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OF THE

LEGISLATIVE ASSEMBLY, 1922



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LEGISLATIVE ASSEMBLY.

Saturday, 23rd September, 1922.

The Assembly met in the Assembly Chamber at Eleven of the Clock.
Mr. President was in the Chair.

QUESTIONS AND ANSWERS.

IMPRISONMENT OF MR. SHANKAR LAL OF DELHI.

357. ***Mr. B. H. Jatkar :** (i) Will the Government of India be pleased to state if it is a fact that Lala Shankar Lal of Delhi is the only person in India, who has been awarded the maximum punishment provided under section 17 (b) of the Criminal Law Amendment Act, i.e., 3 years with hard labour ?

(ii) (a) If the answer be in the affirmative, will the Government state the reason which led to this heavy sentence ? Is it a fact that the Government of India stated clearly that the requirements of justice will be fully met, by a sentence of simple imprisonment or even fine in the cases of persons convicted under the Criminal Law Amendment Act ?

(b) If the answer to part (i) be in the negative, will the Government mention all such cases where the maximum sentence has been awarded and the reasons for that ?

(iii) Is the Government aware that there is a widespread feeling in the minds of the Delhi public that the sentence was given, not on the merits of the case but because Lala Shankar Lal was an eye-sore to the local authorities ?

The Honourable Sir William Vincent : (i) The Government of India has no information as to whether Lala Shankar Lal is the only person in India who was awarded the maximum punishment. It is however a fact that he was sentenced to three years' rigorous imprisonment on the 17th December 1921.

(ii) (a) The reasons given by the Magistrate for inflicting this sentence were that Lala Shankar Lal had been a prime organiser in the so-called "volunteer" movement, was prominent in the intimidatory picketting of the cloth shops in the Delhi Bazar by volunteers on the 21st to the 23rd November 1921, that when in consequence of this picketting the various volunteer Corps were declared unlawful associations, he immediately organised their members into a new corps and on the 8th of December issued an inflammatory manifesto as Secretary of the "Army of Swaraj" calling upon the young men of Delhi to enrol themselves in the "National Volunteers" in defiance of Government and sacrifice themselves for the nation by going to jail. As a direct result a large body of

National Volunteers appeared on parade on the 12th December and were arrested. The Magistrate considered that the manifesto would be read by any ordinary man as a call to rebellion and that the organisation of the National Volunteers was a direct challenge to Government. In the excited condition of the city prevailing at that time the issue of this manifesto, had it not been instantly followed by the arrest of its author, would have plunged Delhi into disturbances.

As to the second clause of this question, the fact is not quite as stated by the Honourable Member.

The Government of India did not suggest a universal rule but that in certain cases a sentence of simple imprisonment or even fine would meet the ends of justice.

(b) The Government of India cannot say whether the maximum sentence has been inflicted in any other case.

(iii) The Government of India are not aware of any such feeling among the public of Delhi. Government have reason to believe that there was a sense of relief among the law abiding citizens at his removal for an appreciable period from the scene of his mischievous activities.

Mr. S. C. Shahani : My supplementary question consists of 3 parts.

(a) Are Government aware that there is a widespread feeling in the minds of the Sind public that the sentence passed on Mr. Jairamdas Dowlatram was done not on the merits of the case, but because Mr. Jairamdas was an eye-sore to the local authorities ?

Mr. President : Order, order. Is the Honourable Member referring to the case in the original question ? This does not arise.

FUNDAMENTAL RULES.

358. ***Mr. W. M. Hussanally :** (a) Will the Government be pleased to lay on the table the letter from the Government of India communicating to the Local Governments the Fundamental Rules made by the Secretary of State under section 96-B. of the Government of India Act ?

(b) Is it one of the objects of these rules to liberalise the former leave rules and to make it easier than before for Government officers to get all the leave admissible to them ?

(c) Do these rules allow a local authority discretion to grant an officer only a part of the leave due and admissible to him and to refuse the rest even when the officer is allowed to retire at the end of the leave and his services are not further required by the local authority, (*vide* Rule 67) ? If so, in what circumstances can a part of the leave be refused in such a case ?

(d) When the whole or part of leave due to an officer is refused by a local authority is it an exercise of its discretion under the Fundamental Rules, and in that case does an appeal or memorial lie to the Government of India ? If not, under what rule is it barred or can be withheld ?

The Honourable Sir Malcolm Hailey : (a) The letter is laid on the table.

(b) It was not the primary object of the rules to make it easier for Government servants to get all the leave admissible to them. But the effect of the new rules has been in the direction of liberalisation and simplification of the leave rules by the removal of a number of restrictions on the grant of leave.

(c) The rules allow complete discretion to the competent authority not only to grant but to refuse or to revoke leave as the exigencies of the public service demand.

(d) Under the Memorial Rules, a Local Government may withhold a petition addressed to the Government of India or higher authority when such petition is an appeal against the non-exercise by the Local Government of a discretion vested in it by rule.

No. 1079-C.S.B.
GOVERNMENT OF INDIA.
FINANCE DEPARTMENT.

SUBJECT :—*Fundamental rules made by the Secretary of State under Section 96-B of the Government of India Act.*

FROM

J. E. C. JUKES, Esq., C.I.E., I.O.S.,
Joint Secretary to the Government of India,

TO

THE CHIEF SECRETARY TO THE GOVERNMENT OF MADRAS,
FINANCIAL DEPARTMENT.
THE CHIEF SECRETARY TO THE GOVERNMENT OF BOMBAY,
FINANCIAL DEPARTMENT.
THE FINANCIAL SECRETARY TO THE GOVERNMENT OF BENGAL.
THE FINANCIAL SECRETARY TO THE GOVERNMENT OF THE
UNITED PROVINCES.
THE FINANCIAL SECRETARY TO THE GOVERNMENT OF THE PUNJAB.
THE REVENUE SECRETARY TO THE GOVERNMENT OF BURMA.
THE FINANCIAL SECRETARY TO THE GOVERNMENT OF
BIHAR AND ORISSA.
THE CHIEF SECRETARY TO THE GOVERNMENT OF ASSAM.
THE CHIEF SECRETARY TO THE GOVERNMENT OF THE CENTRAL PROVINCES.
THE HONOURABLE THE AGENT TO THE GOVERNOR GENERAL
AND CHIEF COMMISSIONER, NORTH-WEST FRONTIER
PROVINCE.
THE HONOURABLE THE AGENT TO THE GOVERNOR GENERAL AND
CHIEF COMMISSIONER, BALUCHISTAN.
THE HONOURABLE THE CHIEF COMMISSIONER, AJMER-MERWARA.
THE CHIEF COMMISSIONER, COORG.
THE CHIEF COMMISSIONER, DELHI.
THE CHIEF COMMISSIONER, ANDAMAN AND NICOBAR ISLANDS.

Simla, the 26th October 1921.

SIR,

I am directed to forward, for the information and guidance of ^{the local Government,} ~~the local Government~~ a copy of the fundamental rules which have been made by the Secretary of State in Council, in exercise of the powers conferred upon him by section 96-B of the Government of India Act, to regulate the conditions of service of the civil services in India. Enclosed with the rules are two memoranda, explanatory respectively of each rule in the fundamental rules and of the treatment accorded in those rules to each article of the Civil Service Regulations. The usual number of spare copies accompanies.

