

Saturday, 21st September, 1935

THE  
COUNCIL OF STATE DEBATES

VOLUME II, 1935

*(16th to 28th September, 1935)*

TENTH SESSION

OF THE

THIRD COUNCIL OF STATE, 1935

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# COUNCIL OF STATE.

*Saturday, 21st September, 1935.*

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

## STATEMENT LAID ON THE TABLE.

### INDIAN MILITARY PENSIONERS.

HIS EXCELLENCY THE COMMANDER-IN-CHIEF: I lay on the table, Sir, the information promised in reply to parts (b) and (c) of question No. 122 asked by the Honourable Mr. S. C. Ghosh Maulik on the 16th April, 1935.

*Statement giving the information promised in reply to parts (b) and (c) of question No. 122, asked on the 16th April, 1935.*

(b) The figures for the years 1932, 1933 and 1934 are given below:—

Year.	Indian soldiers including Viceroy's and Honorary King's commissioned officers.	Non-combatants and followers.	Total.
1932 ..	12,229	173	12,402
1933 ..	10,852	128	10,980
1934 ..	6,849	100	6,949
Total ..	29,930	401	30,331
(c)			
1935 .. ..	1,82,192	5,687	1,87,879

## MOTION FOR THE ELECTION OF ONE NON-OFFICIAL MEMBER TO THE STANDING ADVISORY COMMITTEE FOR THE INDIAN POSTS AND TELEGRAPHS DEPARTMENT.

THE HONOURABLE MR. D. G. MITCHELL (Industries and Labour Member): Sir, I move:

"That this Council do proceed to elect, in such manner as the Honourable the President may direct, one Member for the Standing Advisory Committee for the Indian Posts and Telegraphs Department to fill the vacancy caused by the resignation of his seat in the Council by Mr. Muhammad Yamin Khan."

The Motion was adopted.

## MOTION FOR THE ELECTION OF ONE NON-OFFICIAL MEMBER TO THE CENTRAL ADVISORY BOARD OF EDUCATION.

THE HONOURABLE MR. RAM CHANDRA (Government of India : Nominated Official): Sir, I beg to move :

“That the Members of this Council do proceed to elect, in such manner as may be approved by the Honourable the President, one person from among their members to be a member of the Central Advisory Board of Education constituted by the Government of India.”

The Motion was adopted.

THE HONOURABLE THE PRESIDENT: With reference to the two Motions which have just been adopted by the Council, I have to announce that nominations for these two Committees will be received by the Secretary up to eleven o'clock on Tuesday, the 24th September, 1935, and the dates for the elections, if necessary, will be announced later.

## INDIAN ARMY (AMENDMENT) BILL.

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

“That the Bill further to amend the Indian Army Act, 1911, for certain purposes, as passed by the Legislative Assembly, be taken into consideration.”

A very few sentences will suffice, I think, to explain to the House anything they need know about this Bill.

Clauses 2(a) and 2(b) require no explanation. Clause 3 of the Bill makes good an accidental omission in last year's amending Act, which laid down the punishments that could be awarded to warrant officers by district court-martial. Warrant officers, as Honourable Members are aware, are a new class, being introduced for the first time in the Indian Army owing to Indianization, and it has always been the intention that a district court-martial should be entitled to award the same punishments to warrant officers of the Indian Army as is the case under the British Army Act for British warrant officers. This clause makes provision for that.

Clause 4 of the Bill, the only other clause which requires any explanation, adds two sub-sections to section 103 of the Indian Army Act, and concerns the disposal of lunatics. A case actually occurred where a rifleman of the Burma Rifles went off his head and committed theft. He was tried by court-martial, found insane, and transferred to a mental hospital. After he had been there for some time, it was reported that he had recovered, but it was discovered that there was no legal power under which we could release him. He was released, although it was not strictly legal to do so ; and in order to avoid such an anomaly in future, we have brought this amendment forward to cover any possibility of that kind in future.

Sir, I move.

The Motion was adopted.

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

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

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

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

The Motion was adopted.

