

Wednesday, 22nd March, 1939

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THE
COUNCIL OF STATE DEBATES

VOLUME I, 1939

(23rd January to 18th April, 1939)

FIFTH SESSION

OF THE

FOURTH COUNCIL OF STATE, 1939

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CONTENTS.

	PAGE.
Monday, 23rd January, 1939—	
Members Sworn	1
Questions and Answers	1—9
Motion for Adjournment <i>re</i> Railway disaster near Hazaribagh, E. I. R.	9—10
Amendments to Ottawa Trade Agreement Rules, 1932, laid on the table	10—11
Message from His Excellency the Governor General	11
Committee on Petitions	11—12
Congratulations to recipients of Honours	12—13
Governor General's Assent to Bills	13
Bills passed by the Legislative Assembly laid on the table	13
Messages from the Legislative Assembly	13—14
Death of Nawab Sir Muhammad Muzammil-Ullah Khan and Khan Bahadur Hafiz Muhammad Halim	14
Motor Vehicles Bill—Motion to consider, adopted	15—37
Statement of Business	37—38
Thursday, 26th January, 1939—	
Questions and Answers	39—46
Motion for Adjournment <i>re</i> Constitution of the Indian Sandhurst Committee—Disallowed	46—48
Statement laid on the table <i>re</i> Draft Conventions and Recommendations adopted by the 21st (Maritime) Session of the International Labour Conference	48—50
Governing Body of the Indian Research Fund Association	50
Indian Tariff (Amendment) Bill—Considered and passed	50—55
Indian Income-tax (Amendment) Bill—Motion to consider— <i>not concluded</i>	55—90
Friday, 27th January, 1939—	
Indian Income-tax (Amendment) Bill—Motion to consider, adopted; consideration of clauses— <i>not concluded</i>	91—129
Motion for Adjournment <i>re</i> Railway disaster near Hazaribagh, E. I. R.—Withdrawn	129—139
Saturday, 28th January, 1939—	
Member Sworn	141
Indian Income-tax (Amendment) Bill—Considered and passed, as amended	141—189
Statement of Business	189—190
Monday, 30th January, 1939—	
Member Sworn	191
Questions and Answers	191—194
Messages from His Excellency the Governor General	194
Governing Body of the Indian Research Fund Association	195
Ajmer-Merwara Municipalities Regulation (Amendment) Bill—Considered and passed	195—196
Indian Cotton Cess (Amendment) Bill—Considered and passed, as amended	196—197

	PAGES.
Monday, 30th January, 1939—contd.	
Destructive Insects and Pests (Amendment) Bill—Considered and passed	197—198
Motor Vehicles Bill—Considered and passed, as amended	198—236
Statement of Business	236
Monday, 13th February, 1939—	
Members Sworn	237
Questions and Answers	237—246
Message from His Excellency the Governor General	246
Bill passed by the Legislative Assembly laid on the table	247
Messages from the Legislative Assembly	247
Presentation of the Railway Budget for 1939-40	247—253
Statement of Business	253
Wednesday, 15th February, 1939—	
Information promised in reply to questions laid on the table	255
Messages from His Excellency the Governor General	256
Indian Naval Reserve Forces (Discipline) Bill laid on the table	256—257
Bills passed by the Legislative Assembly laid on the table	257
Message from the Legislative Assembly	257
Indian Income-tax (Amendment) Bill—Consideration and adoption of amendments made by the Legislative Assembly	257—258
Indian Merchant Shipping (Amendment) Bill—Considered and passed	259—260
Saturday, 18th February, 1939—	
Member Sworn	261
Questions and Answers	261—268
General Discussion of the Railway Budget for 1939-40	268—320
Monday, 20th February, 1939—	
Questions and Answers	321—328
Ruling—That the question whether a Bill is <i>ultra vires</i> of the Constitution should be decided by the House	328—333
Resolution <i>re</i> Excluded and partially excluded areas—Negatived	333—360
Hindu Polygamous Marriage Restraint Bill—Withdrawn	360—364
Indian Succession (Amendment) Bill—Introduced	364—365
Resolution <i>re</i> Inland water communication, irrigation and prevention of floods—Negatived	365—367
Statement of Business	367
Thursday, 23rd February, 1939—	
Death of His Excellency Lord Brabourne, Governor of Bengal	369
Monday, 27th February, 1939—	
Questions and Answers	371—376
Resolution <i>re</i> Purchase of stationery, etc., of Indian make—Adopted	376—388
Resolution <i>re</i> Appointment of a Committee for undertaking legislation in regard to Hindu marriages—Negatived	388—409
Civil Procedure Amendment Bill—Motion to circulate, negatived	409—411
Parsi Marriage and Divorce (Amendment) Bill—Introduced	411
Shebaity Bill—Withdrawn	411—413
Indian Succession (Amendment) Bill—Motion to refer to Select Committee, adopted	413
Statement of Business	413