2. It will be seen that the rules will come into force with effect from the 1st January 1922, and that they will, as from that date, replace the substantive rules in the Civil Service Regulations, except in respect of pensions only. Rules framed under the fundamental rules will replace most of the adjective rules relating to leave contained in the Civil Service Regulations. The adjective rules relating to pensions in that volume will continue in force for the time being.

[3. It will further be seen that it will be necessary, before the rules come into force, that the local Government should supplement the main rules by a number of subsidiary rules regulating matters in which the rules concede rule-making powers to Local Governments. Such rules will be

applicable to Government servants under the Local Government's administrative control and it should be noted that this term includes services controlled by the Governor in Council as the agent of the Governor General in Council. The Government of India have already been addressed semi-officially regarding such rules and have been supplied with a number of sets of supplementary rules which the Government of India propose to issue for Government servants employed under their own administrative control and under minor Local Governments. The Local Government may find these rules of some assistance when they take in hand the task of drafting their own rules. It is requested that copies of all supplementary rules which may be drafted may be forwarded at once to the High Commissioner for India.]

[In connection with this task, I am to convey to the local Government two injunctions which the Secretary of State desires the Government of India to impress upon them. It will be noticed that fundamental rule 5 provides that the duty of making rules and general orders will devolve upon that side of the Local Government which administers the department to which the service affected by the rules or orders is attached. In paragraph 3 (1) of his financial despatch No. 19, dated the 17th February 1921, the Secretary of State expressed the desire that His Excellency the Governor shall, at his discretion, take such steps as may be necessary to secure uniformity of provisions in rules so made for different services in cases where, in his opinion, although such uniformity is necessary, the decisions of the Executive Council and the Ministers would produce divergent conditions. In paragraph 50 of the same despatch, the Secretary of State desired that it should be suggested to Local Governments that they should refrain as far as possible from adding to their codes of subsidiary rules special provisions suggested by individual hard cases.]

[In connection with this task, the Secretary of State has asked in paragraph 50 of his financial despatch No. 19, dated the 17th February 1921, that it should be suggested to Local Governments that they should refrain as far as possible from adding to their codes of subsidiary rules special provisions suggested by individual hard cases.]

[3. It will further be seen that a number of the fundamental rules confers rule-making powers in certain connections upon local Governments. As regards Government servants under their own administrative control or employed under minor local Governments, the Government of India will, under rule 4, make the necessary supplementary rules. It is hoped that it will be possible to issue them before the date on which the fundamental rules themselves are to come into force.]

4. Fundamental rule 58 permits any Government servant to exercise the option of remaining under the leave rules to which he has hitherto been subject, provided that this option is exercised within six months from the 1st January next or, if the Government servant is on leave on that date, within six months from his return from leave. As an inducement to Government servants to accept the new rules, the Government of India have obtained the consent of the Secretary of State to the grant of the following concession. On the first occasion hereafter on which any Government servant who accepts the new rules takes leave, he will be permitted, at his option, to draw, during that portion of his leave which corresponds to privilege leave, the pay of the post on which he holds a lien, instead of his average pay without limit.

5. Any Government servant who is on leave on the 1st January next may, if he does not desire to exercise the option of remaining under the old leave rules, cancel the unexpired portion of his leave and substitute for it any period of leave to which he will be entitled under the new rules. This concession will be subject to the condition that it should not operate to secure to the Government servant concerned a larger total period of leave on average pay or its equivalent than he would have been able to enjoy had he been subject to the fundamental rules from the commencement of his leave.

I have the honour to be,

Sir,

Your most obedient servant,

J. E. C. JUKES,

Joint Secretary to the Government of India.

No. 1080-C.S.R.

Copy forwarded to the several Departments of the Government of India (including the Financial Advisers), the Auditor General, the Heads of Departments subordinate to the Finance Department, all Accountants General, the Comptroller, Assam, the Chief Auditors of State Railways, and Government Examiners of Railway Accounts, the Examiner of Accounts, Military Works Services, the Examiner of Government Press Accounts, the Controller of War Accounts, the Examiner of Customs Accounts, the Deputy Accountant General, Central Revenues, Delhi, the Auditor, Government of India Sanctions, the Auditor of the Bombay Development Scheme, and to the Assistant Audit Officer, Delhi (new capital).

By order, etc.,

(Sd.) E. W. BAKER,

for Assistant Secretary to the Government of India.

Mr. S. C. Shahani: Is it a fact that under these fundamental rules judges and professors who enjoy long vacations are in addition ordinarily allowed one month's privilege leave for every year of their service?

The Honourable Sir Malcolm Hailey: I will supply the Honourable Member with a copy of the rules and he will be able to see their exact effect on the departments which have the privilege of vacations.

OFFICIAL MEMBERS ATTENDING THE SITTINGS OF THE LEGISLATURE.

359. ***Mr. W. M. Hussanally:** (a) Is a Government officer regarded as on duty under rule 38 of the Fundamental Rules while attending the Sessions of the Legislative Assembly or the Council of State as an official member?

(b) If so, is an officer on ordinary leave, not counted as "duty" under rule 9 (6) of the Fundamental Rules, competent to sit as an official member and to take part in divisions, etc., unless he returns to duty for the time being?

(c) Is the rule by which the prescribed number of official members of the Legislative Assembly is invariable strictly complied with if the number includes any officer or officers who may be on leave at the time of attending the Session?

(d) Will the Government be pleased to communicate to Local Governments this question with its answer?

The Honourable Sir Malcolm Hailey: (a) Yes.

(b) This question cannot arise since, by virtue of his attendance at the Session, the officer actually returns to duty.

(c) As I have pointed out above, the officer cannot be on leave in such circumstances.

(d) I see nothing to be gained by such communications.

THE COTTON TRANSPORT BILL.

The Honourable Mr. C. A. Innes (Commerce and Industries Member): I beg to move, Sir:

"That this Assembly do recommend to the Council of State that the Bill to provide for the restriction and control of the transport of cotton in certain circumstances be referred to a Joint Committee of this Assembly and of the Council of State and that the Joint Committee do consist of 10 Members."

The House will remember, Sir, that, when I introduced this Bill in March last, I explained that the Bill had its origin in the Report of the

[Mr. C. A. Innes.]

Indian Cotton Committee. That Committee devoted a portion of its Report to certain malpractices in the cotton trade and they laid very special stress upon the prevalence of the malpractice of mixing and of the grave dangers inherent in that malpractice not only for the cotton of India but also for the interests of the growers. This mixing takes different forms. Sometimes, cotton-waste is purchased from the Cotton mill and it is mixed with raw cotton. The mixture is sold as cotton and that form of mixing is fraud pure and simple. Again, cotton of an inferior type is often railed to a tract where the cotton is of a superior variety. It is rebooked from a station in that tract and thereby acquires the name and reputation and obtains the price of the superior variety. Again, cotton of inferior type is railed to tracts where the cotton is superior and it is mixed with the superior cotton and thereby is passed off as superior cotton. These two forms of mixing react upon the reputation and thereby upon the price of the superior cotton of the tract in question.

