (Commander-in-Chief).

The Honourable Mr. M. Ct. M. Chidambaram Chettiyar (Madras : Non-Muhammadan).

The Honourable Mr. Stanley Webb-Johnson (Government of India : Nominated Official).

## QUESTION AND ANSWER.

### MEASURES TO SAFEGUARD THE INTERESTS OF THE INDIAN COMMUNITY IN ZANZIBAR IN CONNECTION WITH THE CLOVE INDUSTRY.

11. THE HONOURABLE MR. V. V. KALIKAR: (a) Has the Chairman of the Imperial Indian Citizenship Association forwarded a memorandum to the Government of India, requesting them to take prompt and effective measures to safeguard the interest of the Indian community in Zanzibar in connection with the clove industry?

(b) Do Government propose to take effective measures to safeguard the interest of the Indian community in Zanzibar before His Majesty's Government pass final order on the report of Mr. Binder? If so, will Government be pleased to state the nature of the measures they propose to take? If not, why not?

THE HONOURABLE KUNWAR SIR JAGDISH PRASAD: (a) Yes.

(b) Representations have already been made to His Majesty's Government on matters arising out of Mr. Binder's report. Until these negotiations have concluded, I regret that it is not possible for Government to make any further statement on the subject.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: Has the attention of the Honourable Member been drawn to the message sent by His Highness the Aga Khan to the public meeting held the other day in Bombay to protest against the anti-Indian decrees in Zanzibar?

THE HONOURABLE KUNWAR SIR JAGDISH PRASAD: I regret to say that I have not seen His Highness's message, but I knew before that His Highness was greatly interested in regard to the position of Indians in Zanzibar. I have not seen this particular message.

**THE HONOURABLE PANDIT HIRDAY NATH KUNZRU :** May I draw the attention of the Government to the message which asks that the Government of India should send another mission to Zanzibar.....

**THE HONOURABLE THE PRESIDENT :** It is not usual to give it at this age. You can send a copy of the message privately to the Honourable member.

**THE HONOURABLE PANDIT HIRDAY NATH KUNZRU :** It is published in the papers.

### AGRICULTURAL PRODUCE (GRADING AND MARKING) BILL.

**THE HONOURABLE KUNWAR SIR JAGDISH PRASAD (Education, Health and Lands Member) :** Sir, I beg to move :

“That the Bill to provide for the grading and marking of agricultural produce, as passed by the Legislative Assembly, be taken into consideration.”

The objects and reasons for which this Bill has been brought are already stated in the Statement of Objects and Reasons and I need not go into great detail about them. But I think that the House would like to have a brief statement of the main principles of the Bill. It was brought to our notice during the course of the marketing surveys which have been done by the Marketing Adviser to the Government of India and his staff that it would be useful to grade certain agricultural products. What we mean by grading is that articles will first be classified according to quality and each of these grades will be given a designation. For instance, articles may be classified as grade 1, 2, 3, or as grade A, B, or C, or for instance as in England apples are designated as extra fine, fine, and so on. Then, in regard to each of these designations, conditions will be laid down. For instance, any article which is classed as grade 1 will have certain qualities, so that corresponding to the designation will be laid down the quality which that designation indicates. That is called grade designation. Naturally, it is necessary that if there are to be these various designations there should be marks to indicate to the purchaser what the particular designation is and therefore we are going to have these grade designation marks. There will be different marks for different grades of the article. This will ensure to the purchaser that the article which he is purchasing is of the grade which he wishes to purchase. It is obvious that if you are going to have these marks that you should protect them in order to prevent others using these marks. You should also have some method by which it is laid down that the marks will be properly used. That is to say, that a mark which is made for a particular grade is not utilised for another grade. Well, that is the principle of these grade designations and grade designation marks. As the whole thing is at the present moment in an experimental stage we have made the measure permissive. It is not incumbent on producers to have any grade marks at all. It is only those who are willing to come into this system will be bound by it. That is to say, that all limitations and so on apply only to those who have agreed to come into this system. We have also, as Honourable Members will notice, limited the articles to which the Bill will apply at present. And we have done this because we wish to gain experience, and we do not wish at this stage to include a large number of articles till we have gained further experience.

Another point in which I think Honourable Members will be interested is that in regard to the grading we have been in the closest touch with the

interests concerned. For instance, as regards the grading of hides, the chief Marketing Adviser held a conference in Cawnpore and it was in consultation with the trade that grade specifications were agreed to. The same is the case in regard to tobacco. The intention here is that for the moment the grading will be only in regard to cigarette tobacco, and the merchants have been consulted, so that all the grading has been done in consultation with the interests concerned.

I now come to another point and that is the penal clauses of the Bill. Honourable Members will notice that in one clause we provide for the case where a person not authorised to use a grade mark uses it. Here the punishment is only a fine. In regard to counterfeiting, the punishment is fine or imprisonment or both. My attention has been drawn this morning to one of the clauses of the Bill—sub-clause (g) of clause 3, and the question has been asked why, when in the substantive clauses there is no mention of confiscation, in the rule-making power the word “confiscation” has been used since in drafting the correct procedure is that if the intention was to make confiscation a punishment it should have been included in the main clauses. I think that is the point to which my attention was drawn. Well, I can assure Honourable Members that there was no intention to confiscate goods as a penalty. All that is desired is that goods should be confiscated only to the extent that they are required for evidential purposes and that in the rules which are being framed and which will be published very shortly so that Honourable Members will have a chance of seeing them during the next two or three days, this point will be made absolutely clear—that there is no intention of using confiscation as a penalty; the whole object of confiscation being merely for evidential purposes. I am sure that the rules which will be shortly published will meet the point of Honourable Members. Confiscation will only be made to the extent that is necessary for evidential purposes and the rest of the consignment will be restored to the owner. Naturally, of course, we will remove the grade marks from the consignment. I am sure that about this there will be no difference of opinion. These are the main clauses of the Bill and it has been passed by the Lower House and I trust that it will receive the same treatment in this House.

Sir, I move that the Bill be taken into consideration.

**THE HONOURABLE MR. V. RAMADAS PANTULU** (Madras : Non-Muhammadan) : Sir, while I rise to support the Motion to take the Bill into consideration, I wish to bring to your notice the disability under which the Members of this House have been placed by this Bill coming up for consideration on a day which has been preceded by two Public holidays. We were told on Saturday evening that these Bills were coming up on Tuesday morning. Speaking for myself and for another Member of my Party, we would have been glad to send up some amendments to clauses of this Bill, partly to improve the wording of the clauses and partly to improve its substance, if we had been given an opportunity to do so. The Notice Office was closed and there was no method whereby we could send amendments to these clauses. I would therefore request that in future, Sir, things should be so arranged that amendments should be received in the Notice Office on a holiday, if the exigencies of business require that we should proceed with the business on the day when Council sits after a holiday, or to give us at least one day on which we can ordinarily give notice of amendments.

**THE HONOURABLE THE PRESIDENT** : I understand that the offices are always open for the purpose of receiving amendments.

**THE HONOURABLE MR. V. RAMADAS PANTULU :** I am told by my Honourable friend Mr. Kumarsankar Ray Chaudhury that they were not.

**THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY (East Bengal: Non-Muhammadan):** I went yesterday and I found the office closed.

**THE HONOURABLE THE PRESIDENT :** The Notice Office is not closed. You are confusing the Legislative Department with the Notice Office.

**THE HONOURABLE MR. KUMARSANKAR RAY CHAUDHURY :** I went to the Notice Office, Sir.

**THE HONOURABLE MR. V. RAMADAS PANTULU :** My information was that the Notice Office was closed. I support the principle of the Bill and also the Motion for its consideration. I wish that the Bill might have been a little more carefully drafted. For instance, the definition of the term "agricultural produce" is, to say the least of it, very clumsy, and curiously enough we find in the Schedule to the Bill item "3—Eggs" and item "4—Dairy produce". I do not know whether on a proper construction of the definition of "agricultural produce" these at all come under that definition.

" 'Agricultural produce' includes all produce of agriculture or horticulture and all articles of food or drink wholly or partly manufactured from any such produce, and furs and the skins of animals."