Tuesday, 28th February, 1939—

Bills passed by the Legislative Assembly laid on the table	415
Presentation of the General Budget for 1939-40	415—421

Tuesday, 7th March, 1939—

Questions and Answers	423—435
Information promised in reply to questions laid on the table	435—475
Standing Committee for the Labour Department	475
Standing Committee for the Department of Commerce	475
Standing Committee on Emigration	475
Indian Naval Reserve Forces (Discipline) Bill—Considered and passed	475—510
Employment of Children (Amendment) Bill—Considered and passed, as amended	510—514

Thursday, 9th March, 1939—

Bills passed by the Legislative Assembly laid on the table	515
General Discussion of the General Budget for 1939-40	515—566

Monday, 13th March, 1939—

Questions and Answers	567—576
Indian Succession (Amendment) Bill—Presentation of the Report of the Select Committee	576
Resolution <i>re</i> Prohibition of the sale of alcoholic liquors in railway refreshment rooms—Negatived	576—590
Resolution <i>re</i> Submission by employers of protected industries of annual wage bills—Withdrawn	590—594
Dissolution of Muslim Marriages Bill—Considered and passed	594—613
Delhi Masjid Bill—Introduced	613—614
Parsi Marriage and Divorce (Amendment) Bill—Motion to circulate, adopted	614—615
Dividends and Interest Returns Bill—Motion to circulate, negatived	615—619

Thursday, 16th March, 1939—

Members Sworn	621
Questions and Answers	621—627
Standing Committee for Roads, 1939-40	627
Standing Committee for the Labour Department	627—628
Standing Committee for the Department of Commerce	628
Standing Committee on Emigration	628
Resolution <i>re</i> Kenya (Highlands) Order-in-Council—Adopted	628—644
Resolution <i>re</i> Revision of pay of Indian commissioned officers—With- drawn	644—655
Delhi Masjid Bill—Motion to circulate, adopted	655—656
Resolution <i>re</i> Constitution of the Legislatures in India on a uni-cameral and entirely elected basis—Withdrawn	656—662
Statement of Business	662

Monday, 20th March, 1939—

Questions and Answers	663—668
Standing Committee for the Labour Department	669
Resolution <i>re</i> Contribution of railways to general revenues—Negatived	669—684
Resolution <i>re</i> Replacement of the Royal Air Force by an Indian Air Force—Negatived	684—707
Standing Committee on Emigration	693