But the most dangerous form of all is where unginced cotton of inferior variety is taken to a tract where superior or long-staple cotton will grow, and it is ginned in that tract. The clean cotton is mixed with the clean cotton of the superior variety in the same way as I have explained. The seed passes into the hands of the cultivator, and that sets up a process of degradation and deterioration which it is almost impossible to arrest.

The Indian Cotton Committee were so impressed with the magnitude of the dangers of this practice of mixing that they recommended the most drastic remedies. They went to the length of suggesting that no cotton should be transported by rail in India except to *bona fide* consumers, that is the cotton weaving and spinning mills, and except to ports for sale there or for export. Had those recommendations been accepted, it would have meant in practice that no cotton could have been transported by rail in India except under cover of some pass, permit or licence. I understand that a system of this kind has been introduced by legislation in Egypt and we have been criticised in that we also have not carried out these recommendations in their entirety. I am quite free to admit that, when we first consulted Local Governments on the recommendations of this Committee, they were on the whole in favour of the acceptance of these recommendations. But, when the Government of India came to examine the subject in detail, we were impressed by the difficulties in the way of accepting these recommendations. We were doubtful whether we could work a system of licencing on this gigantic scale. We were doubtful whether we would be justified in interfering to this extent with the movement of what is perhaps India's most important industrial crop. Accordingly, we consulted the Central Cotton Committee. That Committee, as the House no doubt knows, consists of representatives of cotton interests all over India and of cotton experts. It is the most authoritative body on cotton now existing in India and the Bill which I introduced in March last was framed on the lines recommended by that Committee. It is a modest attempt to attack this evil of mixing in places where that evil may have the most serious results. It is proposed to empower Local Governments, provided they get the previous approval of their local legislatures, to notify areas for protection, and, when an area has been so scheduled, cotton may not be transported to it except under licence.

Now, Sir, in accordance with the motion accepted by this House in March last, the Bill has been circulated to Local Governments for opinion. And I am quite willing to concede that it has had a mixed reception. Some Local Governments are indifferent. Either they do not grow cotton or they have no long-staple areas of cotton or their cotton is already so mixed that the protection which this Bill is designed to afford would be of no use to it. Two Local Governments are definitely hostile—the Government of the United Provinces and the Government of Madras. They suggest that, on the one hand, the Bill is not likely to be effective, and, on the other hand, it may afford opportunities for corruption. The Bengal Chamber of Commerce has taken exception to the Bill on broad grounds of principle. It has laid down the proposition that Government should not interfere in trade, and that an evil of this kind should be left to the trade itself to deal with.

On the other hand, apart from the Bengal Chamber of Commerce, commercial associations in India are on the whole in favour of the Bill. In Bombay, no doubt, the tendency, as I have already said, is to criticise the Bill as not going far enough, but they welcome the Bill on the whole as an instalment of reform in the direction that is required. The Central Cotton Committee warmly welcomes the Bill. It has made certain suggestions for improvement, but I am not concerned at present with details. Those suggestions will be considered if the House accepts my motion that this Bill should be referred to a Committee. Finally, the Bombay Government is strongly in favour of the Bill.

Now, the Government of India have considered the replies to the reference made to Local Governments with great care, and they have decided that they ought to proceed with this Bill. That is why I am asking the House to-day to agree to refer the Bill to a Joint Committee. That is why I am asking the House to accept the principle of the Bill. I will first take the objection of principle raised by the Bengal Chamber of Commerce. As an abstract proposition I agree with the statement of the Chamber of Commerce. I agree that if the trade could deal with this matter itself, it would be very much better that it should do so. That indeed has been the policy of the Government of India for these many years. But we have to consider the logic of facts. Experience has shown that the trade, in spite of its efforts, cannot deal with this evil, and the practical question before the House is this. Are we to take our stand on these grounds of principle and are we to stand aloof in this matter? Are we to sit by with folded hands and watch our best strains of cotton rapidly being degraded one after another till they fall into disrepute? That is the practical question before the House. As regards the opposition of the Governments of the United Provinces and Madras the answer is simple. They need not apply the Bill unless they desire to do so. In any case they cannot apply the Bill unless and until they satisfy their local Legislative Councils that the Bill is required in their provinces. And is it so certain that this Bill is likely to prove ineffective? I think that the House will agree with me that concrete facts are better than any amount of theory. The remedies we propose to put into effect by this Bill have already been tried in one Indian State. I refer to Hyderabad. The Hyderabad State cotton crop amounts to some 3,000,000 acres and to some 600,000 bales. Of these, 400,000 bales are long staple cotton

[Mr. C. A. Innes.]

of the Bani type with a staple of one inch. It was reported by the Indian Cotton Committee that much of this important crop had deteriorated due to mixture with short staple cotton from Berar, and that the deterioration had extended to nearly three-fourths of the whole crop. Energetic action was taken by the Durbar and measures were taken to check the movement of cotton to other stations for mixing or sale under a false description. These measures have done much to rehabilitate the reputation and quality of Hyderabad cotton. There is a case, Sir, where the very measures we propose tentatively to introduce have been tried and have been up-to-date successful.

But, Sir, this Bill is required mostly in the Bombay Presidency. It is the Bombay Government which has been brought into contact most with the evils of this mixing. Other gentlemen here—Mr. Saklatvala for one—can if necessary give many instances of the deterioration caused by this practice of mixing. I propose to concentrate my attention on two cases, one the case of a tract where the cotton has been degraded beyond repair by the practice of mixing, and the other the case of a tract where, if we do not take timely measures, we shall see that history repeated. The first tract is the Broach tract. It has been said, Sir, that Broach was once a guilt-edged cotton. It used to be the cotton by which the standard of inferiority of other cottons in India was measured. I will now explain what has been the fate of this Broach cotton, very largely owing to the effect of this evil which this Bill is attempting to tackle. In 1908 a special inquiry was made by the Bombay Trade Association and the Agricultural Department into the mixing of short and long staple cotton. It was ascertained that the equivalent of 12,000 bales of short staple cotton had been imported by rail into the Surtee Broach tract, estimated to be equal to five per cent. of the whole crop, and that the degree of adulteration was much higher. It was recorded in the same year that one station alone, Broach, imported 4,000 bales of short staple cotton. Of the 12,000 bales referred to above, 3,000 were received at small stations with no mills near by, while the receipts at other stations were out of all proportion to mill requirements. In their evidence before the Indian Cotton Committee the Bombay Cotton Trade Association gave evidence which showed that this deterioration had steadily proceeded. They showed that this deterioration was due to the prevalence of mixing, and they showed that between 1913 and 1917 Broach cotton prices in comparison with other long staple cotton had decreased by 18 per cent., that is, by Rs. 50 a candy. That represents the measure of the loss to the growers of cotton. Now, Sir, let me tell the House what the end of this Chapter is. Broach, as I have said, used to be one of the staple crops in India. In 1919-20 the following statement occurs in the report of the Clearing House Committee of the Bombay Cotton Contracts Board :

“ The great bulk of the Broach crop is again not tenderable owing in the main to the inferiority of the staple. For many years the Broach crop has been deteriorating, and the Board in view of the experience of the last two seasons, has decided to exclude Broach from good staple contracts.”