I am not aware whether eggs are manufactured from agricultural produce (*An Honourable Member* "Food or drink.") Eggs come from poultry and not agricultural produce. The dairy produce may probably be included if animal husbandry is part of the definition of Agriculture.

Apart from that, Sir, there is another substantial objection which I might have taken in the form of an amendment to this Bill. The Honourable the Mover has already referred to clause (g) of section 3 which relates to the rule-making power of the Governor General in Council. While there is no substantive provision in the Bill for the confiscation of produce, clause (g) gives power to the Governor General in Council to do so by rule-making power. Whether it is quite legal or not is not the point on which I would like to dwell. Generally speaking, from my knowledge of the way in which Bills are drafted, the rule-making power is confined to matters coming under one of the provisions of the Act, and it is generally said that without prejudice to any of the provisions of the Act or consistently therewith certain rules can be made by the Executive. But in this case no provision is at all made in the substantive clause of the Bill with regard to confiscation as a penalty and the Executive is given a free hand in regard to the rule-making power. The Honourable the Mover remarked that it was not intended to be a penalty but only meant for the purpose of securing evidence about the infringement of the provisions of this Act. If that is so, then the word "seized" must be used and not "confiscated". It is open even otherwise to seize the article in respect of which an offence has been committed and bring it before the court as a piece of evidence in order to prosecute the person. Confiscation is definitely a penalty and wherever I find provisions for confiscation, as in the Sea Customs Act and the Land Customs Act, I always find this provision incorporated in the substantive sections. On the merits also I think that when a new Bill like this is being enacted for the first time, where the people who voluntarily

come under its beneficent provisions will be added by the Government by means of this Bill, confiscation may not be a very proper remedy, because, people may be ignorant in many cases, and while they do want to take advantage of this Bill, they certainly would not like that confiscation should be a penalty. Because as a result of confiscation, it is not the person who offends against the provisions who suffers but the man whose produce is graded. If the produce is confiscated, it is not the people who deal with it, the commission agency or the marketing society, that suffers, but it is the person who brings those goods to the agency for grading and selling that suffers, because it is he who loses his produce. This is a very drastic provision and more care might have been taken in framing it. As for the assurance of intention given by the Honourable the Leader of the House, it is of very little use. The Privy Council decisions have laid down that any expression of opinion as to intention, which is not borne out by the very wording of an Act, is of very little use in construing or interpreting a Statute. Therefore, Sir, taking everything into account I wish the Bill had been drafted more carefully and the provisions about confiscation had been omitted, and opportunity should have been given to this House to move amendments.

**THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab : Non-Muhammadan):** Sir, the objects underlying this Bill are noble and are in the interest of the cultivator. But, Sir, I should like to know from the Honourable the Leader of the House whether dairy produce include ghee and butter, because at present we are not getting pure ghee and admixture of vegetable compound with pure ghee is going on on a very large scale and ignorant people are being cheated by the people who sell adulterated ghee as pure ghee.

As far as agricultural produce is concerned, it pains me to find that particularly in Kapas there is a lot of mixture of indigenous Kuppas (cotton with seed) with American and long-staple Kuppas. The result is that it is generally very difficult to get pure, good and long-stapled Kapas. On account of that mixture, the poor cultivator gets a very low price for the Kapas that he sells. I would therefore like that so far as long-staple cotton is concerned, the good name of India ought to be established in the local as well as foreign markets as regards the purity of the cotton sold. Therefore, Sir, I would suggest to the Honourable the Leader of the House kindly to insert Kapas in the Schedule, because it is in the interest of the zamindars, and I think it is the duty of the Government to deal with this matter seriously in order to secure much better price for the pure cotton.

**THE HONOURABLE THE PRESIDENT :** Is there any special Act for cotton adulteration ?

**THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS :** I do not know if there is any specially to stop adulteration for cotton, but there is a Cotton Cess Act and the Government charge so much per bale on the cotton pressed.

**THE HONOURABLE MR. R. H. PARKER (Bombay Chamber of Commerce):** Sir, we welcome this permissive measure. We think it is a step in the right direction and to the advantage of both producers and consumers. We hope that it will result in there being no bad eggs. We were rather frightened about the question of rules but the cause of fright was removed by the

[Mr. R. H. Parker.]

action taken in the Lower House. I think I am right in saying that imprisonment only arises where it also arises under the Indian Penal Code in similar circumstances. I am not quite sure but I think I am right also in saying that there is a cotton adulteration Act but it is a local one in Bombay.

**THE HONOURABLE SIR DAVID DEVADOSS** (Nominated: Indian Christians): While I welcome this measure I would suggest that adulteration of cotton and other produce ought also to be prevented. It is a well known fact that owing to the adulteration of good cotton with bad, India suffers in name and not only the consumer. I know for instance that karunganni cotton, which is a long-staple cotton, is adulterated with other inferior qualities, with the result that the ryot does not get the price he ought to get. Though this Bill may not be extended to that, I would ask the Honourable the Leader of the House to see that such things are prevented by a proper enactment. No doubt there is a Cotton Act so far as Bombay is concerned, but I do not think it extends to the whole of British India.

**THE HONOURABLE KUNWAR SIR JAGDISH PRASAD**: Sir, I am extremely sorry that any inconvenience should have been caused to Honourable Members opposite by our taking up this Bill today. Had I for a moment thought when I made the announcement on Saturday that there would be any difficulty about sending in amendments I could easily have taken up the Bill tomorrow. I therefore regret if through inadvertence any inconvenience has been caused to Honourable Members.

Now, as regards the question of confiscation, I have already explained my position and I hope that when my Honourable friend sees our rules during the course of the week he will be satisfied that there is really no need for alarm over the confiscation of produce. We have no intention that producers should be penalised and in framing our rules we shall see that our intention is given effect to.

Then my Honourable friend the Leader of the Opposition wanted to know whether ghee and butter are included in dairy produce. They are. He also made a suggestion with regard to the grading of cotton. That is already dealt with by the East India Cotton Association.

I share the hope of Mr. Parker that if this Bill is passed those who are fond of taking eggs will get no rotten eggs and that fruitarians will be benefited equally.

**THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS**: I would like to ask whether the East India Cotton Association have ever suggested to the Government that some legislation is necessary to put a stop to the adulteration of Kuppas (cotton with seed) and to put pure cotton on the market?

**THE HONOURABLE KUNWAR SIR JAGDISH PRASAD**: I am afraid I shall have to ask for notice of that question. My Honourable friend can put a question and I shall get the information. I could not say off-hand.

- **THE HONOURABLE THE PRESIDENT**: The question is:

“That the Bill to provide for the grading and marking of agricultural produce, as passed by the Legislative Assembly, be taken into consideration.”

The Motion was adopted.

Clauses 2 to 5 were added to the Bill.

Clause 1, the Title and Preamble and the Schedule were added to the Bill.

THE HONOURABLE KUNWAR SIR JAGDISH PRASAD : Sir, I move :

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

The Motion was adopted.

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### INDIAN NAVAL ARMAMENT (AMENDMENT) BILL.

HIS EXCELLENCY THE COMMANDER-IN-CHIEF : Sir, I move :

“ That the Bill further to amend the Indian Naval Armament Act, 1923, for a certain purpose, as passed by the Legislative Assembly, be taken into consideration.”

The purpose of this Bill is, I think, sufficiently explained in the Statement of Objects and Reasons, and only a few words from me are required in commending it for the acceptance of this House. Those who are interested in the subject are aware that ever since 1922, the date of the famous Washington Conference, the two greatest naval powers in the world, that is to say, Great Britain and the United States of America, have taken the lead in making persistent and not unsuccessful efforts to limit by agreement the size and number of battleships and their guns. India as part of the Empire has consistently supported those efforts, although she has no large fleet of her own. In 1923 was passed the Indian Naval Armament Act giving effect to the Washington Treaty at a time when we had no combatant naval force of our own, and in 1931 that Act was amended to give effect to the London Naval Treaty of 1930. The international situation in 1936, when the next Naval Conference took place, made further progress difficult, but the Treaty which was then made and to which this Bill gives effect so far as India is concerned does preserve the *principles* of the older Treaties and keeps the door open for further international agreement in future. By passing this Bill we too shall keep our Naval Armaments Act alive.