### CENTRAL PROVINCES COURTS (SUPPLEMENTARY) BILL.

THE HONOURABLE MR. G. H. SPENCE (Government of India : Nominated Official) : Sir, I move :

"That the Bill to supplement the Central Provinces Courts Act, 1917, as passed by the Legislative Assembly, be taken into consideration."

The Court of the Judicial Commissioner of the Central Provinces, which is now the High Court for the Central Provinces, is shortly to be replaced by a High Court of Judicature established by Letters Patent under the Government of India Act. All that this Bill does is to bring the provisions set out in the Schedule into line with this position.

Sir, I move.

The Motion was adopted.

The Schedule was added to the Bill.

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. G. H. SPENCE : Sir, I move :

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

The Motion was adopted.

### PROVINCIAL SMALL CAUSE COURTS (AMENDMENT) BILL.

THE HONOURABLE MR. G. H. SPENCE (Government of India : Nominated Official) : Sir, I move :

"That the Bill further to amend the Provincial Small Cause Courts Act, 1887, for a certain purpose, as passed by the Legislative Assembly, be taken into consideration."

Honourable Members, Sir, have doubtless read the Statement of Objects and Reasons. All that I have to add thereto is that the immediate occasion for the initiation of this small piece of legislation was a judgment of the Madras High Court in which Ramesam J. observed that, on account of what he described as the somewhat unhappy and therefore obscure language of the proviso, there was some doubt as to the exact procedure to be followed by a petitioner, and he added an expression of opinion that the difficulty ought to be cleared up by the Legislature. This was by no means the first occasion on which the Courts have found difficulty in giving effect to the existing wording of the proviso and Government agree that the proviso ought to be clarified. Hence this Bill.

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. G. H. SPENCE : Sir, I move :

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

The Motion was adopted.

### PROVINCIAL INSOLVENCY (AMENDMENT) BILL.

THE HONOURABLE MR. G. H. SPENCE (Government of India : Nominated Official) : Sir, I move :

“ That the Bill further to amend the Provincial Insolvency Act, 1920, for a certain purpose, as passed by the Legislative Assembly, be taken into consideration.”

This, Sir, is another Bill of which the immediate inspiration is to be found in a pronouncement of the Madras High Court. In a recent case the learned Chief Justice had to decide whether a creditor who had taken no part in the insolvency proceedings and therefore was not entered in the schedule referred to in the section which this Bill seeks to amend was bound by a composition effected and approved in the course of the insolvency proceedings. On a consideration of the explicit language used in the existing section the learned Chief Justice was constrained to answer that question in the negative, this answer being in conformity with the prevalent though not entirely unanimous course of earlier judicial opinion. He however proceeded to observe that in his view there was no good ground for the difference between the effect in the relevant respect of section 39 of the Provincial Insolvency Act and section 30 of the Presidency Towns Insolvency Act. He expressed the opinion that it was the last-named section which more correctly carried out the policy of the Insolvency Acts. Government entirely agree with this opinion and the object of this Bill is to bring the effect of section 39 of the Provincial Insolvency Act into line with the effect of section 30 of the Presidency Towns Insolvency Act. If any Honourable Member is curious as to the reasons which led the Legislature of 1920 to enact section 39 in a form out of keeping, as has been suggested, with the general policy in the Act, he will I think find the explanation in the conjecture thrown out by the late Sir Dinshaw Mulla on page 254 of his work on the Law of Insolvency. The learned author says :

“ Under the Provincial Insolvency Act, 1907 ”—that was the earlier Act repealed by the Act of 1920—“ an order of discharge released the insolvent from ‘ all debts entered in the schedule ’, and it was therefore appropriate that in the case of a composition also the debts to be barred should be the debts entered in the schedule prepared by the Court under section 27 (7) of that Act. Under the Act of 1920 an order of discharge releases the insolvent from ‘ all debts provable under the Act ’. It looks as if the Legislature while enlarging the operation of an order of discharge under the Act of 1920 lost sight of the provisions of section 39 of that Act. I think it is desirable to consider whether section 39 of the Provincial Insolvency Act should not be amended.....”

And he then proceeds to set out a formula of amendment substantially identical with that embodied in the Bill.

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. G. H. SPENCE : 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 Monday, the 23rd September, 1935.