That is to say, Broach is no longer a staple crop. I have said just now that the loss estimated in 1917 was at Rs. 50 a candy. Since then

I have seen two estimates. One conservative estimate is to the effect that the deterioration in the Broach crop since 1913 represents a loss to the grower of not less than Rs. 80 a candy while another authority puts the loss at Rs. 150 a candy. The House will see that this evil practice reacts in the end upon the cultivator himself.

Sir, I now come to the other case, the case of a tract where, if we do not take timely measures, we shall see the history of Broach repeat itself. I refer to Surat-Navsari tract. This is a tract south of the Broach tract and adjoining to it. It has a high reputation now for long staple cotton. In 1919-20 the difference in value between Surat Cotton and Broach Cotton was measured by 100 points on, as they say in cotton parlance. That tract is a standing temptation to dealers in the short staple tracts round it. They have only got to rail their cotton-ginned or unginned into that tract, and thereby they can get the higher price which Surat Cotton commands, and if we let them continue to do so, we shall see happen in that tract what has already happened in Broach tract. We shall see the long staple cotton of Surat gradually losing its reputation and gradually ceasing to command the price which it now commands.

It may be asked why the Bombay Government should not legislate in this matter itself. They did try to do so. They were so impressed with the dangers which threatened the Surat tract that they came up to the Government of India with a Bill designed to protect that tract on the lines which we have incorporated in our own Bill. When we came to examine that Bill we found that the difficulties in the way of a Local Government legislating for a Central subject like Railways were quite insuperable.

A Bill passed by the Local Government has force and effect only within the confines of its province. The legislation of the Bombay Government, therefore, had it been passed, would not have operated as a bar to dealers and others outside the Bombay Presidency in sending their cotton into this tract. All that the Bombay Government could have done would have been to hold up the trains at the limits of their province in order that such cotton might be unloaded. As the House will see, we could not possibly agree to that and the main object of this Bill is to put the Bombay Government in the same position as they would have been had they been able to pass their own Bill. As I have said, this evil is a very real one. It is an evil which may have very serious effect not only upon the best strains of Indian cotton but upon the cultivators who grow those strains. I have pointed out that no Local Government need apply this Act unless it thinks it necessary or wise to do so. I have pointed out that no Local Government can apply this Act unless it obtains the approval of its own local Legislative Council and it is only in the local Legislative Council that a problem of this kind can be discussed with a full knowledge of local conditions and with consideration to the interests of all parties concerned. I have shown that the Hyderabad State has already taken action on the lines of this Bill and that that action has been successful. In these circumstances, I hope the House will accept my motion that the Bill be now referred to a Joint Committee. I think that we should incur very serious responsibility

[Mr. C. A. Innes.]

if we stood in the way of the Bombay Government tackling an evil which they are satisfied is likely to do incalculable harm to Bombay cotton and Bombay cotton trade. I hope that the House will accept my motion.

The motion was adopted.

THE ABOLITION OF TRANSPORTATION BILL.

The Honourable Sir William Vincent (Home Member): Sir, I move for leave :

“ To introduce a Bill to provide for the abolition of the punishment of transportation in respect of criminal offences.”

This Bill is the outcome of the report of the Jails Commission. I have on a previous occasion explained to this House the action which the Government of India are taking or propose to take in reference to the important recommendations in that Report. I refer in particular to a statement which I made on the 11th March last year on this subject. On the 15th September last year I laid copies of all correspondence with the Local Governments on the subject on the table of this House. These letters are printed in the proceedings of the House. At the same time I definitely announced that it was the intention of the Government to abolish the punishment of transportation.

The Government can at present, of course, commute sentences of transportation into sentences of imprisonment, and they can also by action under section 32 of the Jails Act prescribe that a jail in British India is a place to which a person under a sentence of transportation can be sent. Indeed in practice this is frequently done. I think however the House would like to know further what executive action we have taken in order to give effect to the undertaking given by the Government. In doing so, I should like Members to remember that there are 12,000 or 14,000 prisoners or there were 12,000 or 14,000 in the Andamans, and consequently it was impossible to abolish transportation as a punishment immediately. Time must be given for new jails to be built and accommodation provided for prisoners in British India before any such step could be taken. As a matter of fact, the transportation of new prisoners sentenced to this penalty has been abolished since 1921. We first issued orders to that effect. The result was that our jails were seriously overcrowded. There was a great deterioration in jail administration and jail discipline and we were in fear of serious epidemics. Consequently, we have had, very reluctantly, partially to reopen transportation to the Andamans. It is still prohibited in regard to women and to those prisoners who are commonly, though I believe erroneously, called political prisoners, and also in regard to prisoners who are suspected of being addicted to any form of unnatural vice. Further the only provinces from which such transportation is allowed are Madras and the Punjab. For a short time the same orders applied to Bengal, but we found that it was possible to avoid sending men from Bengal to the Andamans and consequently the orders issued were cancelled. The question of repatriation is more difficult. Some

provinces, a few provinces I believe, have taken back their prisoners from the Andamans, and all prisoners of the class to which I alluded just now, particularly political prisoners, have been brought back to British India. I may remark that I am not so sure that all those who have been brought back have been very much pleased with this change. But, Sir, the Bill which I ask for leave to introduce goes very much further than this and it seeks to abolish transportation as a punishment altogether. It may be necessary for some time to send a certain number of prisoners to the Andamans for reasons which I have already explained. If so, that can be done by making one of the jails there a prison under section 29 of the Act. But we seek to avoid this as far as possible, and the evidence which I have given to this Assembly shows that we have been earnest in our endeavours gradually to abandon the Andamans as a penal settlement. I may add that an officer was deputed from the Home Department to visit the settlement this year and he informs me that the number of convicts has already been materially reduced. As to the Bill, if Honourable Members will turn to it, they will see that the operative part of it is almost entirely confined to the schedules, and for a proper understanding of them I should have to take the House through each clause and explain what the effect of the amendments would be. But I do not propose to do this, certainly not at this stage, nor would it serve any useful purpose. There is one point however to which I will draw attention and that is, the different measures of punishment provided for various offences in the Indian Penal Code in which transportation is included. I do this because it will illustrate the very great difficulty we have had in retaining the view of the present legislation as to the relative gravity of each offence for which transportation is awarded.

When I say that transportation for life is in some cases, or may in some cases be, awarded in lieu of the death sentence, in lieu of imprisonment for 14 years, in other cases in lieu of imprisonment for 10 years of either description and in lieu of, at least in one case, imprisonment for three years, I think the Assembly will realise the difficulty we have had in examining this matter and substituting what we thought was a reasonable term of imprisonment in place of transportation. There is a further point to which I should like to advert and that is the question of retention of imprisonment for life as a punishment in place of transportation for life and that punishment is prescribed in the Bill for very few offences indeed ; indeed only for some of the offences for which a death sentence might otherwise be awarded. I may add that these sentences will normally be regarded as sentences of imprisonment for 20 years ; but all these questions will have to be considered in very much greater detail by the House later and those who take an interest in this subject will find in the Statement of Objects and Reasons a fuller explanation than I have been able to give. If this motion is approved by the House, we intend to circulate the Bill to Local Governments for opinion and at the same time we shall invite them to specify to us any cases under local laws or special laws, to which our attention has not been drawn, and to say whether these offences should be included in the Bill, or whether we should leave it to them to enact their own laws in their local Legislature to provide for the object we have in view. The

[Sir William Vincent.]

latter course appears to us the more suitable having regard to all the circumstances but we should of course be open to conviction on that point as well as on others.