The main points about the new Treaty are, *firstly*, that it limits the size but not the numbers of different categories of warships and their guns ; and, *secondly*, that it introduces the new plan of exchanging information between the High Contracting Parties regarding their programmes of naval construction. It is true, Sir, that India is not directly affected by this Treaty,—except to the extent of giving information about the vessels of the Royal Indian Navy—but that was equally true of the last two Treaties ; and there is no reason why we should not repeat the gesture that we made on the two previous occasions. The British Empire and the United States of America are the two greatest forces for peace in the disturbed world that we see before us today. India too wants peace and any action that we can take in evidence of that wish, however little it may be, does, I submit, deserve the support of this Honourable House. Sir, I move.

The Motion was adopted.

Clauses 2 and 3 were added to the Bill.

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

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

**HIS EXCELLENCY THE COMMANDER-IN-CHIEF:** Sir, I move :

“That the Bill further to amend the Indian Naval Armament Act, 1923, for a certain purpose, as passed by the Legislative Assembly, be passed.”

The Motion was adopted.

### LAND CUSTOMS (AMENDMENT) BILL.

**THE HONOURABLE MR. A. H. LLOYD** (Government of India : Nominated Official) : Sir, I move :

“That the Bill further to amend the Land Customs Act, 1924, for certain purposes, as passed by the Legislative Assembly, be taken into consideration.”

This Bill, Sir, has provisions which fall under two heads. There is, firstly, the provision dealt with in clauses 2 and 3, which is designed to make applicable in case of need to the frontiers between British India and Indian States the Land Customs Act, 1924, which is at present applicable only to the frontiers between British India and external territory, such as the French and Portuguese Settlements or countries like Siam. The second group of provisions refer to details of administration which have no particular reference to the frontier States. In fact they have been asked for because of certain conditions that have arisen on the frontiers between British India and French or Portuguese territory.

As regards the first of these proposals, I should explain to this Honourable House that in 1924 the reason why the frontiers between British India and Indian States were left out of the application of the Land Customs Act was that at that time we had in existence no frontier at all between British India and any Indian States. We had not in contemplation the imposition of any such frontier. Some anxiety was expressed lest the Bill of 1924, which was primarily introduced for the better administration of the Pondicherry and Goa frontiers and to enable us to deal with the Siamese frontier, should have really been designed to cloak an intention to introduce land customs frontiers against certain Indian States. That suspicion was at the time without foundation and Government agreed to make the Bill of 1924 applicable to external frontiers only. Since then the situation has changed. In 1927 we found it necessary to re-impose a land customs frontier against the territory of some States in Kathiawar. More recently such a frontier has been closed against the territory of a neighbouring State. Now, although the Land Customs Act of 1924 did not apply when these land customs lines were imposed, it was perfectly feasible to carry on the administration, because we had in existence an old Act of 1857, which provided machinery reasonably efficient, but not uniform in all respects with the Act of 1924, for administering those lines and it is under that Act of 1857 that we have since continued to work. Very recently we have had to consider the whole subject of our land customs law in connection with the coming into force of Part II of the Government of India Act, 1935, which of course involves an overhaul of this like all other classes of law, where there has been in the past some delegation of functions to Local Governments. The Bombay Land Customs Act of 1857 confers certain functions upon the Local Government, which would have to be taken away and transferred to the Central Government. Similarly with the Madras Inland Customs Act of 1844, which as a matter of fact has not been in use at all against any Indian State for any period to which even my historical recollection goes back. It then became clear that this was the most

convenient time at which to clear up the position, supersede these obsolete Acts by one which would be uniform with those in force on other frontiers, and that is the primary reason for the present choice of date for introducing this change. Now, Sir, I had the privilege of presenting this Bill in another place and when I did so in the simplicity of my mind I described it as non-contentious. I am afraid that I am not able in this House exactly to give myself that consoling reflection, because of something that has happened within the last day or two. Honourable Members have doubtless, like myself, read in the newspapers an account of some discussions which took place in the Committee of Chamber of Princes on Sunday last. There is at least one Honourable Member here who must have been present at those discussions and others will have doubtless read about them in the papers. If it has escaped the notice of anyone, I will, with your permission, Sir, read the extract from the paper. It is quite a....

**THE HONOURABLE THE PRESIDENT:** It is not the usual practice to read any extract from newspapers in this House. Sorry, I cannot allow it.

**THE HONOURABLE MR. A. H. LLOYD:** Very well, Sir. I take it, Sir, that I am entitled to quote particular sentences and deal with them. For example, if I might ask your ruling, the sentence to which I particularly wish to refer.....

**THE HONOURABLE THE PRESIDENT:** You may use them as your own words without reading the extract.

**THE HONOURABLE MR. A. H. LLOYD:** It was suggested according to newspaper accounts that the effect of the Bill now before the House was to make it possible for the Government of India to declare all States to be foreign territory for the purpose of administering the land customs laws. Now, that, Sir, is a complete misconception. I cannot state too strongly that the Bill before the House, if passed, will not have at all the effect of enabling the Government of India to declare all States foreign territory for the purposes of land customs. And why? Because they have that power already without qualification under the Indian Tariff Act. This Bill refers to the Land Customs Act of 1924 which is purely a measure designed for applying the ordinary procedure to a liability imposed under another Act, namely, the Indian Tariff Act. Section 5 of the Indian Tariff Act authorises the Government of India to declare any territory outside British India to be foreign territory for the purpose of levying customs duties. If a notification under section 5 of the Indian Tariff Act is passed and if it relates to the frontier between the Presidency of Bombay and an Indian State we proceed at once to use the machinery provided by the Bombay Land Customs Act, 1857, and there is no particular difficulty except for certain inconveniences owing to differences in practice, which I shall deal with later. If the occasion were to arise—though it has not arisen within any memory to which I can go back historically nor do I see any possibility of its arising—to impose a land customs line on any line between the Presidency of Madras and an Indian State, we should at once be able to use the Madras Inland Customs Act, which was in fact used, not ineffectively, against territories such as Pondicherry and the like up till 1924. If a declaration under section 5 of the Indian Tariff Act were made with reference to the frontier between any other part of British India and an Indian State, it is true that at the moment—although the legal liability to the application of the customs rates would be fully established by

[Mr. A. H. Lloyd.]

that notification—we should not have a very convenient machinery for enforcing it; but it would not be beyond our power to enforce it. Not at all. What we could do in the absence of any *ad hoc* provision such as can be found in the Sugar Excise Act would be to make use of the power of prohibiting or restricting the entry of goods from and the despatch of goods to territories outside British India which is in the hands of the Government of India under section 19 of the Sea Customs Act. This is applicable to imports by land from Indian States just as much as to imports from any other territory outside British India. It is applicable to exports to such States just as much as to exports to any other territory outside British India. It would always be open to us to impose such a prohibition subject to conditions under which the relaxation of the prohibition might be allowed, these conditions being such as to cover the declaration of all goods passing the frontier and to cover the procedure for the assessment and collection of duties. But that would be an exceedingly cumbersome and inconvenient method of procedure, and I only mention it to the extent that I have done to show that we are not unarmed and that we are not taking an entirely new weapon into our armoury to be used in the event of the Government of India exercising their inherent power to apply the customs tariff to the land frontier between British India and any State in the country. I have elaborated this point in order to show quite clearly that we are not doing anything new and the uneasiness and suspicion that appears to have been caused unfortunately in the minds of certain Princes is, I say, without foundation. Nothing is being done to affect the rights of the States. The States have not the right to insist that British India should surrender its sovereignty in a matter of this sort any more than British India has the right to insist that the States should surrender their sovereignty. This is always of course subject to the possibility of the existence of some treaty obligations. But I am talking now about the law of the country itself. The position is, to put it briefly, that we have the power at present to make any frontier between British India and an Indian State a customs frontier. We have certain rather unsatisfactory means of giving practical effect to such a decision and this machinery is so unsatisfactory that it ought to be rationalised and put on a uniform basis and that is the only object of the present legislation. At the same time, let it be clearly understood that there is no intention on the part of the Government of India, as a result of the passing of this Bill, of modifying the land customs line which at present exists. Land customs lines are imposed by British India, unlike the practice of the States, only in cases where there is some really cogent and overruling necessity for it.

