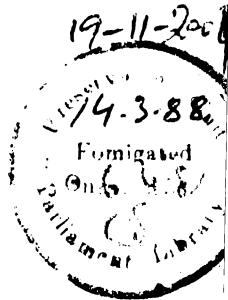


THE
COUNCIL OF STATE DEBATES

VOLUME I, 1937

(16th February to 8th April, 1937)

FIRST SESSION
OF THE
FOURTH COUNCIL OF STATE, 1937



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COUNCIL OF STATE.

Tuesday, 9th March, 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.

The Honourable Mr. James Reid Kay (Bengal Chamber of Commerce).

The Honourable Maharaja Jagadish Nath Ray of Dinajpur (Bengal : Nominated Non-Official).

The Honourable Lieut.-Colonel Sir Hissam-ud-din Bahadur (North-West Frontier Province : Nominated Non-Official).

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU (United Provinces Northern : Non-Muhammadan): Sir, before the business of the day begins, may I draw your attention to a matter of considerable importance to this House. During the Budget debate a few days ago, a number of questions relating to the Military Department were brought forward by Members on this side of the House. His Excellency the Commander-in-Chief, rising almost at the end of the debate, said that he had carefully noted down the points that had been raised here and that he would undertake to see that all of them would be answered in the other House. Now, Sir, we are not allowed to quote from the proceedings of the other House here, at any rate during the same Session. Apart from this, Sir, it is not very courteous to Members of this House to be told that their questions would be answered in the other House.

THE HONOURABLE THE PRESIDENT: I cannot allow any discussion except by way of a Resolution. I do not know what point you propose to refer to. If you wish to refer to any particular point, will you please straight come to it, so that I may give my decision on it?

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: The point was this. Was His Excellency the Commander-in-Chief in order in referring us to the speech to be made by an official Member in the other House in reply to questions put by us here? That is the question, Sir, that I want to put to you, especially in view of the fact that we cannot quote from the proceedings of the other House here during the same Session. It may be that we shall have to use the replies given in the other House to certain questions put by us here during the course of this very Session.

THE HONOURABLE THE PRESIDENT: As far as I remember, when the discussion took place on the General Budget, some Honourable Members, and particularly the Honourable Pandit Kunzru, referred to certain important points and asked His Excellency the Commander-in-Chief to give explanation on those points; and, as far I remember, His Excellency said he had not that information at his fingers' tips there and then, but he said that a similar question was likely to be raised in the other House when replies would be given to those

[The President.]

points. The Honourable Pandit Kunzru has also stated that when the debate takes place here, he will not be entitled to refer to the proceedings of this Session in the other House. That is quite in consonance with the previous rulings of this House, but he will be certainly entitled to say then in his own words in this House what was said there without referring to the proceedings altogether ; and so far as I am concerned, I will allow Honourable Members reasonable latitude. I presume the Honourable Member refers to his Resolution which is coming on the 18th here. Is that so ?

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : I do not know. I may have to use the replies given in that House.

THE HONOURABLE THE PRESIDENT : The Resolution has been admitted by me. In any case, I am sure His Excellency the Commander-in-Chief will as far as possible desire to give replies in answer to what you may say here in connection with it when the actual Resolution is moved.

(The Honourable Rai Bahadur Lala Ram Saran Das rose to speak.)

THE HONOURABLE THE PRESIDENT : I cannot allow any further discussion on this matter under the new Standing Orders.

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 a certain purpose, as passed by the Legislative Assembly, be taken into consideration."

The object of this Bill, Sir, is by the addition of only two words to make the Indian Tea Cess Act, 1903, inapplicable to Burma. At present the Act provides for the levy of a customs duty on all tea produced in India and exported from any customs port to beyond the limit of British India or Aden ; and it also provides for the administration of the sum thus collected by a committee. Government have had under consideration the position of Burma after separation and it is felt by everybody connected with the industry and by the Governments of both India and Burma that, in view of the very small sum which would be collected in Burma and also in view of the fact that Burma has no representative on the Indian Tea Marketing Board, it would be quite unsuitable for the Act to apply to Burma. The average export of tea in Burma is only in the nature of 30,000 pounds a year and at the present rate of cess the tax so collected would only be three or four hundred rupees. To leave the Tea Cess Act applicable to Burma would merely be to create a possible source of friction. Burma could hardly claim to have a representative on the Board, and yet would feel that the Board ought to concern itself with the advertisement of Burma tea as well as Indian tea. So, looked at from all points of view, the Indian Tea Association, the Indian Tea Licensing Committee, the Government of Burma, and the Government of India, all feel that the best thing would be to remove Burma from the scope of the Act. The necessity for a Bill to give effect to this intention arises from the operation of section 148 of the Government of Burma Act, under which all legislation applying to both India and Burma on the date of separation will automatically take effect in Burma. It is necessary therefore that before the 1st of April this Act

should be so altered that it does not apply to Burma, and the very small amendment which is now proposed to the Act is designed to have that effect.

Sir, I move.

The Motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. H. DOW : Sir, I move :

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

The Motion was adopted.