Mr. President : The question is :

“ That leave be given to introduce a Bill to provide for the abolition of the punishment of transportation in respect of criminal offences.”

The motion was adopted.

The Honourable Sir William Vincent : I introduce the Bill.

THE INDIAN PENAL CODE (AMENDMENT) BILL.

The Honourable Sir William Vincent (Home Member) : I beg for leave :

“ To introduce a Bill to amend sections 362 and 366 of the Indian Penal Code.”

Honourable Members will remember a debate in this Assembly on the 7th February when the following motion was adopted :

“ This Assembly recommends to the Governor General in Council that India do sign the International Convention for the Suppression of the Traffic in Women and Children accepted by the Assembly of the League of Nations at its second Session, subject to the reservation that in applying Article 5 of the Convention, India may, at its discretion, substitute the words ‘ sixteen completed years of age ’ for the words ‘ twenty-one completed years of age ’.”

It will be seen from the Statement of Objects and Reasons that relying on this Resolution of the House the Government of India have now signed the International Convention adopted by the Second Assembly of the League of Nations with that reservation and have further accepted the White Slave Traffic Convention of 1910. The Bill which I am now asking leave to introduce is intended to give effect to this executive action on the understanding that the words ‘ under age ’ and ‘ over age ’ will be interpreted as meaning under 16 and over 16 years of age. Honourable Members will recollect that at the last discussion of this subject many suggestions were put forward by non-official Members of this House that the age should be raised either to 18 or to 21 and I then undertook to ascertain public opinion as to whether a greater age than 16 years should be specified in our legislation. We have taken this action and as the result of the examination of the opinions of Local Governments the Government of India have decided that they cannot safely adopt a higher age than 16 completed years for the present. I do not know if Honourable Members have been supplied with copies of the opinions of Local Governments (*Voices* : “ No.”). I think they have been circulated. I will ascertain if it has been done. If not, I will have it done. I believe that Honourable Members often receive these papers but do not examine them carefully, but I will ascertain the facts more definitely and if I have made an error, I will withdraw that statement. I am mentioning this only as a preliminary to explaining to the Assembly, that there is great variance of opinion amongst the Local Governments as to what age should be put in in this Bill. Some Local Governments say 16 years, some 18 years and some say that 21 should be the age. Bombay, for instance, suggests 21 as the proper age and there are similar variations I think.

in the opinions of the various authorities consulted, so that any one who seeks to raise the age to 18 or 21 or to retain it at 16, if he wishes support for the position which he takes up will find ample material in the opinions. I do not wish to detain the House by going into these opinions in detail but I ought to mention this fact, because I know many members take a great interest in this question of age.

I want also to draw the attention of Members to the manner in which we propose to give effect to these undertakings. If they examine the Bill they will see we do this by extending very slightly the scope of the definition of the offence of abduction and by extending also the provisions of section 366 of the Indian Penal Code which deals with kidnapping or abducting a woman with intent that she may be compelled or seduced to illicit intercourse. We believe that the amendment of section 366 will give effect to the provisions of Article I of the Convention under which it will be an offence if any person, in order to gratify the passions of another, procures, entices or leads away, even with her consent, a woman or girl under age for immoral purposes. It is really the wide scope of the provisions of Article I of this Convention that exercised us very considerably in regard to the question of age. Another factor that led us to adopt 16 years as a suitable limit is this. It will be remembered that this Bill and the Convention do not merely deal with cases of trafficking in procuration and I am very anxious that members should understand this quite clearly. It is not a question of taking away girls for a life of immorality alone and on our interpretation of it it includes also the procuring a girl or abetting the procuration of a girl, for a single act of illicit intercourse, that is, in sending out an agent to bring in a girl for immoral purposes to visit a man. In my opinion—I am subject to correction, I am not a lawyer—the agent procuring the girl, and the man who sent him out, would be guilty of an offence under this section. There is another difficulty, and that is, that the ages now specified in sections 363, 366, 372 and 373 of the Code, all those sections which relate to kidnapping and abduction, I think apply only to girls under 16 years of age. So long as we retain the limit of 16 in those sections, and there is nothing, no material before us to indicate that it is necessary to increase it, we are inclined to think that it is desirable to adhere to 16 for the purposes of the new offences which will be constituted if the Bill which I am now moving is enacted. However, it is possible to consider all these questions at greater length later on, and I am at present only moving for leave to introduce the Bill.

Mr. President : The question is :

“ That leave be given to introduce a Bill to amend sections 362 and 366 of the Indian Penal Code.”

Mr. J. Chaudhuri (Chittagong and Rajshahi Divisions : Non-Muhammadan Rural) : Sir, it may be in the recollection of the House that when a Resolution was introduced by the Honourable the Home Member at the Delhi Session for the adoption and acceptance of the recommendations of the Geneva International Convention, there was a difference of opinion in the House. The Government view was that the International Convention was not suited to India. The International

[Mr. J. Chaudhuri.]

Convention proposed to raise the age to 21 ; that is, the procuring of women up to the age of 21, even when she is a consenting party to being procured for immoral purposes, would make the person, not the woman, but the person procuring her for immoral purposes, punishable under the law. That is the recommendation of the International Convention, and that was forwarded to this country for our acceptance. There is a large body of opinion in this House that the age should be brought on a par with that adopted in the Continent, because the women in this country are more helpless, more uneducated, and need more protection than their European sisters. Further, we find that, here, the Penal Code provides for the punishment of persons procuring girls, i.e., minor girls for immoral purposes, and the age fixed is 16 ; the difference between our law and the International Convention consists in this that the International Convention says that a girl or a woman, up to the age of majority, if she is procured by any person for immoral purposes, the person so procuring should be made punishable ; we should amend the Indian Penal Code on these lines ; and a further difference is that, here, if the woman is a consenting party, you cannot punish the person procuring her for immoral purposes under the Indian Penal Code. The International Convention goes further than our law and says that even if the woman is a consenting party, the man who procures her, and it need not be by force, fraud, coercion or any other criminal act, but by persuasion, the man who takes her away from her home for immoral purposes, should be punished, and the consent of the woman is quite immaterial ; our law does not make any provision for that, and there was a considerable volume of opinion in this House that in that respect the Indian woman needed a greater protection than the European woman. So it would not be to the prejudice of the women of this country if we accepted the International Convention. I find that this Bill does not incorporate these two provisions at all,—does not raise the age above 16, and, further, does not also provide that the consent of the girl or woman is immaterial. The man procuring her for immoral purposes should be punished whether the woman is a consenting party or not. At this stage I do not wish to oppose the introduction of the Bill, but I only suggest that these questions should be considered in the Committee and at the time when this Bill comes up for consideration before this House. After placing my objections with regard to the provisions of the present Bill before the House, I do not wish to oppose its introduction ; but I hope that the points that I have put forward will receive the due consideration of the House when the measure comes up before it.

