

Wednesday, 2nd September, 1925

THE
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OF THE
COUNCIL OF STATE, 1925



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COUNCIL OF STATE.

Wednesday, the 2nd September, 1925.

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

QUESTION AND ANSWER.

COMPETITION OF RAILWAY WORKSHOPS WITH PRIVATE ENTERPRISE.

101. THE HONOURABLE MR. PHIROZE C. SETHNA: With reference to the information supplied in reply to parts (e) and (f) of question 86 put on 11th February last, will Government be pleased to state the nature of the work given out to private enterprise and its amount in each of the last two years?

THE HONOURABLE MR. D. T. CHADWICK: The collection of the information would involve a considerable amount of time and expense and would not appear to serve any useful purpose. The Government do not therefore propose to collect it.

BILLS PASSED BY THE LEGISLATIVE ASSEMBLY LAID ON THE TABLE.

SECRETARY OF THE COUNCIL: Sir, in accordance with Rule 25 of the Indian Legislative Rules, I lay on the table copies of a Bill to confer certain exemptions on members of legislative bodies constituted under the Government of India Act, and a Bill to supplement certain provisions of the Sikh Gurdwaras Act, 1925, which were passed by the Legislative Assembly at its meeting held on the 1st September, 1925.

INDIAN SUCCESSION BILL.

THE HONOURABLE SIR HENRY MONCRIEFF SMITH: I have to move:

“That the Bill to consolidate the law applicable to intestate and testamentary succession in British India, as reported by the Joint Committee, be taken into consideration”.

I intend to make very few remarks in bringing this motion to the notice of the Council, partly because I occupy a somewhat anomalous position in that, though I am making a motion before the Council, I am not able to cast my vote in favour of it, unless, which God forbid, there is an equal division of opinion on the motion. The position which I occupy was fully explained by my predecessor, Sir Alexander Muddiman, when he asked for the leave of the Council to introduce this Bill, and I think Honourable Members are fully aware of the reasons why I am taking the unusual course of laying a motion before the Council, and that is, that this Bill is the product of the Statute Law Revision Committee of which, at the moment, I have the honour to be the President.

The Bill which Sir Alexander Muddiman introduced two years ago purported to be a measure of pure consolidation, and this House and the other

[Sir Henry Moncrieff Smith.]

House, accepting it as such, agreed to refer it to a Joint Committee. The Bill has now been considered by the Joint Committee and its Report and the Bill as amended by it are before Honourable Members. I think I may assert, without fear of contradiction, that despite the numerous amendments which have been made in the text of the Bill by the Joint Committee the nature of the Bill has not been altered, and it is still a measure of pure consolidation. Two points, therefore, only arise. The first is whether it is a measure of complete consolidation. Are there enactments on our Statute-book which with advantage might be incorporated in this Bill which for the moment are not included in its provisions? That point has been considered in the first place fully by the Statute Law Revision Committee. They recognised that there were certain enactments which had been left out in this consolidation. Thereafter, it was considered by the Government to whom this Bill went and finally it has been considered by the Joint Committee. If Honourable Members will turn to paragraph 3 of the Report, they will find a discussion of the enactments which wholly or partly have been excluded from the scope of this measure.

The other point which arises is whether there has been a true consolidation, that is to say, whether the Bill, in bringing together the law scattered as it was previously over the whole of the Statute-book, has, in making the necessary alterations of language and in making the necessary rearrangement of sections, unconsciously altered the law in any respect. The Joint Committee is satisfied that no such alteration has been made. As I have said, a very large number of textual amendments have been made in the Bill. These are all of a drafting nature. At the same time the Joint Committee thought, in view of suggestions made by certain competent critics of the Bill, that it was possible to improve the arrangement of some of the Chapters and Parts. The rearrangement that has been made is explained in the Report and is indicated also in the copy of the Bill as amended by the Joint Committee.

I move that the Report of the Joint Committee be taken into consideration.