	PAGES.
Wednesday, 22nd March, 1939—	
Central Advisory Council for Railways	709
Standing Committee for Roads, 1939-40	709
Standards of Weight Bill—Considered and passed	709—710
Indian Merchant Shipping (Second Amendment) Bill—Considered and passed	710—711
Insurance (Amendment) Bill—Considered and passed	712
Indian Patents and Designs (Amendment) Bill—Considered and passed	712—713
Workmen's Compensation (Amendment) Bill—Considered and passed	714
Cotton Ginning and Pressing Factories (Amendment) Bill—Considered and passed	714—715
Thursday, 23rd March, 1939—	
Question and Answer	717—718
Resolution <i>re</i> Increase in recruitment of Indians of pure descent to senior subordinate services on railways—Negatived	719—735
Central Advisory Council for Railways	735—736
Resolution <i>re</i> Expansion and protection of the Indian Mercantile Marine—Adopted	736—754
Resolution <i>re</i> Censoring or stopping of telegrams—Withdrawn	754—100
Indian Succession (Amendment) Bill—Considered and passed, as amended	758—762
Statement of Business	762—763
Saturday, 25th March, 1939—	
Messages from His Excellency the Governor General	765
Indian Finance Bill, 1939, laid on the table	765—766
Tuesday, 28th March, 1939—	
Member Sworn	767
Questions and Answers	767—770
Death of Khan Bahadur Syed Abdul Hafeez and Sir Ernest Miller	770—771
Standing Committee for the Department of Communications	771—772
Indian Finance Bill, 1939—Considered and passed	772—797
Standing Committee for Roads, 1939-40	797
Thursday, 30th March, 1939—	
Member Sworn	799
Questions and Answers	799—800
Central Advisory Council for Railways	800
Resolution <i>re</i> Indo-British Trade Agreement—Adopted	800—862
Statement of Business	832
Saturday, 1st April, 1939—	
Central Advisory Council for Railways	863
Standing Committee for the Department of Communications	863
Bill passed by the Legislative Assembly laid on the table	863
Message from the Legislative Assembly	864
Statement of Business	864
Monday, 3rd April, 1939—	
Presentation of a Mace to the Council of State by the Honourable Maharajadhiraja Sir Kameshwar Singh of Darbhanga	865—871

	PAGE.
Tuesday, 4th April, 1939—	
Questions and Answers	873—888
Registration of Foreigners Bill—Considered and passed	889—893
Statement of Business	894
Thursday, 6th April, 1939—	
Information promised in reply to questions laid on the table	895
Bills passed by the Legislative Assembly laid on the table	895
Tuesday, 11th April, 1939—	
Members Sworn	897
Questions and Answers	897—910
Indian Tariff (Second Amendment) Bill—Considered and passed, as amended	910—934
Statement of Business	934
Friday, 14th April, 1939—	
Member Sworn	935
Message from the Legislative Assembly	935
Questions and Answers	935—942
Information promised in reply to questions laid on the table	942—943
Statement laid on the table <i>re</i> Draft Convention concerning statistics of wages and hours of work, etc., etc., adopted by the Twenty-fourth Session of the International Labour Conference	943—949
Coal Mines Safety (Stowing) Bill—Considered and passed	949—969
Statement of Business	969
Saturday, 15th April, 1939—	
Messages from His Excellency the Governor General	971
Indian Tariff (Third Amendment) Bill laid on the table	971
Bills passed by the Legislative Assembly laid on the table	971—972
Message from the Legislative Assembly	972
Statement of Business	972
Monday, 17th April, 1939—	
Questions and Answers	973—977
Statements laid on the table	977—990
Sugar Industry (Protection) Bill—Considered and passed	990—1015
Chittagong Port (Amendment) Bill—Considered and passed	1015
Criminal Law Amendment Bill—Considered and passed	1015—1016
Indian Soft Coke Cess Committee (Reconstitution and Incorporation) Bill—Considered and passed	1016—1017
Tuesday, 18th April, 1939—	
Indian Tariff (Third Amendment) Bill—Considered and passed	1018—1048

COUNCIL OF STATE.

Wednesday, 22nd March, 1939.

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

CENTRAL ADVISORY COUNCIL FOR RAILWAYS.

THE HONOURABLE SIR GUTHRIE RUSSELL (Chief Commissioner for Railways) : Sir, I move :

"That this Council do proceed to elect, in such manner as may be approved by the Honourable the President, six non-official Members from the Council who shall be required to serve on the Central Advisory Council for Railways."

The Motion was adopted.

THE HONOURABLE THE PRESIDENT : With reference to the Motion which has just been adopted by the Council, I have to announce that nominations to the Central Advisory Council for Railways will be received by the Secretary up to 12 Noon tomorrow, and the date of election, if necessary, will be announced later.

STANDING COMMITTEE FOR ROADS, 1939-40.