Mr. President : The question is :

“ That leave be given to introduce a Bill to amend sections 362 and 366 of the Indian Penal Code.”

The motion was adopted.

The Honourable Sir William Vincent : Sir, I introduce the Bill.

THE INDIAN STATES (PROTECTION AGAINST DISAFFECTION) BILL.

The Honourable Sir William Vincent (Home Member) : Sir, I move for leave :

“ To introduce a Bill to prevent the dissemination by means of books, newspapers and other documents of matter calculated to bring into hatred or contempt, or to excite disaffection against, Princes or Chiefs of States in India or the Governments or administrations established in such States.”

The object of this Bill is explained in the Statement of Objects and Reasons, and I will not detain the House for any time in discussing it to-day. If the present motion is passed, the House will have abundant opportunities for discussing this question further at a later stage. But I will give, briefly, the reasons for the introduction of this measure. I am well aware that the first charge that will be brought against me will be that I was a Member of the Press Act Committee (Hear, hear) which did not recommend this legislation. But I think Honourable Members who have read the Report of that Committee will find that it did not negative the idea that such legislation might be necessary in the future, but only stated that adequate material had not been brought before the Members of that Committee to justify such legislation at that juncture. I do not remember myself to have signed as to anything more than that. I shall no doubt be corrected, if I am wrong. The point is that very few instances were brought to the notice of the Committee in which the Press had excited disaffection against, or had attempted to bring into hatred, Princes or Chiefs of States in India. We had before us a witness from the Political Department who was cross-examined by various Members of this Assembly, including myself, on this subject, and he did not adduce evidence of a satisfactory character in our opinion on that point ; we were therefore not convinced that there was any justification for such a law.

Sir, that view has not been accepted by the Government of India
12 noon. as a whole, particularly in the light of recent circumstances. And here I should like if I may to read a word or two from what His Excellency said in his address to the Legislature in 1921. He said :

“ There is however one part of the report upon which it is necessary to make some reservation and that is in relation to the protection hitherto afforded since 1910 to Ruling Princes against seditious attacks upon them in newspapers published in British India. If the Press Act is repealed it may become necessary to consider what form of protection shall be given to them in substitution.”

His Excellency again in his inaugural address to the Legislatures this year referred to the subject. He said :

“ The Press Act of 1910 has been repealed. In this connection I pointed out last year that the repeal of the Act might necessitate the consideration of the form of protection to be given to the Princes against seditious attacks upon them in newspapers published in British India. In the meantime the Local Governments have been consulted and this question has been closely examined and has been the subject of correspondence between my Government and the Secretary of State. We

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have decided that we are bound by agreements and in honour to afford to Princes the same measure of protection as they previously enjoyed under the Press Act—which is the only protection available to them, and a Bill to secure this object will be brought before you in the present session. This protection to Princes was first given by the Act of 1910; it is not suggested that it has been abused and the only reason for its 'repeal is because in British India we have decided to dispense with special remedies under the Press Act and to rely on the general law which is not applicable to the Princes.'

The general grounds upon which the Government of India consider this legislation necessary are explained very clearly in that speech of His Excellency. Government have come to the conclusion that this legislation is necessary under the terms of the treaties and in accordance with Royal pronouncements regarding the protection of Princes and Chiefs. The Government of India are pledged to accord to the Princes and States in India full protection of their honour, rank and dignity and to maintain unimpaired their privileges and their rights.

May I refer here to a Royal Proclamation on this subject which was issued as late as February 1921. It is stated there :

"In my former proclamation I repeated the assurance given on many occasions by my Royal predecessors and myself of my determination to maintain unimpaired the privileges, rights and dignities of the Princes of India. The Princes may rest assured that this pledge will remain inviolate and inviolable."

Sir, the second reason for this measure of protection is that it has been found on examination to be necessary. I am told, and I accept it, that the case was not fully put before the Press Act Committee. There have been a number of cases in which protection of this character has been justly required and demanded. I will quote a very few of them to this House; I am not going to mention names, and I think Honourable Members will not expect me to. I find one paper in India suggesting that Indian States are cursed by absentee despots and it is the duty of every patriotic Indian to prepare the country for an Indian Republic. From another paper I quote the following :

"People will see to it that the present system of administration—(i.e., in Indian States)—is smashed to pieces within five years."

From another paper I take this citation :

"We call upon the 700 odd gilded puppets in India to put their house in order, to liberalize their administration, lest the flame of the popular movement should gut the old and moth-eaten fabric of indigenous but autocratic rule in India."

Here is another Maharaja, a man of great weight, spoken of in these terms :

"An impatient new-fledged detective in search of sedition and is worth no more than an ordinary detective who is a traitor to Swarnaj."

I could go on and multiply these instances but I do not wish to do so at this stage. I merely give them as instances of the proposition which I have stated. I submit that articles of this kind not only transcend all the limits of decency, but are really a dangerous source of disaffection to the Governments of the States which are attacked in this manner. It is against such insults, it is against the fomenting of such disaffection that the Government of India now think it right to introduce this measure, in order to secure to the Princes that legitimate protection

which they have, in the opinion of the highest authorities, a right to claim.

I only want to mention two other points at this stage. One is that there are States in which fomenting disaffection against the Government of British India is penalized. Can we in justice withhold to those States that protection against the preaching of disaffection against them in British India which they afford to us? Further, in any case, if they were to allow it, could we allow Indian States to be centres of disaffection against the Government of India? If the answer is in the negative, ought we not in all fairness and in all justice to prevent British India from being a centre for movements of disaffection against them.

I know it has been said that this Bill will stifle all legitimate criticism. I do not accept this and I think if Honourable Members will read clause (2) of the Bill which is before them, they will see all possible safeguards in this respect have been inserted in the measure. We have protected every form of legitimate criticism from coming within the scope of this law. There is yet another safeguard, namely, that no prosecution can be instituted without the sanction of the Governor General in Council. I am aware that there is a certain amount of feeling against this measure in this House, if I may judge from conversations with various individuals and from the proceedings of the Press Act Committee. But I hope the House will really view this matter in a fair and just spirit and afford to our allies in the Indian States that protection which seems to be demanded. Finally I may add that this Bill follows again very closely the principles of English law. I do not know whether I am making too wide a statement, but at any rate I can say this much, no one under the law in England is allowed, without rendering himself liable to prosecution, to promote disaffection against a foreign State or to make seditious attacks upon the Government of a foreign State and this is a similar proposition to that contained in the Bill. I do not think it is necessary for me to cite authorities on the point and I believe that I am stating the law correctly. I also believe that in many other European countries the same provision applies.

But the real point is, as I have said, that we consider this Bill to be necessary for the fulfilment of our promises to the Indian States. The Indian States are almost unanimous in demanding this protection from us and we have now evidence that this protection is needed for their safeguard. In these circumstances I move for leave to introduce the Bill.