THE HONOURABLE SIR MANECKJI DADABHOY (Central Provinces: General): Sir, I have only one observation to make in connection with this Bill. As you have rightly pointed out, this measure is one of pure consolidation of the several Acts with certain improvements in textual drafting, and as such the Bill as now presented is fully complementary and embodies all the necessary amendments. I congratulate the Joint Committee on the presentation of this Bill which involved arduous labour. But I have one important advice to offer in connection with this Bill. When this Bill was circulated for opinions numerous important amendments were suggested. Unfortunately, as the scope of reference to the Joint Committee was limited to consolidation only, no notice was taken of the several important amendments of the Act itself which have been widely recommended. This Act has been in existence for a long time, and I have seen and perused the reports of several bodies on some of the amendments proposed. Many of these amendments are very necessary, and I only trust that at an early date the

Government will undertake a measure to incorporate the numerous amendments that have been already suggested. I have nothing further to add.

THE HONOURABLE SIR NARASIMHA SARMA (Law Member) Sir, the country and the Government are under a great obligation to the Statute Law Revision Committee for the extremely useful piece of legislation which they had undertaken and for the thoroughness, care and success with which they have performed their arduous labours. The attention of the Government has been invited by the Joint Committee to the numerous amendments which have been suggested when the Bill was circulated for opinions. Sir Alexander Muddiman and I, in appending our signatures to the Report of the Joint Committee, have in a manner pledged the two departments concerned to undertake the task of amendment at an early date. I do not wish to be understood to bind my successor too closely to dates. I am sure that as soon as the pressure of other business permits, the departments concerned will undertake the revision of this Bill when it is passed into an Act and press it upon the attention of both the Houses. (Hear, hear.)

THE HONOURABLE DR. DWARKANATH MITTER (West Bengal: Non-Muhammedan): Sir, the need for this consolidating legislation is indeed very great, and we are thankful to the Members of the Joint Committee of both Houses for placing their Report at such an early date before this House. The intention was, when Sir Alexander Muddiman referred this Bill to the Select Committee on the 29th February 1924, to include in this legislation all matters of previous legislation regarding succession. On that day I made a suggestion to the Honourable Sir Alexander Muddiman, who was then presiding over this House, that it might be possible to include the Hindu Disposition of Property Act, 1916. That, as Honourable Members will find, is stated as the first Act which has been omitted from this consolidating measure in paragraph 3 of the Report. The reason which is given by the Joint Committee is that section 5 of that Act leaves it open to the Governor General in Council to extend it to other communities like the Khoja community by a certain notification, and that it does not render it desirable that that Act should find a place in this consolidating measure. There are also other Acts like the Special Marriage (Amendment) Act, 1923, the Wills Act, 1838, and the Inheritance Act, 1839, the Legal Representative Suits Act, 1855, and the Oudh Estates Act which have not been included in this consolidating legislation, and if, as it seems to be the intention from some Resolution to which reference has been made by you, Sir, that Government intend to bring forward an amending measure to amend the Indian Succession Act at an early date, if as the Honourable the Law Member suggests that his successor will take the earliest opportunity of introducing that measure,—the question that necessarily arises is, whether it would be right to pass this consolidating measure, now, if Government really intend within a year or two to bring forward an amending measure so as to have a complete law of succession embodying in it all the amendments. In view of the fact that the Government intend to amend, having regard to the volume and strength of opinions which have been collected, the present measure, I ask whether the House will be right in passing this consolidating measure at present. If you do so, you will simply be multiplying

[Dr. Dwarkanath Mitter.]

the measures on the Statute-book. It would also lead to some difficulty for lawyers or legal practitioners to move about in the course of one or two years from one Statute to another. That is always an inconvenient method, and if the intention is that an amending measure should be brought forward at an early date, I think, Sir, that this consolidating measure should not be passed now. I mean no great advantage will accrue by passing this consolidating measure, for, after all, it helps legal practitioners to tell their clients who are interested in a will where they should look for the provisions as to how the estate of the particular person is to be administered after his death. If within a year or two we have to throw this consolidating measure into the wastepaper basket and look to some other Act which will include not only the amendments but also the previous Statutes with regard to succession, I do not see that any object will be served by passing the present consolidating measure. That is, Sir, the view which I submit before this House.

THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY (West Bengal : Non-Muhammedan) : Sir, I am sorry that, in supporting the motion that you have just moved from the Chair, I have to join issue with my Honourable and learned friend Dr. Dwarkanath Mitter. The very fact that he himself brought to the notice of this House, when this matter was committed to the Joint Committee, the necessity of considering certain amendments arising out of measures like the Hindu Disposition of Property Act, which however could not very well come in as a part of the consolidating measure, cuts the ground away from under him with regard to the suggestion, a somewhat belated suggestion, that he has now thrown out, that we should wait till the Government are ready with their proposals for amendments. I should have thought, Sir, that he would have recognised, as he did recognise before, that the first and most important step for amending a large and comprehensive measure like this would be a good consolidating Act. That was aimed at by the Statute Law Revision Committee and by the Joint Committee. I am free to congratulate the Statute Law Revision Committee on its achievements. But for obvious reasons I cannot associate myself in the chorus of congratulations to the Joint Committee.

Sir, a good piece of consolidating work has been done, and after it has been done and done so thoroughly, I think it would be a thousand pities to await the convenience of the incoming Law Member for his amending measure and to let this stand over. From the point of view that I have urged before, namely, that a good consolidating measure must always precede a good amending Act and also for the reason that it has been so thoroughly done, I think the House would not be well advised in letting this matter stand over, but should pass it in the form in which it has been presented.

Sir, the Honourable the Law Member has given us a qualified pledge, we know how to value Government pledges. They can always be qualified. I do not think the qualification was necessary. We have heard of pressure of work in the Law Department but, as I said the other day, other departments like the Home Department are taking over a large portion of the work that used to belong to the Law Department before. That may be an administrative

convenience ; it may owe its origin to other reasons. Sir, we have had long-due measures awaiting amendment, measures about which the lawyers to whom my Honourable friend has alluded are very much exercised, measures, for example, like the Transfer of Property Act which has long needed revision and amendment. Honourable Members know that Government money and Government time have been spent over it and yet the comprehensive amending measure, towards which we have been looking forward for a long time, has not yet come. I do not know, therefore, how soon, in spite of the pledge given by my Honourable friend, a comprehensive amending measure with regard to this enactment will be forthcoming.

I do hope it will come early and I do hope that the Transfer of Property Act will also come early. And when these measures do come, Sir; more than incidentally I desire to draw the attention of this House, as I have drawn your attention, Sir, through the Secretary, to the somewhat difficult position that this House occupies with regard to Select Committees. According to our rules, if a Select Committee has been appointed elsewhere and not a Joint Committee, this House is precluded from appointing a Select Committee of its own and has to resort to other devices and means for the purpose of having a measure threshed out here. That is a matter, Sir, which I would like to commend to your attention for consideration and rectification. What good Joint Committees can do has to a certain extent been demonstrated in this piece of enactment.

I have not the slightest doubt that this House will pass the measure as it stands and the other House, in spite of its desire and its constant look-out for finding fault with whatever is done in this House, will not find it quite easy to discover a weak spot so far as this enactment as an amending measure is concerned. And lastly, Sir, I should like very strongly to associate myself with what the Joint Committee has said, namely, that the amendment which has been so largely and so strongly demanded from all sides, should be taken up as early as possible.