THE HONOURABLE THE PRESIDENT: I should have preferred it if you had reserved all these statements for replying to, instead of anticipating, all these objections.

THE HONOURABLE MR. A. H. LLOYD: I am sorry, Sir. I thought it might save time if I dealt with arguments which have been given great publicity. But I will drop the point and proceed to the administrative aspect of the Bill.

It has been stated, Sir, in the Statement of Objects and Reasons that the existing Act of 1857 is defective. I do not want this to be taken too seriously as meaning that the existing Act won't work. On the contrary it works quite well. But it is a very unfortunate fact that in certain details it is not uniform

with the Land Customs Act of 1924, and this causes considerable inconvenience owing to the fact that the two Acts are operated side by side by the same establishment in the same part of the Bombay Presidency. I will not give all the details where differences exist but I might perhaps refer to one or two. Under the Act of 1857, if a penalty is fixed for smuggling the minimum must be 1/10th of the value of the smuggled goods. Under the Land Customs Act, 1924, there is no minimum. Under section 20 of the Bombay Act confiscation can only be ordered by a Commissioner or Deputy Commissioner of Customs or by an Assistant Commissioner of Customs who is also a Justice of the Peace. That, Sir, is an obsolete provision. It is not necessary for us to insist that the Assistant Commissioner of Customs who authorises a confiscation should be a Justice of the Peace. Then there is the question of exemption. Under the Land Customs Act, an exemption from duty of a general character can be given by the Government of India under section 23 of the Sea Customs Act of 1925. Under the Bombay Land Customs Act exemption is only possible either by way of the rather cumbersome device of making an exception to the notification under section 5 of the Tariff Act or by a separate order in each case, a stipulation which really it is not practicable to observe.

That, Sir, is our case for applying the Land Customs Act of 1924 to those frontiers between British India and the Indian States to which any land customs procedure at all has to be applied.

The other part of the Bill, contained in clause 5, refers to the daily working of the Act and the need for it has been established by experience, not on the frontier between British India and the Indian States but on the frontier between British India and French territory. There are two proposals. The first is that section 88 of the Sea Customs Act should be applied. This is the section that provides a procedure for the disposal of goods which are not cleared within four months after entry. We left that out of the Bill of 1924 because we did not think that a situation needing it was likely to arise. It has in fact arisen now. It is quite clear that it is desirable to have some statutory provision for dealing with uncleared goods. The time of grace allowed is four months and that is surely ample. The other proposal is to provide for the application of section 168 of the Sea Customs Act. This section includes the following words :

“ Every vessel, cart or other means of conveyance, and every horse or other animal used in the removal of any goods liable to confiscation under this Act shall, in like manner, be liable to confiscation ”.

There has been, as the House is probably aware, considerable activity on the part of smugglers and on the part of the staff dealing with smugglers on the Pondicherry and Karaikal frontiers and we find in practice that the absence of the power conferred in the case of the Sea Customs Act by section 168 is a handicap to the work of the staff engaged in the tracing of smuggling. Many vehicles are used for the conveyance of smuggled goods and it is desirable that in cases where the authorities are satisfied that there was every reason to suppose connivance on the part of the owner of the conveyance this particular penalty should be added to those already provided for. The penalties already provided for under the Land Customs law are in fact stiffer than those under the Sea Customs law. Under the Sea Customs law, you cannot prosecute and secure a sentence of imprisonment in the case of smuggling, which you can do under the Land Customs law. We therefore ask that this provision of the Sea Customs Act, which has been in existence since 1878, and which I do not think can ever be said to have been abused, should be extended to the land

[Mr. A. H. Lloyd.]

customs frontier. With these words, Sir, I move that the Bill, as passed by the Legislative Assembly, be taken into consideration.

**THE HONOURABLE THE PRESIDENT :** Motion made :

“That the Bill further to amend the Land Customs Act, 1924, for certain purposes, as passed by the Legislative Assembly, be taken into consideration.”

At this stage, I must draw the attention of Honourable Members to the fact that this morning I have received a notice from the Honourable Sir Prabhankar Pattani asking permission to move an amendment referring this Bill to a Select Committee and in the alternative to circulate it for eliciting public opinion thereon. This notice is framed in an alternative manner. I will first read the notice :

“That the Bill be referred to a Select Committee consisting of the Honourable Mr. A. H. Lloyd, the Honourable Sir Bertrand Glancy, the Honourable Sir K. Ramunni Menon, the Honourable Mr. Prakash Narain Sapru, the Honourable Pandit Hirday Nath Kunsru, the Honourable Mr. Hossain Imam and the Mover.

If this amendment fails :

That the Bill be circulated for the purpose of eliciting opinion thereon.”

I will first deal with the second part of this Motion, and I may say at once that I rule it out of order. As Honourable Members are aware, there are several rulings on this point that in the Second Chamber it is not usual to make a Motion for circulation of a Bill. There are also several rulings on the subject of reference to Select Committees. In 1931, my predecessor, Sir Henry Moncrieff-Smith, gave a ruling. In 1934, on two occasions, I had to deal with similar Motions. It is not necessary for me to go into all the previous rulings today, both as regards circulation and reference to Select Committees, but for the benefit of the new Members of this House, I shall refer to only one ruling of mine—the last ruling—on the subject in 1934 when this point was raised. I might as well read what I said then, because that will save me the trouble of repeating the same arguments. I said then :

“In that case under rule 29 the Honourable Member is entitled to move for the appointment of a Select Committee in this House. I may point out that rule 29 crystallises the traditional practice and procedure of the House of Lords. The Honourable Member is entitled to speak, but this privilege of asking for the appointment of a Select Committee in the Upper House is very, very rarely exercised. This Council was constituted in 1921—it emanated from the Montagu-Chelmsford Reforms—and I have been in this Council from 1921 and as far as my recollection goes, not on a single occasion has this House appointed a Select Committee to reconsider a Bill. I mention this fact to the Honourable Member merely because it is a very small Bill and I find that the reference to Select Committee will cause considerable delay and would hamper the progress of the Bill. Though the Honourable Member has a right to move his amendment, I wish to point out to him that clause 2 is the only matter for consideration and the question whether this Bill should be made permanent or limited for a fixed period of three or seven years and this can be more usefully and expeditiously discussed and threshed out by the whole Council here today than by a reference to a Select Committee.”

In this case, so far as the Select Committee motion is concerned, I would like to know definitely from the Honourable Mr. Lloyd if this Bill was referred to a Select Committee in the originating Chamber.

**THE HONOURABLE MR. A. H. LLOYD :** No, Sir.

**THE HONOURABLE THE PRESIDENT :** Then, in this case, no Select Committee was appointed in the originating House, and though it is rare to

move for a Select Committee in this House; under rule 29 of the Indian Legislative Rules framed under the Government of India Act, 1919, I have the privilege of allowing such a motion. Rule 29 says :

“ Any Member may (if the Bill has not already been referred to a Select Committee of the originating Chamber or to a Joint Committee of both Chambers, but not otherwise) move as an amendment that the Bill be referred to a Select Committee, and, if such motion is carried, the Bill shall be referred to a Select Committee, and the Standing Orders regarding Select Committees on Bills originating in the Chamber shall then apply.”

But my difficulty in this case is that the notice itself for moving this motion of reference to a Select Committee is very defective. Under Standing Order 39A—

“ At the time of the appointment of a Select Committee, the number of persons whose presence shall be necessary to constitute a quorum of the Committee shall be fixed by the Council.”

In this notice the Honourable Mover has not fixed the quorum as required by the rule. Secondly, he has not fixed the time limit, required under Standing Order 40, within which the report of the Select Committee must be submitted to this House. Clause (2) of Standing Order 40 states :

“ Such report shall be made not sooner than three months from the date of the first publication of the Bill in the Gazette, unless the Council orders the report to be made sooner.”