THE HONOURABLE THE PRESIDENT : With reference to the announcement made by me on the 16th March, regarding nominations to the Standing Committee for Roads, I have to announce that the following Honourable Members have been nominated for election to that Committee :

1. The Honourable Mr. R. H. Parker.
2. The Honourable Sardar Buta Singh.
3. The Honourable Rai Bahadur K. Govindachari.
4. The Honourable Mr. Susil Kumar Roy Chowdhury.
5. The Honourable Mr. M. N. Dalal.
6. The Honourable Kumar Nripendra Narayan Sinha.

There are six candidates for three seats and an election will be necessary. The date of election will be announced later.

STANDARDS OF WEIGHT BILL.

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

"That the Bill to establish standards of weight throughout British India, as passed by the Legislative Assembly, be taken into consideration."

[Mr. H. Dow.]

Sir, I do not think I need weary the House in going into the history of this measure. It has been realised for a long time that it is very much in the interests of the whole of India that there should be uniform standards both of weights and of measures and that they should be enforced throughout the country. This Bill deals merely with the prescription of the standard, the constitutional position being, under the present Government of India Act, that the Central Government is responsible only for the prescription of standards of weight, and that weights and measures are provincial subjects, so that the enforcement of the standard will remain with the Provincial Governments. The Provincial Governments are anxious for this Bill to be passed in order that they may get on with the enforcing of standard weights. Some Local Governments have already passed Acts, one of them being the Bombay Government, and probably the legislation of the Bombay Government, which has been quite successful, will form a suitable model for legislation in other provinces. The really operative part of this Bill is the prescription of the actual standard which is referred to in clause 2 of the Bill. It is there laid down that the unit of weight shall be the standard grain, that is to say, that weight which when multiplied by 1799·84585 is the weight *in vacuo* of the iridio-platinum cylinder in the custody of the Mint Master, Bombay. There is no particular virtue about the prescription of one article rather than another as the standard if it is duly related to the grain; but what is wanted in the standard is durability, and it should be something which is not likely easily to disintegrate. Everything of course is subject to decay. "Flame burns, rain sinks into the cracks and they all go to ruin under the thud of the years". But in this iridio-platinum cylinder we have got something which is as durable as possible, and the standard weights which are referred to later on in the Bill can all ultimately be referred to that standard.

As I have said before, the enforcement of the standard is now a provincial responsibility. The matter has been considered by Local Governments and they are all anxious for this Bill to be passed, and I think some of them indeed have legislation which is actually waiting for the passing of this Bill in order to be introduced and enforced.

Sir, I move.

The Motion was adopted.

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

Clauses 5 and 6 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

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

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

The Motion was adopted.

INDIAN MERCHANT SHIPPING (SECOND AMENDMENT) BILL.

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

"That the Bill further to amend the Indian Merchant Shipping Act, 1923, for a certain purpose, (*Second Amendment*), as passed by the Legislative Assembly, be taken into consideration."

Under the provisions of Article 100 of the International Sanitary Convention of 1926 shipping companies are required to provide for each person, irrespective of age, an area of 1·50 square metres which is equivalent to 16 English square feet in the between decks over and above the space reserved for the crew. But under the Indian Merchant Shipping Act, 1923, section 149 (3), children under the age of one are excluded from the computation of pilgrims on pilgrim ships. The result is that there is a conflict between Article 100 of the Sanitary Convention and the Indian Merchant Shipping Act. The authorities in Saudi Arabia passed a decree in 1934 enforcing the provisions of Article 100 of this Convention and since then the Government of India have by negotiation with these authorities been able to secure that our ships should carry children under one year of age without being subject to a penalty. But last year a certain ship of a particular company which had taken such children was fined by the Saudi Government and now they have said that we should take steps to amend our Act so as to bring it into conformity with the provisions of Article 100 of the International Sanitary Convention. I may mention for the information of the House that all ships going from the Netherlands Indies, all ships going from Egypt, carrying pilgrims, conform to this convention and at the last meeting in Paris of the Office International d'Hygiene Publique they came to the conclusion that a child requires as much cubic air space as anybody else so that we are merely following a practice which is recognised by the medical world as necessary for the health of the children. Moreover, if we do not amend the law in this respect, the Saudi authorities will fine the captains of ships who carry children under one year of age without providing for this air space in contravention of the provisions of the International Sanitary Convention. The matter was placed also before the Central Haj Committee last year and they agreed that such a change was essential. There was no amendment moved in the other place and I therefore hope that the Honourable Members here will follow in this respect the example of Members in the other place.