THE HONOURABLE SAIYID RAZA ALI (United Provinces East : Muham-
madan) : Sir, as to the somewhat discordant note struck by the Honourable Dr. Dwarkanath Mitter, I would like the House to remember that the functions of the Joint Committee were confined to consolidating a number of Acts that are to be found scattered. No power was given to the Joint Committee to consider amendments which would have a tendency to change or alter the law. The Joint Committee, therefore, had to work within the limited scope that had been assigned to it by this House. Yet Honourable Members will find that the point has not escaped the careful attention of the Joint Committee over which you, Sir, presided. In paragraph 2 of the Committee's Report it is clearly and definitely pointed out that there is a considerable volume of opinion in favour of amending the existing law and the attention of the Government is invited to this fact. I believe this is as far as the Joint Committee could under the circumstances possibly go. We have now further had a guarded assurance from the Honourable the Law Member, who was a distinguished member of the Joint Committee, to the effect that under certain conditions Government would consider the question of amending the whole law on the subject. A very good reason, Sir, has been given in the Joint

[Saiyid Raza Ali.]

Committee's Report why the several Acts that have been specifically enumerated in that Report could not be put into the consolidation measure with which the Joint Committee was charged. I do not think anything has been said by my Honourable friend to weaken the force of this argument. He makes rather—if he will excuse my saying so—fantastic suggestion when he says that the question of real amendment is of such great importance that, instead of taking the consolidation measure into consideration, we should wait till the Government can bring forward an amending Bill. That, Sir, I may be permitted to say, is counsel of perfection. In spite of the personal inclination of the Honourable the Law Member, we do not know how long it will take the Government to prepare such a measure. The difficulties and the hard work involved in preparing a Bill of this character are not unknown to those Honourable Members who have anything to do with the profession of law. I for one am not prepared to say that this House should accept the counsel of my Honourable friend. The consolidation measure has been prepared as carefully as was possible under the circumstances of the case. It appears from Schedule IX that as many as 14 Acts have been consolidated and brought into this one Bill. That in itself is by no means a mean achievement. I therefore think that it is high time that the profession and the Bench were spared the trouble of looking into a number of scattered measures that are to be found on the Statute-book, and that this Council should lose no time in giving its blessing to this measure and pass it.

THE HONOURABLE SIR HENRY MONCRIEFF SMITH: I thank those Honourable Members who by their speeches have saved me from the necessity of joining in this debate. I think perhaps they have taken an unnecessarily serious view of the remarks that fell from the Honourable Dr. Dwarkanath Mitter. As I listened to him I did not for a moment gather the idea that he intended to oppose the motion.

I should like also, as President of the Statute Law Revision Committee and as Chairman of the Joint Committee on this Bill, to take the opportunity, on behalf of those Committees, to thank the Council for their very generous appreciation of the work done by them.

THE HONOURABLE THE PRESIDENT: The question is:

“That the Bill to consolidate the law applicable to intestate and testamentary succession in British India, as reported by the Joint Committee, be taken into consideration”.

The motion was adopted.

THE HONOURABLE SIR HENRY MONCRIEFF SMITH: I move that the Bill, as amended by the Joint Committee, be passed.

The motion was adopted.

INDIAN SUCCESSION (AMENDMENT) BILL.

THE HONOURABLE SIR ARTHUR FROOM (Bombay Chamber of Commerce): Sir, I move for leave to withdraw the Bill to amend the provisions of section 27 of the Indian Succession Act, 1865, as reported by the Joint Committee.

Sir, I think perhaps that a few words of explanation are due from me to this Council as to the reason of this motion. The reason of the motion I have just made will be at once apparent to the legal Members of this Council; it is that Schedule IX of the main consolidating Bill, which has just been passed, repeals the Indian Succession Act of 1865 which my Bill seeks to amend. Therefore, when the main Bill goes through the other House and becomes an Act, my Bill, if allowed to stand, would seek to amend an Act which does not exist. I hope though at some future date, after the main consolidating Bill becomes an Act, to reintroduce this small Bill of mine in a somewhat modified form.

The motion was adopted.

The Council then adjourned till Eleven of the Clock on Thursday, the 3rd September, 1925.