If I allow this motion as it stands to be moved, the report cannot be submitted before three months, when this Council will most probably have adjourned and there will be no use referring this Bill to a Select Committee. That is the second difficulty. At the same time I realize the importance of this Bill and I should be unwilling that a measure of such importance to British India and the States should be passed hurriedly in this House. I shall therefore allow the Honourable Member to make his motion altered and framed in the terms I have pointed out, if he is willing to do that, and to submit it to me now.

Then, as regards the other point, it is perfectly clear from several rulings that, even if this motion for Select Committee fails, I cannot permit the alternative motion to circulate for the purpose of eliciting public opinion.

THE HONOURABLE SIR PRABHASHANKAR D. PATTANI (Bombay : Non-Muhammadan) : I am very grateful to you for giving me the opportunity of moving this motion for the appointment of a Select Committee if provision for a quorum and the time limit within which the report of the Committee is to be submitted is made. With your permission I therefore move the addition that the quorum be fixed at five and that the report of the Select Committee should be submitted to the House within two weeks.

I am quite sure if this request is granted that much light will be thrown on this Bill, which, as you yourself have said, Sir, is a Bill of great importance, because as far as my knowledge goes this is the first time when an attempt has been made to distinguish between British India and Indian States.

THE HONOURABLE THE PRESIDENT : You are not to make a speech at this stage.

THE HONOURABLE SIR PRABHASHANKAR D. PATTANI : I suggest that the time limit and the quorum as I have submitted may kindly be

[Sir Prabhaskar D. Pattani.]

accepted, and I may be allowed to move the motion I have submitted with these two additions.

**THE HONOURABLE THE PRESIDENT:** Amendment moved :

"That the Bill be referred to a Select Committee consisting of the Honourable Mr. A. H. Lloyd, the Honourable Sir Bertrand Glancy, the Honourable Sir K. Ramunni Menon, the Honourable Mr. Prakash Narain Sapru, the Honourable Pandit Hirday Nath Kunzru, the Honourable Mr. Hussain Imam and the Mover, that the quorum shall be five and the time limit within which the report is to be submitted is two weeks."

Discussion will now proceed only on this amendment that the Bill should be referred to a Select Committee.

**THE HONOURABLE SIR PRABHASHANKAR D. PATTANI:** Sir, my submission will be short and will only refer to the importance of the Bill and its effect on the Indian States as well as on British India. India has been under one Sovereign without distinction between British India and the Indian States throughout the history of the establishment of the British Empire in this country, and for the first time now at a time when there is an attempt to constitutionalise the status and union of all-India interests in the new constitution Act such a measure, as the Honourable Member in charge of the Bill suggested, must create some very definite fears in the minds of the Princes who are now meeting in Delhi in informal Committee. But I do not wish to discuss the points of view that have been presented there. This question has to be decided in this House. The Committee I have asked for will have many important points to discuss, which will be useful alike to Government and to the States, and if I am in ignorance in regard to some matters I will be enlightened.

I would first draw attention to section 3 of the Bill. It is definitely said that this Bill is aimed at the economic interests of the Indian States. I realize at the same time that foreign goods entering through an Indian State without paying customs duty at the rate of the British Indian tariff have no right to underbid the trade of British India by paying a lower tariff. But there are arrangements or agreements or treaties with Indian States under which they are under the obligation of charging British Indian tariff rates. There should therefore be no distinction between Indian State Ports and British Indian Ports, both of whom are in the same customs union.

**THE HONOURABLE THE PRESIDENT:** I do not want you to go into the details of the merits of the Bill.

**THE HONOURABLE SIR PRABHASHANKAR D. PATTANI:** This point will be discussed by the Committee and I think it will be very interesting and enlightening. I would very humbly but very earnestly request the House to accept this motion without difference of opinion. After all the idea is to find out how the matter stands, whether it is opportune to do it at this moment, whether it is not in the interests of India as a whole that we should all sit together, stand together, work together, and not be in conflict with regard to our economic interests. I do not want to detain the House with arguments which I can put before the Committee, and I would ask for the acceptance of this motion without division or further discussion.

**THE HONOURABLE MR. A. DEC. WILLIAMS:** May I point out that Sir Bertrand Glancy is not a Member of this Council?

**THE HONOURABLE THE PRESIDENT :** Then his name will have to be eliminated. Do you wish to substitute any other name for that of Sir Bertrand Glancy ?

**THE HONOURABLE SIR PRABHASHANKAR D. PATTANI :** Is not Sir Bertrand Glancy a Member of this House ?

**THE HONOURABLE THE PRESIDENT :** At present when the motion is being made he is not a Member ; he is not a Member of the Council today. He may come in in two or three days' time again. He is not a Member at the time of your making the motion.

**THE HONOURABLE SIR PRABHASHANKAR D. PATTANI :** The Member in Charge is the Honourable Mr. Lloyd as I understand.

**THE HONOURABLE THE PRESIDENT :** You have got so many names that I think it is quite sufficient. You are of course entitled to give another name.

**THE HONOURABLE SIR PRABHASHANKAR D. PATTANI :** I will be satisfied with six.

**THE HONOURABLE THE PRESIDENT :** I will allow you to put in another name if you wish to do so.

**THE HONOURABLE SIR PRABHASHANKAR D. PATTANI :** I will suggest the name after referring to the list of Members but I do not mind the omission of Sir Bertrand Glancy if you, Sir, think that the six members are enough.

**THE HONOURABLE THE PRESIDENT :** I do not think anything when I am presiding in this House.

**THE HONOURABLE SIR PRABHASHANKAR D. PATTANI :** I will give the name later.

**THE HONOURABLE THE PRESIDENT :** Before I put the motion the name must be given.

**THE HONOURABLE SIR PRABHASHANKAR D. PATTANI :** Mr. Parker.

**THE HONOURABLE MR. V. RAMADAS PANTULU (Madras : Non-Muhammadan) :** Sir, in rising to support the Motion for referring the Bill to Select Committee, I would like to add a few words. First of all, Sir, I am making it clear that I am not dealing with this motion or with this Bill either as a champion of the Indian States or British Indian provinces, nor do I wish to say anything about what reaction it will have on the Federation which is coming.

**THE HONOURABLE THE PRESIDENT :** This is entirely superfluous at this stage. You will please speak only on the motion for reference to Select Committee.

**THE HONOURABLE MR. V. RAMADAS PANTULU :** My reason for supporting this motion is this. First of all, it is very difficult to agree with the Honourable Mr. Lloyd that nothing new is being done and that the law as contained in the present Land Customs Act and the Madras and Bombay Acts is merely being put on a more satisfactory basis. It is very difficult to agree with that position. I think for instance that the new definition of foreign territory is a vital change.

**THE HONOURABLE THE PRESIDENT :** This is all superfluous again. You are speaking on the merits.

**THE HONOURABLE MR. V. RAMADAS PANTULU :** If that is so, Sir, I do not wish to go into details; but there are certain very important matters in the Bill which have not been considered in the other House and I will merely refer to a few matters which do require consideration and try to show why this Bill should go before a Select Committee. In regard to the incorporation of section 168 of the Sea Customs Act into this Bill I think it is a very vital departure in the law and if you think that all that could be said at a later stage, I bow to your ruling. In supporting the motion for Select Committee I wanted to show how this Bill involved very vital questions which would require careful consideration for that might induce this House to agree to a motion for Select Committee; if there is nothing new in these provisions but a formal amendment of the existing law, the motion for referring it to Select Committee may not be accepted. So, with this explanation I support the motion.

**THE HONOURABLE MR. A. H. LLOYD :** Sir, I oppose this motion. The Bill, it appears to me, is far too simple to require the Select Committee procedure. It is one regarding which the Honourable House might very easily be asked either to accept the Bill or to reject it or to reject particular clauses. But the procedure of a Select Committee does not seem to me to be necessary for such a course. The Honourable Member who moved for the appointment of this Select Committee did so because he wished to have certain aspects of the Bill and certain doubts and uncertainties felt outside regarding the object of the Bill discussed in such a way as to set them at rest. Surely by far the best place to deal with apprehensions felt outside this House would be in the House itself. So far as the matter in which the Honourable mover is interested is concerned, there is one question of principle before us and that is the question whether or not we should replace the existing defective Act and unsatisfactory machinery—the Land Customs Act of 1924—for use if, in any circumstances, occasion should arise for imposing a land customs line on any frontier between British India and an Indian State. I have always understood that the acceptance of reference to Select Committee is the acceptance of the principle of the Bill and I submit, Sir, that if this Bill is referred to Select Committee it means that that principle is accepted and if that principle is accepted, then there is really nothing more to be said about it except to pass the Bill as it stands. As regards what my Honourable friend Mr. Ramadas said, that again seems to me to be a matter which could have been very simply dealt with by the process on the floor of the House. An amendment could have been put up to clause 5 of the Bill proposing to omit those words which make section 168 of the Sea Customs Act applicable. We could then have adopted it on the merits in this House.