Sir, I move.

The Motion was adopted.

THE HONOURABLE MR. HOSSAIN IMAM (Bihar and Orissa : Muhammadan) : On a point of information, Sir. May I ask the Honourable the Leader if, as a result of this amendment, the children will be still carried free by the shipping companies or will they be charged for ?

THE HONOURABLE KUNWAR SIR JAGDISH PRASAD : I think that question should be addressed to the shipping companies rather than to the Leader of the House.

Clause 2 was added to the Bill.

Clause 3 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble 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.

INSURANCE (AMENDMENT) BILL.

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

"That the Bill to amend the Insurance Act, 1938, as passed by the Legislative Assembly, be taken into consideration."

This is a fairly formidable looking Bill, Sir, of 37 clauses, and in the ordinary way it might seem to require a considerable speech from me by way of introducing it to the House. But it consists almost entirely of small changes of a technical kind which a detailed scrutiny of the Act has shown to be necessary. Honourable Members will remember that the Act had a very long and somewhat stormy and contentious passage in another place last year. A good many amendments were carried through on the floor of the House without very much time for detailed scrutiny, and at the time when the Act was put through Government had not the advantage of the assistance of anyone who was a real expert in insurance matters. Since then, although I think we can take it that this Bill does not now require a great deal of detailed scrutiny by us, I would like to assure the House that it has been the subject of a very great amount of work ; and in that connection I feel that I ought to mention the services of Mr. Thomas, the new Superintendent of Insurance under the Act. If it had not been for the hard work that he has put into it, and the way in which he has won the confidence of insurance interests throughout the country, it would have been a very much more difficult matter for Government to deal with.

The Bill is really confined to technical changes. There was one matter of some importance which was not entirely technical, which was originally put in the Bill, but the Select Committee thought that that had better be left out. The Bill was dealt with in great detail in the other House by a Select Committee, which contained some most prominent legal luminaries and members interested in insurance, and I feel quite confident that it can now be commended to this House.

Sir, I move.

The Motion was adopted.

Clauses 2 to 20 (including 2A) were added to the Bill.

Clauses 21 to 30 were added to the Bill.

Clauses 31 to 37 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

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

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

The Motion was adopted.

INDIAN PATENTS AND DESIGNS (AMENDMENT) BILL.

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

"That the Bill further to amend the law relating to the protection of Inventions and Designs, as passed by the Legislative Assembly, be taken into consideration."

Sir, the main object of this Bill is to stop the import of goods bearing designs which constitute infringements of designs registered under the Indian Patents and Designs Act. This matter, Sir, has been the subject of many complaints from the commercial public and has been under the consideration of Government since 1933. The proposal now really is to extend to registered designs the same protection which already exists for copyright under the provisions of the Indian Copyright Act.

If Honourable Members will turn to clause 21 of the Bill, they will find that it is proposed to insert an additional clause in section 18 of the Sea Customs Act with this object in view. This proposal was circulated to Provincial Governments and commercial bodies and they were generally in favour of the legislation being undertaken. But it was found in the course of examination that this amendment by itself would not give the person injured any civil remedy, and that the mere importation of goods with pirated designs would not bring the act within the mischief of section 53 of the Indian Patents and Designs Act unless it was also proved that the importer caused the pirated design to be applied to the goods. There were further discussions and it was then eventually decided to proceed by way of addition of a clause to section 53 (1) of the Patents and Designs Act. That is section 13 of the Bill before you. This will now provide specifically against importation for the purposes of sale, without the consent of the registered proprietor, of any article to which the design or any fraudulent or obvious imitation of the design has been applied. The owner will thus be provided with a remedy against the importer of a pirated design without being required to prove that the importer was aware the design was pirated. This remedy is of course a civil one. It is a well established principle that where a person, either with or without knowledge, injures another person's civil rights, he should be liable to damages.