INDIAN LIMITATION (AMENDMENT) BILL.

THE HONOURABLE MR. A. DEC. WILLIAMS (Government of India : Nominated Official): Sir, I move :

"That the Bill further to amend the Indian Limitation Act, 1908, for a certain purpose, as passed by the Legislative Assembly, be taken into consideration."

Article 149 of the first Schedule to the Limitation Act provides a period of 60 years limitation for any suit by or on behalf of the Secretary of State for India in Council. This provision is of very long standing and I think it is universally recognised that a long period of limitation is desirable where Government is concerned. Indeed, this question is not before us now, for the effect of the Bill before us is to shorten in certain cases this period of limitation.

Now, section 293 of the new Government of India Act enables His Majesty by Order in Council to amend British Indian statutes where such amendment is necessitated by, or consequential on, the new constitution. Such an Order in Council has been laid before Parliament. It effects an amendment in article 149 of the First Schedule to the Limitation Act. The reason for this amendment lies in sections 176 and 179 of the Government of India Act, 1935. These sections, roughly speaking, provide that after the 1st April 1935, in cases where, as things now stand, the Secretary of State for India in Council might sue or be sued, the Federation or the Provincial Governments can sue or be sued. As a consequence of these provisions, the Order in Council will amend article 149 of the Schedule to the Limitation Act so as to read—first of all the existing words—"any suit by or on behalf of the Secretary of State for India in Council",—then it adds the words "the Secretary of State, the Crown representative, the Central Government or any Provincial Government". Honourable Members will, I am sure, appreciate that if the new Act provides that these Governments can sue or be sued, it is necessary to provide some term of limitation. This insertion is therefore being made by Order in Council in article 149.

Well, if article 149, apart from that insertion, is left as it is, the effect will be that in all cases suits by or on behalf of the Secretary of State for India in Council, the Secretary of State, the Crown representative, the Central Government or any Provincial Government will be liable to a period of limitation of 60 years.

I would now draw the attention of Honourable Members to section 204 of the Government of India Act, 1935, which provides for certain original suits before the Federal Court. Sub-section (2) of that section provides that

[Mr. A. deO. Williams.]

these suits are merely of a declaratory nature. The suits can only be between the Federation and the Provinces, or between Provinces, or—though we are not concerned with that for the moment—Federated States.

It is fairly obvious, I think, that for declaratory suits between Provinces and the Central Government or between Provinces, and nearly always of a constitutional nature, so long a period of limitation as 60 years is quite unnecessary. Indeed, a constitutional point should be decided as quickly as possible in suits of this character. It is therefore intended by the amendment made by this Bill in article 149 to take these declaratory suits on constitutional matters out of the article. The effect of this will be to leave them to be governed by the residuary article, article 120, which provides a period of limitation of 6 years. I submit, Sir, that that is perfectly adequate for suits of this character. As regards other suits by these authorities, the existing period of limitation of 60 years will be maintained.

Sir, I move.

THE HONOURABLE MR. V. RAMADAS PANTULU (Madras; Non-Muhammadan): Sir, while I take no objection to the principle of this Bill to prescribe a short period of limitation for suits to be instituted on the Original Side of the Federal Court, notwithstanding the explanation given by the Honourable Mr. Williams, I am not quite able to follow the necessity for this Bill. The section of the Government of India Act itself which deals with the kind of suits that can be instituted on the Original Side of the Federal Court does not mention any suit to which the Secretary of State in Council is a party and that is made clear by the Statement of Objects and Reasons appended to this very Bill. It says:

"Article 149 of the Limitation Act prescribes a special period of limitation of 60 years for any suit by or on behalf of the Secretary of State for India in Council. This Article will in future govern suits by a Province against a Province or between a Province and the Federation. The reasons which justify a specially long period of limitation for suits by the Crown against a private person hardly seem applicable where both parties represent the Crown."

Both parties may represent the Crown, but there will be no suit by the Secretary of State for India in Council as such. Hereafter, the suits will be either by the Secretary of State, not Secretary of State for India in Council, in which case article 149 of the Limitation Act will not apply, or by a representative of the Crown or by a province. So, the section of the Government of India Act dealing with Original suits in the Federal Court does not contemplate, so far as I can see, any suit by or on behalf of the Secretary of State for India in Council. The Secretary of State for India in Council as such disappears from the whole scheme of future litigation, because the Secretary of State or a representative of the Crown and not the Secretary of State for India in Council will be concerned. I am not indulging in mere legal technicality, but unless the necessity for this Bill is clearly made out, there is no necessity for us to vote in favour of it. Not that I am objecting to the period of limitation being curtailed from 60 years to 6 years in the case of declaratory suits to settle points of legal difficulty arising between province and province or between the Federation and a province. But these are certainly not suits which will fall within the scope of the present article 149 of the Limitation Act, and so far as I can understand the sections of the Government of India Act referred to by the Honourable Mr. Williams and the Order-in-Council, I think this Bill is wholly misconceived and there is no necessity for it.

THE HONOURABLE THE PRESIDENT: Does not this Bill in any case make the point clear and free from any doubt?