Munshi Iswar Saran (Cities of the United Provinces : Non-Muhammadan Urban) : Sir, I rise to offer opposition to the motion which is before the House to-day. Sir, I wish to assure the House that it is in no spirit of hostility or unfriendliness to the Indian Princes that I am offering this opposition. I cannot forget that they are our own countrymen and if they choose they can make themselves and their States objects of joy and pride for us. If there be anything in our humble power which we can do in order to aid, help and assist them, our humble services are at their disposal. But, Sir, as regards the question which we have got to consider at the present moment, I shall say only this. The Honourable the Home Member has appealed to us to look at it in a fair

[Munshi Iswar Saran.]

spirit ; I shall only say that I shall look at it in the same spirit in which the Honourable the Home Member himself looked at it on the 14th July 1921. The Honourable the Home Member told us what he meant when he put his signature over the report of the Press Act Committee. May I tell him with all respect that this is not his individual report ; it is the unanimous report of the entire Committee ; and I may be a very humble man, but having put my signature to it I may claim the right of interpreting what the Committee meant at that time, as much as the Honourable the Home Member himself. What does this Committee say ? Here let me pause for a minute. This Committee was not composed of fire-eaters, perhaps like myself, but it had on it two distinguished members of the Government of India itself, very sober I should think, very thoughtful, very experienced, very far-sighted. Who were they ? The Honourable the Law Member presided over it and the Honourable the Home Member was the most distinguished member of that Committee. With your permission, Sir, I shall read out a short passage from the report of this Committee :

“ Perhaps the most important of these is the question whether the dissemination of disaffection against Indian Princes through the press of British India should be penalised in any way. We have been handicapped in our examination of this question by very inadequate representation of the views of the Princes, many of whom were unwilling to allow their opinions to be placed before the Committee. We have, however, had the advantage of seeing some minutes submitted by them and of examining Sir John Wood, Secretary in the Political Department. It has been argued—*(the same argument which the Honourable the Home Member now advances)*—that the Government of India is under an obligation to protect Indian Princes from such attacks, that the Press Act alone affords them such protection and that if it is repealed it is unfair—*(the same argument, I wish to remind the House, has been used now)*—having regard to the constitutional position of the Government of India *vis à vis* the Indian States that the press in British India should be allowed to foment disaffection against the ruler of an Indian State. On the other hand—*(I shall beg the House to mark this)*—various witnesses have protested in the strongest terms against any such protection being afforded to the Princes. It is alleged that the effect of any such provision in the law would be to stifle all legitimate criticism and deprive the subjects of such States of any opportunity of ventilating their grievances and protesting against maladministration or oppression. We understood—*(and here again I beg the House to mark these words)*—that before the Press Act became law it was not found necessary to protect Indian Princes from such attacks and we note that the Act so far as the evidence before us shows has only been used on three occasions for this purpose. We do not in the circumstances think that we should be justified in recommending on general grounds any enactment in the Penal Code or elsewhere for the purpose of affording such protection in the absence of evidence to prove the practical necessity for such a provision of the law.”

Sir, I ask what has happened between the 14th of July 1921 and the 23rd of September 1922 ? Have so many new facts come to the knowledge of the Government of India, have so many seditious writings appeared in the newspaper press that we should be justified in ignoring the unanimous opinion of the Committee appointed by Government ? Sir, it may be that some thin-skinned people might suggest that instead of having a Press Act we ought to apply the extradition laws to these offences and anybody who was considered to have written seditious articles in the press against the Princes should be bodily handed to them to be tried in their Courts ; but I sincerely hope, Sir, that no such suggestion will be made even by the boldest advocates of the motion

that is before us at the present moment. As the House is aware, there was no statutory law in existence before 1910, and I take it that these agreements, these obligations between the Government of India and the Indian Princes existed even before 1910. Are we to understand, Sir, that these obligations have come into being since 1910 ? I do not think so. I submit that they have been in existence ever since the relation between the Government of India and these Princes started.

Sir, at this moment, I shall appeal from the Honourable the Home Member, the Mover of this motion, to the Honourable the Home Member, the Member of the Press Act Committee ; and if I am erring at all, I have the satisfaction of erring in most excellent and in most distinguished company. Now, what will be the result of this Act ? I hope the House knows that there are few Indian newspapers in Indian States, and even they do not possess the courage of freely and fearlessly criticising administrative measures of their States. If you pass an Act like this, the result will be, in the words of the Report of the Press Act Committee, that you will stifle all legitimate criticism in British India. It is well-known to all of us that we the Members of this Assembly cannot put a single question about any Indian State. We cannot pass any Resolution about the affairs of any Indian State. We may look at their affairs and we may feel intensely about them ; but we dare not come up to you, Sir, and ask your permission to ventilate our grievances against these Indian States on the floor of this House. Such being the difficulties of the situation, Sir, I ask, is it fair, is it reasonable, is it proper that permission should be given for the introduction of a measure like this ?

Sir, there is another matter to which I wish to invite attention. Why, I ask, should not these Indian Princes, very distinguished, very exalted personages indeed, on occasions behave like ordinary individuals ?

I know, Sir, and the House knows also, that it was not long ago that His Most Gracious Majesty the King-Emperor, when a vile imputation was made against him, absolutely declined to take advantage of his position as sovereign, and he said that he would claim as a private individual the vindication of his right. Might I not submit to the Indian Princes, with all respect, to follow the glorious example, if I might be permitted to say so, set by His Most Gracious Majesty the King-Emperor himself ? Sir, what I say is this : introduce, if you like, a measure in this House which will give protection to the subjects as well as to the Indian Princes ; place such a measure before us, and we shall then be inclined to consider it, but a one-sided measure like this in which you try to do nothing for the subjects of Indian Princes is one, I submit, which cannot be acceptable to this House. You have, Sir, the Report of the Press Act Committee. You have it in that Report that only on three occasions the provisions of the Press Act were brought into operation ; you have it that before 1910 there was no such law. Having regard to all these facts, I submit, Sir, that it is up to us Members of this House to reject this motion and not to allow the Honourable the Home Member to introduce it. On one occasion the Honourable the Home Member said ' come out in the open if you want to.' Sir, I shall beg the House to come out in the open and reject this motion.

Mr. President : The question is :

"That leave be given to introduce a Bill to prevent the dissemination by means of books, newspapers and other documents of matter calculated to bring into hatred or contempt, or to excite disaffection against, Princes or Chiefs of States in India or the Governments or administrations established in such States."

The Assembly then divided as follows :

AYES—41.

Abdul Quadir, Maulvi.
Abdul Rahim Khan, Mr.
Abdulla, Mr. S. M.
Allen, Mr. B. C.
Amjad Ali, Maulvi.
Arbuthnot, Mr. R. E. V.
Asad Ali, Mr.
Asjad-ul-lah, Maulvi Miyan.
Bhanja Deo, Raja R. N.
Bradley-Birt, Mr. F. B.
Bray, Mr. Denys.
Bridge, Mr. G.
Burdon, Mr. E.
Butler, Mr. M. S. D.
Chatterjee, Mr. A. C.
Clarke, Mr. G. R.
Cotelingam, Mr. J. P.
Crookshank, Sir Sydney.
Davies, Mr. R. W.
Gidney, Lient-Col. H. A. J.