**THE HONOURABLE THE PRESIDENT :** You can still do that at a later stage when I go into the clauses.

**THE HONOURABLE MR. A. H. LLOYD :** There is all the more reason why my view that it is not a matter for Select Committee should be accepted. Sir, I oppose.

**THE HONOURABLE MR. P. N. SAPRU (United Provinces Southern : Non-Muhammadan) :** Sir, there is just one aspect of the matter to which I should like to draw your attention. It is this. I do not want to go into the merits of the Bill. Probably so far as the merits of the Bill are concerned, I would be with my friends opposite.

**THE HONOURABLE THE PRESIDENT :** You can certainly show reasons why it should be referred to a Select Committee. So far as that is concerned, you can go into the merits.

**THE HONOURABLE MR. P. N. SAPRU :** So far as the motion for the Select Committee is concerned, what I want to say is this. By sending the Bill to Select Committee the House will have committed itself to the principle of the Bill. Therefore, it strikes me that there is no disadvantage in having a Select Committee. The matter can be discussed in the Select Committee. It is a matter which may require some further elucidation and therefore I should be disposed to support the motion for a Select Committee without committing myself to any further steps that Sir Prabhaskar Pattani may take. (*An Honourable Member :* "What further steps?") If the motion for Select Committee is defeated and if Sir Prabhaskar Pattani proposes the rejection of the Bill, then I am not prepared to support the rejection of the Bill, but I am prepared to support the motion for reference to Select Committee.

**THE HONOURABLE THE PRESIDENT :** I have already said that when we go into the clauses, any amendment you desire to make, though notice of it has not been given, I will allow.

The Motion is :

"That the Bill be referred to a Select Committee consisting of the Honourable Mr. A. H. Lloyd, the Honourable Mr. R. H. Parker, the Honourable Sir K. Ramuni Menon, the Honourable Mr. Prakash Narain Sapru, the Honourable Pandit Hirday Nath Kunru, the Honourable Mr. Hossain Imam and the Mover. The quorum shall be 5 and the time limit will be two weeks for submission of the report."

**THE HONOURABLE SIR PRABHASHANKAR D. PATTANI :** May I say a few words in reply to what the Honourable . . . . .

**THE HONOURABLE THE PRESIDENT :** I gave you an opportunity and you ought to have got up then. So far as the amendment is concerned, a person who moves an amendment has no right of reply under our Standing Order:

The Question is that this Motion be adopted.

The Motion was negatived.

**THE HONOURABLE THE PRESIDENT :** The debate will now proceed on the main Bill.

**THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab : Non-Muhammadan) :** Sir, I rise to support the Bill. The Bill seems to be in the interests of British India and so it ought to have our support. From the material which is before us we find that smuggling is being practised on

[Rai Bahadur Lala Ram Saran Das.]

the land frontiers of India and the sooner that smuggling stops the better. Sir, one cannot say with certainty as to how that smuggling goes on but from the prices of various articles which are sold cheaper than the cost they are landed in British India plus the import duty one cannot come to any other conclusion but that smuggling is in existence. This Bill, Sir, will stop such smuggling and hence it ought to have the support of the Council.

THE HONOURABLE SIR DAVID DEVADOSS (Nominated : Indian Christians) : Sir, I welcome this Bill. I have heard people say that diamonds to the value of 40 lakhs of rupees used to be smuggled into British India from the foreign territory and recently the cordon has been strengthened and from the figures given the customs revenue has considerably increased. And seeing that Cochin is going to be an important port, this Bill is not at all a day too early. We may take it, Sir, that all kinds of articles might be imported into Cochin which is an important port and might be smuggled into British India though at present we do not hear of any such smuggling. But from French possessions like Pondicherry and Karikal very large quantities of silks and other dutiable articles are smuggled into British India. I welcome the amendment of the Act by the introduction of a provision for the confiscation of vehicles. That is a very welcome provision, Sir, for the smuggling is done by means of motor cars and motor lorries. If the vehicles also are confiscated I think it will prevent enterprising people from trying to smuggle dutiable articles into British India. With these words I have much pleasure in supporting the Bill.

THE HONOURABLE MR. V. RAMADAS PANTULU : There is just one matter on which I would like to say a few words. The present Bill seeks to incorporate the provisions of section 168 of the Sea Customs Act into this Bill. The provisions of section 168 of the Sea Customs Act provide for the confiscation not only of the goods, including packages in which they are found and other contents thereof, but also of every vessel, cart and other means of conveyance, every horse and other animal engaged in the removal of any goods. They are all liable to confiscation. Sir, the Sea Customs Act is somewhat different in its scope from the Land Customs Act. The conveyances or vehicles which are intended to carry these goods specially go to the ports where the goods are imported and the owner of the vehicles know what they are doing. With regard to the Land Customs Act, it is possible that many kinds of goods which are subject to duty but on which duty was not paid may be conveyed by individual passenger by motor lorries and buses or even by private motor cars which may be frequently moving from one place to another on land and of which the owner of the vehicle may not know ; and there is nothing in the section which will confine its operation to the confiscation of vehicles the owners of which are aware that any contraband articles are being carried. Supposing a passenger in a motor bus carries some articles on which duty is payable but was not paid, that will come under the mischief of the new Statute. So not only the person in possession of the articles will be prosecuted and his goods confiscated but even the motor car or bus in which the goods are being carried will be confiscated. Of course, the usual answer is that the executive officers, the Commissioners of Customs, will not behave so unsensibly and will always make sure that the use of the vehicle was obtained for illicit purposes and that the man who owned the vehicle knew that it was being used for this purpose, and that without such evidence no such drastic step would be taken. But in extending the penal provisions of one Act to another Act, very great care must be taken. The Land Customs

Act would apply to cases of vehicles which frequently pass from one place to another on land and many innocent owners of vehicles may be brought within the mischief of this Act and incalculable harm may be done. The argument that since 1878 there has not been no hardship under the Sea Customs Act will not be a sufficient answer to my objection because the case of the Sea Customs Act is somewhat different since vehicles are specially sent to the port to bring in the unloaded cargo, whereas in the case of the Land Customs Act some articles may be carried in buses which are not intended for the transport of such articles but which may be used for passenger traffic as well. Therefore, I think this is a very drastic provision and there is no reason why it should be included. It was not in the 1924 Act and it was not in the Bombay Act of 1857 or Madras Act of 1844. I think it is a dangerous provision and should not be included in this Bill.

THE HONOURABLE MR. A. H. LLOYD: Sir, I do not wish to detain the House for more than two minutes with reference to the remarks made by the Honourable Member who has just sat down. He has rather put me in a difficulty by anticipating exactly my answer to his argument. But I am, I think, in the position to answer his answer. He said that there was a fundamental difference between the places to which the Sea Customs Act and the Land Customs Act are applicable. I think that he is mistaken in that respect. Section 168 of the Sea Customs Act, in addition to referring to goods, refers to carts or other means of conveyance, and every horse or other animal used in the removal of goods. That, Sir, I think suggests that cases for the application of section 168 might very easily arise in connection with the illicit transport of goods by land from a place where they have been landed and that would most probably occur in places which are not ports. My Honourable friend in talking of his difficulties referred to ports. One of the great dangers which any coast-guard staff has to guard against is the landing of goods in places which are not ports, from which they are removed by any kind of vehicle. The position then is really just the same as if they were brought to a point on the land customs frontier and then removed by vehicle. Therefore, I do not admit that there is such a distinction as my Honourable friend felt existed between the two cases and I feel therefore that what I have said still holds good as an answer to the objection, namely, that this power has been vested in the hands of the Customs Officers for more than half a century and has not been abused. It is to me unthinkable that our staff should be so unreasonable as to act in the way that has been suggested. If a single passenger on a motor lorry were to have goods concealed on his person, in such circumstances, the driver, much less the owner of the lorry, could not have the slightest idea that there was smuggling aboard. There could be no question of the Customs Officers exercising the power which it is now proposed to confer on them in such a case. Where he will exercise those powers is in the numerous cases which have been occurring with great frequency on the frontiers of Pondicherry and Karikal where a car is specially equipped for smuggling purposes with hiding places in the upholstery and so forth.