There are one or two other minor changes. A limit has been placed on the total sum recoverable in respect of each infringement, and it has also been made possible for any person who is interested in any article to discover whether the registration of a design exists in respect of such article.

These are the main changes which the Bill carries out. The opportunity has been taken to carry out a number of other minor changes of a non-contentious nature. This Bill has also been on the stocks for a very long time and it has been very carefully examined by commercial interests and by the Select Committee in another place. That, Sir, is all that I need say in commending this Bill to the House.

Sir, I move.

The Motion was adopted.

Clauses 2 to 21 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

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

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

The Motion was adopted.

WORKMEN'S COMPENSATION (AMENDMENT) BILL.

THE HONOURABLE MR. M. S. A. HYDARI (Labour Secretary) : Sir, I move :

"That the Bill further to amend the Workmen's Compensation Act, 1923, for a certain purpose, as passed by the Legislative Assembly, be taken into consideration."

Sir, compensation for injuries or death incurred in various industrial occupations is payable under the Workmen's Compensation Act, 1923, to employees who are "workmen" within the definition given in section 2 (1)(n)(ii) of that Act. One of the qualifications is that a workman should be "employed on monthly wages not exceeding three hundred rupees". The intention has always been that this should qualify for compensation all workmen drawing on an average three hundred rupees a month, whether employed on a monthly, daily, piece-work or other rate of wage. The Madras High Court have however on two separate occasions held that persons employed otherwise than on a monthly rate of wage are not workmen within the meaning of this definition. The Bombay High Court have held the contrary view. The Bill seeks to remove this conflict of interpretation in regard to pending and future cases and permits the re-opening of previous cases in which workmen employed other than on a monthly rate of wage have suffered disqualification.

Sir, I move.

The Motion was adopted.

Clauses 2 and 3 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. M. S. A. HYDARI : Sir, I move :

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

The Motion was adopted.

COTTON GINNING AND PRESSING FACTORIES (AMENDMENT) BILL.

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

"That the Bill to amend the Cotton Ginning and Pressing Factories Act, 1925, for certain purposes, as passed by the Legislative Assembly, be taken into consideration."

This Bill has only two clauses of substance. The second, to mention the more important first, is an amendment of section 14 of the original Act. There have been many complaints from the trade of the rigidity of this section. As it stands at present, it enables a purchaser of cotton to refuse to accept delivery on the ground of entirely technical faults. The object of this Bill is to restrict the right of the purchaser to refuse delivery of a bale to the case in which it does not bear the special mark of the factory which is prescribed under section 4 of the Act. This has been under examination by the Indian Central Cotton Committee for a very considerable time and the form in which we propose the amendment has the general consent of the cotton trade.

The other change which is made by this Bill relates to structural alterations in factories. Structural alterations in cotton factories have to be approved by Local Governments and it has been held by some courts, principally in the Punjab, that this previous approval cannot be insisted on in the case of factories which were constructed before 1925, when the main Cotton Ginning and Pressing Factories Act was passed. The object of this further amendment is to compel the older factories also to get the approval of Government to structural alterations and so put them in, as far as possible, the same position that the newer factories are placed in. There are various safeguards which are designed to see that that requirement does not operate unfairly on the old factories to which it is applied.

Those, Sir, are the only two changes which are made by this Bill and I commend it to the House.

The Motion was adopted.

Clauses 2 and 3 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

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

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

The Motion was adopted.

THE HONOURABLE THE PRESIDENT : Before I adjourn the Council I wish to remind Honourable Members that a group photograph will be taken tomorrow at 11 A.M. I have also to remind Honourable Members that the informal election of one Member to serve on the Central Committee of the Tuberculosis Association of India will be held in the Committee Room No. 64 tomorrow after the Council rises.

The Council then adjourned till Eleven of the Clock on Thursday, the 23rd March, 1939.