THE HONOURABLE MR. V. RAMADAS PANTULU: Of course, by way of abundant caution, on a matter on which any doubt may arise, it may attempt to make a matter clear. What I mean is that legislation ought not to carry caution to an extent as to deal with doubts which do not arise at all.

THE HONOURABLE THE PRESIDENT: I always thought that caution in framing legislation was the first ideal.

THE HONOURABLE MR. A. DEC. WILLIAMS: As I understand the Honourable Mr. Pantulu, his objection is that these words which we are introducing into Article 149 can have no application to the Secretary of State for India in Council, and that is perfectly true; nor can they have any application to the Secretary of State who is being introduced into this Article by the Order-in-Council. But those words can have application and do have application to the other legal persons who are introduced into the Article, namely, the Crown Representative, the Central Government and the Provincial Governments. There is therefore some force in the amendment. The Honourable Mr. Pantulu's point, I take it, would be met by omitting all reference to the Secretary of State for India in Council from this Article. But we wish to retain this period of 60 years for suits to which the Secretary of State for India in Council and the Secretary of State can be parties. Therefore we are not omitting them from this Article. But there is no question that the amendment does have some application. It applies to those legal persons who can sue under section 204 of the new Government of India Act.

THE HONOURABLE MR. V. RAMADAS PANTULU: Will those suits you contemplate be instituted in the name of the Secretary of State for India in Council? Otherwise the Bill serves no purpose.

THE HONOURABLE MR. A. DEC. WILLIAMS: I am unable, Sir, to fathom the reasons which actuated the Parliamentary Draftsman in drafting the various provisions of this Order in Council. He has seen fit to leave the Secretary of State for India in Council in this Article; and I for one am not prepared to question the propriety of this.

THE HONOURABLE THE PRESIDENT: The Question is:

"That the Bill further to amend the Indian Limitation Act, 1908, for a certain purpose, as passed by the Legislative Assembly, be taken into consideration."

The Motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. A. DEC. WILLIAMS: Sir, I move:

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

The Motion was adopted.

THE HONOURABLE THE PRESIDENT : In the List of Business there were four elections for today. Some Members having withdrawn their candidature in respect of some Committees, there will be only one election before the House today.

STANDING ADVISORY COMMITTEE FOR THE INDIAN POSTS AND TELEGRAPHS DEPARTMENT.

THE HONOURABLE THE PRESIDENT : With reference to the announcement made by me on the 5th March, regarding nominations to the various Committees, I have to announce that the following Honourable Members have been nominated for election to the Standing Advisory Committee for the Indian Posts and Telegraphs Department :

The Honourable Sir David Devadoss, and

The Honourable Mr. Govindlal Shival Motilal.

There are two candidates for two seats and I declare them duly elected.

CENTRAL ADVISORY BOARD OF HEALTH.

THE HONOURABLE THE PRESIDENT : The following Honourable Member has been nominated for election to the Central Advisory Board of Health constituted by the Government of India :

The Honourable Mr. P. N. Saprú.

There is only one candidate for one seat and I declare him duly elected.

IMPERIAL COUNCIL OF AGRICULTURAL RESEARCH.

THE HONOURABLE THE PRESIDENT : The Honourable Mr. B. K. Basu has withdrawn his candidature for election to the Imperial Council of Agricultural Research and its Governing Body. As there now remains only one candidate, the Honourable Mr. Hussain Imam, for one seat, I declare him duly elected.

CENTRAL ADVISORY BOARD OF EDUCATION IN INDIA.

THE HONOURABLE THE PRESIDENT : The Honourable Mr. Mahapatra has also withdrawn his candidature for the Central Advisory Board of Education in India. As there remains only one candidate, the Honourable Sir K. Ramunni Menon, for one seat, I declare him to be duly elected.

STANDING COMMITTEE FOR ROADS.

THE HONOURABLE THE PRESIDENT: The following Honourable Members have been nominated for election to serve for the remainder of the current financial year on the Standing Committee for Roads:

The Honourable Mr. J. C. Banerjee.

The Honourable Mr. R. H. Parker.

The Honourable Mr. Govindlal Shivilal Motilal.

The Honourable Haji Syed Muhammad Husain.

The Honourable Rao Bahadur K. Govindachari.

The Honourable Saiyed Mohamed Padshah Sahib Bahadur.

There are six candidates for three seats and an election will be necessary, which will be conducted by means of the single transferable vote. The Council will now proceed to elect three Members. Voting papers will be handed round and I ask Honourable Members to vote in accordance with the instructions noted thereon.

THE HONOURABLE SAIYED MOHAMED PADSHAH SAHIB BAHADUR: I desire to withdraw from this election.

THE HONOURABLE THE PRESIDENT: I wish you had given notice before this. There are now only five candidates for election.
(Voting papers were handed to Honourable Members and after completion were deposited.)

THE HONOURABLE THE PRESIDENT: The result of the election will be announced at the next meeting.

This completes our business for today.

The Council then adjourned till Eleven of the Clock on Friday, the 12th March, 1937.