Now, Sir, I ask the House to trust their administration just to this extent—to trust them to be reasonable in exercising these powers which it is now proposed to confer on them rather than to refuse them these powers, because there was no specific limitation to cases of good faith. I think, Sir, it would be a lamentable matter if this Council of State were to act on the assumption that good faith will be absent from the proceedings of the Customs Officers if they are not expressly bidden to observe good faith.

**THE HONOURABLE THE PRESIDENT :** Motion made :

"That the Bill further to amend the Land Customs Act, 1924, for certain purposes as passed by the Legislative Assembly, be taken into consideration."

The Question is :

"That that Motion be adopted."

The Motion was adopted.

**THE HONOURABLE THE PRESIDENT :** The Question is :

"That clause 2 stand part of the Bill."

**THE HONOURABLE SIR PRABHASHANKAR D. PATTANI :** Sir, I object to this clause being passed as it stands, because it distinguishes between "British India" and Indian India. It is sought to substitute the words "British India" for the word "India". There is an attempt to put in the words "British India". That means that this clause attempts to divide the sub-continent of India into two parts although the same Sovereign has authority over both. I would not make a long speech because I do not intend to detain the House unnecessarily. Of course I am very sorry that my first motion was rejected, because that prevents full consideration being given to the Bill in Select Committee. But I do not wish now, having been defeated on that motion, to reiterate the same thing; but I urge that technicalities must not over-ride the importance of the occasion, and in a House like this where there is no man belonging to the Indian States as a State .....

**THE HONOURABLE THE PRESIDENT :** You are a host in yourself.

**THE HONOURABLE SIR PRABHASHANKAR D. PATTANI :** I am a resident of, and belong to, an Indian State, but I do not represent the Indian States in this House, and my views would be the most impartial views on any measure that comes up before the House. In a House like this, where a most innocent proposal for reference of this Bill to Select Committee has been rejected, I despair of any attempt to bring in other amendments because they will meet with the same fate. I also despair of any changes in the clauses being allowed if anybody else or myself suggested them, and I know that it is a most dangerous thing for this House, at this juncture especially, by force of technical power to let this Bill go through without full discussion, which would have been possible and which would have enlightened many Members of this House as to the necessity of considering certain important recommendations. These recommendations without in any way affecting the desire of the Government to prevent smuggling, and without in any way affecting the great principle that goods that have not paid the British tariff rate should not be allowed to pass into British India and also in territories which are governed under treaties and engagements as customs ports, would greatly have improved the Bill. But anything beyond that that is intended to be introduced here is a direct violation, if I may be allowed to bring in politics, of the great Proclamation which says that Dignities, Rights and Privileges of Indian States shall not only be guaranteed but preserved "as if they were our own". I know that when a House discusses a Bill, there is always a disinclination to hear political views. But this view that I am commenting upon cuts at the very root of the promises made at the time when the East India Company ceased to exist here and the Great Queen Victoria took over the administration of India. My only chance is now to object to clauses when we discuss the clauses. But I suggest to the

House—and I would very humbly also suggest to the Government—that it would have been both right and courteous if this Bill had been allowed to go to a Select Committee. It is beyond me now to press for it because the House has rejected that proposition, and I know that any other amendment or any other proposition that I may have the privilege of putting before the House when we discuss the clauses—I have no doubt about it—will meet with the same fate as the amendment that I proposed. It would be a pity from many points of view, not merely from the States' point of view but also from the Government point of view. I had hoped that it would have been possible for Government to drop the Bill at the present juncture and bring it forward at the time when constitutional changes would allow the party against which it is aimed to be present to put their point of view, in which event there would have been a sort of friendly compromise between the parties that are mostly affected by this. British India and Indian States are in the same country and under the same Sovereign and for Indian States to be declared for customs purposes foreign territories is a new idea. This is a new definition of the Indian States' position in the sub-continent of India. They are foreign territories because they are foreign jurisdictions, because they are Sovereign States and not for the purpose of customs where those States have entered into customs relationship under agreements and treaties. I think this is a great mistake. But I have lost my motion and the only chance left to me now is to strive single-handed against innovations in the position of Indian States. It is most inopportune. This is not the time when the great Government of India should introduce a measure like this, when even the parties against whom the measure is directed are not present in the Legislature: when it is the earnest desire of the British Government, not only here but also in England, to bring about a Constitution which may help the proper working of the two Indias together in a friendly spirit. With this final appeal, I hope that any request for an improvement of the clauses will not meet the fate with which my very simple and very humble motion has met. I appeal to the Members here, I appeal to their conscience, I draw attention to the fact that in the Statement of Objects and Reasons it is said that no treaty rights are intended to be abrogated, and that there is no intention of expanding the frontier lines against Indian States. If that is really so, then this has to be incorporated in the Bill itself, namely, that no additional frontier lines than those which exist today shall be introduced and that treaty rights will be carried out honestly in the spirit and not in the letter only. I do not wish in this House to quote any individual cases. It would have been possible to mention such things in the Committee, and it would have been in the interests of Government themselves to have given that opportunity. But it is no use mentioning these good intentions in a statement appended to this Bill, which has no legal significance in a court of law. The House knows and every man with some legal knowledge knows that no matter what promises have been given by Government in the discussions on a Bill in this House or are appended in statements like this, they have no force at all when the Bill becomes an Act. When the Act is there, everything else is disregarded by a court of law. Therefore, these intentions expressed in this statement will have to be brought into the Bill and definitely incorporated in the sections when we come to them. I think the effect of this Bill is not realised. The effect will be that any State whether internal or maritime, can be circumscribed by a customs barrier, where all goods, whether dutiable or not, could be taxed or prevented from entering British India. And it has to be remembered that in that event British Indian goods may or may not be able to enter the Indian States. Is that the position which the Government have in view? One-third of Indian territory belongs to the States, and this is an aspect to be considered. I mean internal

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States consume goods which have entered those States through British Indian ports where the goods have paid duty to Government. Is not Government benefitting from that consumption, and what will happen if those goods are not allowed to enter the States? These are considerations which I am quite sure, if I had been given the opportunity of discussing them in Committee, would have impressed Government or if I am wrong I would have been enlightened. But that opportunity has been denied to me. I have no other amendment to submit. My second amendment for circulation of the Bill is apparently against previous rulings, and the only thing left for me is to put forward my views when we come to consider the Bill clause by clause. I know what the fate of that will be. But I should deeply regret it if technicalities are allowed to override human considerations in this matter. I am not saying this because I am influenced by sentiment. As an administrator who has served both the Government and Indian States, here and in England, I think that from the administrative point of view the permitting of technicalities to override human considerations of good government is a danger now and will be so in the future.

THE HONOURABLE MR. GOVINDLAL SHIVLAL MOTILAL (Bombay : Non-Muhammadan) : Sir, Sir Prabhaskar Pattani has put forward a very pathetic case for the Indian States, but a greater section of India is in British India, and that section has expressed its opinion repeatedly and very clearly and unequivocally. For a long time there has been smuggling of goods through certain ports and representations have been made by the commercial community and commercial associations to the Government to take steps to prevent such smuggling— which has been going on for a long time. This is not a precipitate measure. In fact the commercial community at various places has felt that Government were very dilatory in taking measures to deal with this unfair competition which has been diverting the trade of British India to certain other ports. The commercial community have not been able to understand how goods which cost them so much cost so little in Indian States. Sir, I do not understand which particular provision of this Bill can be said justly to inflict a hardship on the Indian States. Sometimes it has been found that the States themselves have been importing the goods and traders from outside too have imported goods through State ports, where various facilities are allowed to them. Something must be done to put an end to this unfair competition. Therefore, Sir, I am unable to support the amendment.

THE HONOURABLE THE PRESIDENT : There is no amendment.

THE HONOURABLE MR. GOVINDLAL SHIVLAL MOTILAL : The opposition.

THE HONOURABLE THE PRESIDENT : There is no amendment nor proposition. An amendment of a negative character is not admissible under the Standing Orders. The party who opposes may vote against the clause, but there can be no amendment of any kind.

THE HONOURABLE MR. A. H. LLOYD : My answer to what the Honourable Sir Prabhaskar Pattani has said is really to be found in the remarks which I made, trespassing upon your patience, in my opening speech, and it is not necessary for me to say more than one or two words.

**THE HONOURABLE THE PRESIDENT :** You are entitled to repeat as much as you like.

**THE HONOURABLE MR. A. H. LLOYD :** I do not desire to weary the House by repeating more than this, that it is a fundamental misconception to say that this Bill is doing anything to alter the rights and privileges of Indian States in regard to the existence or non-existence of a liability to customs duty on goods crossing their frontiers. As I have already explained, that is a position accorded, with no exception in favour of any Indian State, by the Indian Tariff Act, section 5. We are now only talking about the machinery, and to talk about a machinery measure as if it were deciding questions of principle is only I am afraid misleading. Clause 2 of the Bill about which we are now talking does not attempt to divide India into two parts as my Honourable friend says. What it intends to do is to recognise the extent of the existing division of India into two parts so far as it does exist. Therefore it is not necessary for me to say anything more in defence of the clause.

Clause 2 was added to the Bill.

**THE HONOURABLE THE PRESIDENT :** The Question is :

“That clause 3 stand part of the Bill.”

**THE HONOURABLE SIR PRABHASHANKAR D. PATTANI :** Sir, I should like to add a few words to the remarks I have already made. I would remind the House of the remarks that have fallen from me on clause 2. There is only a solitary “No” when I object to any clause and I know my position is only one solitary “No” in a House consisting of so many Members, and if Government have made up their mind to have this Bill they will have it.

**THE HONOURABLE THE PRESIDENT :** You said there was one solitary ‘No’. There are here several non-official Members.

**THE HONOURABLE SIR PRABHASHANKAR D. PATTANI :** No. There were no other ‘Noes’. With regard to the abolition of clause 2 I was the only solitary ‘No’ and I will have the same privilege of a solitary ‘No’ with regard to the other items, I am afraid. But I should like to state once more even at the risk of a humble repetition that this is a most dangerous Bill from the point of view that it is going to drive a wedge between one part of India and another part of India, which are intended to and which work together and which can be made to so work together that that combination may work for the best interests of India, for the Commonwealth as a whole. I never intended to bring in these sentiments in this discussion. I would have tried to convince by persuasion the Committee, but that opportunity has been denied me and I have therefore to say these things here, not because I feel the thing, but because from the administrative point of view it is such a repugnant idea that under one Sovereign and in one country there should be two different people fighting against each other in the interests of their economic life. I entirely agree with my Honourable friend who opposed my submission from the point of view that British India have thought that smuggled goods are entering from Indian States. This is a case which required to be gone into in a court of law. It can be proved that there has been no diversion from any British Indian ports, that there has been no smuggling from certain States. Because in one corner of the whole province of Kathiawar something may have happened 8 or 9 years

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before the 1927 frontier line was imposed, that therefore all the Kathiawar State should be punished as culprits against whom suspicions would be justified—I protest against this point of view held in higher quarters, that all the States are thus behaving. The remedy was to put right the State which may not have kept to its obligations rather than for the sake of one delinquent, as is happening in other spheres of political existence today in India, for the sake of one delinquent to put the whole class of friendly Indian States into the category of foreign countries for the purposes of customs, which really means a barrier upon the economic life of the Indian States. It already imperils and certainly to a great extent ruins the economic life of whole populations and the Indian State population is one-fourth of the population of India who are intended to be brought into a constitution, so that we can shake hands and work together for the common interests of the country as a whole. I am afraid because of some under-appraisal of the great difficulties that this Bill will create that this action has been taken ; that under-appraisal would have probably been modified if there was a chance of talking together. But that is now I am afraid not possible. I take objection to clause 3 because for the first time in the existence of any Government in India there has now been an attempt to distinguish between one part of India from the other similar but more important, influential, part of India ; and I therefore again place before the House however humble a request—as my friend over here very pithily expressed it—almost a prayer to this House that this action may be taken after full consideration of all the implications that this Bill presents. I have great objection against clause 3 which should be deleted from this Bill and if there is to be any portion of the section to be improved upon, I would suggest that this section should in no circumstances apply to States which enjoy the rights of customs ports, who are under treaty obligations with Government that have been accepted for over three-fourths of a century and have got the Secretary of State's final decision on those rights. I would therefore say that this shall not apply to a State which has the privilege of being in customs union with the Government of India and which has definite treaty relations, accepted by Government themselves, against whom this barrier was put by a misapprehension on the occasion of the last frontier line established by the Viceroyalty of Lord Curzon in 1903, against which there was a memorial to the Secretary of State, who has said that the Government of India has divested themselves of the right of their prerogative to put any barrier against a State which has entered into contractual relations with the Government of India. I would therefore add that this should be incorporated in this Act, so that when a thing like that goes before a court we may not have to depend upon the Statement of Objects and Reasons. It has no value in a court of law, as I explained in my first speech. I should suggest that, if the House agrees, this section would be dropped so that the objectionable part of this Bill may be removed. I earnestly request that promises should not be broken for the purpose of preventing smugglers, for the purpose of preventing goods entering into British India which have not paid the full duty. I do not suggest that smugglers should have freedom to do it.

THE HONOURABLE THE PRESIDENT : Nothing is said in this clause that promises will be broken.

THE HONOURABLE SIR PRABHASHANKAR D. PATTANI : Sir, the promises are broken.

**THE HONOURABLE THE PRESIDENT :** It is extraneous matter altogether so far as the clause is concerned.

**THE HONOURABLE SIR PRABHASHANKAR D. PATTANI :** Well, we will have to bow to the decision of the Chair but I think that it is being done at present. You cannot deny the facts. I am very sorry that I should be forced to bring forward facts that are at present occurring against solemn treaties, solemn promises, solemn intentions, and solemn interpretations.

**THE HONOURABLE THE PRESIDENT :** You can take your case before the proper authorities. It has nothing to do with the present question.

**AN HONOURABLE MEMBER :** Treaties are scraps of paper.

**THE HONOURABLE SIR PRABHASHANKAR D. PATTANI :** You cannot say that of the British Government, which is the most honest Government in the world.

**THE HONOURABLE THE PRESIDENT :** Sir Prabhashanker Pattani, I have given you the widest latitude. You must confine yourself to the clauses of the Bill.

**THE HONOURABLE MR. A. H. LLOYD :** Sir, the Honourable Member has discussed certain very high issues which it might have been interesting for me to answer if this had been the proper place. But I submit it is not the proper place. The only answer which, having regard to the business before us, I can properly give is that his remarks are irrelevant for the reasons which I have already given. This Bill is not creating any new situation as regards the power of the Government of India to declare that for the purposes of levying customs duty any Indian State territory should be treated as foreign territory. It merely deals with a matter of machinery.

I may perhaps be permitted to add one word with regard to the question of treaty rights. Even if the Honourable Member's criticisms had been relevant my answer to that point would be that the protection of treaty rights does not depend upon the form of the law in this country. It depends upon the fact that the Government, the parties to the treaty, will not exercise powers created by their domestic law in such a way as to infringe the treaty obligations.

Clause 3 was added to the Bill.

Clauses 4 to 6 were added to the Bill.

The Schedule and clause 1 were added to the Bill.

The Title and Preamble were added to the Bill.

**THE HONOURABLE MR. A. H. LLOYD :** Sir, I move :

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

The Motion was adopted.

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The Council then adjourned till Eleven of the Clock on Wednesday, the 24th February, 1937.