Hailey, the Honourable Sir Malcolm.
Hudson, Mr. W. F.
Hullah, Mr. J.
Ibrahim Ali Khan, Lient. Nawab M.
Innes, the Honourable Mr. C. A.
Lindsay, Mr. Darcy.
Mitter, Mr. K. N.
Moir, Mr. T. E.
Muhammad Hussain, Mr. T.
Muhammad Ismail, Mr. S.
Percival, Mr. P. E.
Sapru, the Honourable Dr. T. B.
Sarfaraz Hussain Khan, Mr.
Singh, Mr. S. N.
Sinha, Babu L. P.
Steele, Mr. F. S. A.
Tollinton, Mr. H. P.
Vincent, the Honourable Sir William.
Waghorn, Colonel W. D.
Way, Mr. T. A. H.

Zahiruddin Ahmed, Mr.

NOES—15.

Abdul Rahman, Munshi.
Abul Kasem, Maulvi.
Agarwala, Lala Girdharilal.
Agnihotri, Mr. K. B. L.
Ahmed, Mr. K.
Bagde, Mr. K. G.
Barodawala, Mr. S. K.
Barua, Mr. D. C.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Dalal, Sardar B. A.
Das, Babu B. S.
Gajjan Singh, Sardar Pahadur.
Gulab Singh, Sardar.
Hajeebhoy, Mr. Mahomed.
Husmanally, Mr. W. M.
Ikramullah Khan, Raja M. M.
Iswar Saran, Munshi.
Jatkar, Mr. B. H. R.
Joshi, Mr. N. M.
Kamat, Mr. B. S.
Lakshmi Narayan Lal, Mr.

Man Singh, Bhai.
Misra, Mr. B. N.
Misra, Mr. P. L.
Mudaliar, Mr. S.
Mukherjee, Mr. J. N.
Nag, Mr. G. C.
Nand Lal, Mr.
Neogy, Mr. K. C.
Pyari Lal, Mr.
Rangachariar, Mr. T.
Reddi, Mr. M. K.
Saklatvala, Mr. N. B.
Samarth, Mr. N. M.
Sarvadhikary, Sir Deva Prasad.
Shahab-ud-Din Chaudhri.
Shahani, Mr. S. C.
Singh, Babu B. P.
Sinha, Babu Ambika Prasad.
Sohan Lal, Bakshi.
Srinivasa Rao, Mr. P. V.
Subrahmanayam, Mr. C. S.
Venkatapatiraju, Mr. B.

Vishindas, Mr. H.

The motion was negatived.

DEMANDS FOR SUPPLEMENTARY GRANTS.

The Honourable Sir Malcolm Hailey (Finance Member) : I have to move :

"That for the amounts against each head of demand shown in column 3 of the Statement entitled 'Statement comparing the total voted and non-voted expenditure included in each grant under 'Expenditure from revenue' for 1922-23 with the

revised estimates of expenditure for that year' be substituted the amounts shown in column 6 of the same statement, the savings indicated in column 9 being transferred to meet excess expenditure shown in the same column, and that a supplementary grant of Rs. 13,09,000 be voted by the Assembly to cover the total excess in voted expenditure under 'Expenditure from revenue'."

Owing to circumstances of which the House is well aware, this motion has come on somewhat earlier than I originally intended; but it will, I think, suit the convenience of the House if I am allowed to place the matter before it to-day and to explain the exact effect of the proposal we are making. After that I shall, with your permission, ask you to take the sense of the House regarding the further discussion of this motion. (*Voices* : "Monday.") That is a point, Sir, for you to decide in view of the business that may be coming before us on Monday; as far as I am concerned, I am willing to meet the convenience of the House in this respect.

My reason for wishing to make a short introductory statement explaining this motion lies in the fact that the form in which it is placed before the House, though compendious, may present at first sight some difficulties. It will be of advantage—whether we hold the further discussion to-day or whether it is deferred until Monday—for the House to know the exact effect of what we are proposing; and I hope that, when I have explained the case to them, Members will be in a far better position to judge of the exact effect of this operation.

Let me begin with our Budget debates on the Demands for Grants in March last. We then placed before the House a proposition for the expenditure on ordinary Civil heads of 140 crores 14 lakhs and 32 thousand rupees. May I pause for one minute. As the result of a recent debate in this House—a debate which necessarily aroused great interest not only in the House but among those affected,—outside,—I have been described in the Press not only as a robber chief, but as a bullet-headed bureaucrat bullying the Assembly. I do not know whether the Assembly recognises itself in the description; whether I myself acknowledge that polite alias, is of course no matter here. But I am anxious on this occasion, at all events, to carry the Assembly with me by other methods and to give it all the information in my power. If I might make a request to the House, it is that members should jot down the main figures as I give them; it will aid the House in its future consideration in this case.

Now, we started, as I said, our Demands for Grants with a proposition which involved the expenditure of Rs. 1,40,14,32,000, made up of Rs. 28,19,15,000 non-voted, and Rs. 1,11,95,17,000 voted expenditure. Though only the voted portion was placed before the House and debated by it, yet for the moment, I take the two together. As the result of long discussions, in which we found ourselves very frequently at variance with the Assembly, but from which I hope we both derived mutual advantage, the House desired that in the non-voted portion of this expenditure there should be made a cut of Rs. 95,72,000. Therefore, if we had been able to accept that proposition exactly as it stood, maintaining, of course, the non-voted expenditure on the original figure, the total proposition for expenditure would have been Rs. 1,39,18,60,000. A feeling was at the same time generally expressed that when the economies could not be fully realized in the voted portion, they should be shared by the voted portion. When the discussions were over, and the captains and the kings had

[Sir Malcolm Hailey.]

departed, it became necessary for us to consider how far we could meet with the desire expressed by the Assembly. It was of course always possible under the Act for the Governor General in Council to restore a certain portion of these cuts, a proceeding which I need not say he would have taken with reluctance, and which the Assembly would have no doubt met with remonstrance. But it certainly lay upon us to see how far we, who were just as anxious as the Members of the Assembly for economy, and indeed had an obligation apart from this to carry out as far as possible the wishes of the House could meet the requirements of the budget decision ; that is to say, how far we could under the various heads make reductions to the amount desired by the Assembly, without at the same time impairing efficiency or so far reducing expenditure as to be positively uneconomical. We entered into the process of consideration with every desire to effect every possible reduction, and I should like at once—whatever view the Assembly may take of the results of our deliberations—to pay a tribute to the genuine efforts made by the various Departments to meet the pressure put upon them in this respect. It is one thing, Sir, to give way to pressure placed upon you by a powerful body such as our future Retrenchment Committee. It is another thing voluntarily and in advance of the decisions of such an authority to reduce expenditure already placed in a Budget which in itself embraced no latitude for fresh expenditure. But let me proceed at once to give the results. The Departments proceeded to effect economies by a variety of different methods. I will take some of the most characteristic. Thus, we delayed the full employment of the Income-tax establishment for which we had budgetted ; where we found that leave allowances were over-estimated, we made a reduction on that score ; in other cases we succeeded in reducing expenditure on contingencies. In some departments we found it necessary to direct that there should be a reduction in travelling on the part of touring officers. We purchased somewhat less opium than we had originally intended. There was a clean cut of some 25 lakhs in the revenue expenditure on Railways—not an operation, I think, that one would be inclined to indulge in save under the result of severe financial pressure ; but I understand that to some extent the Railway Department was aided by a fall in prices. We curtailed work on Surveys ; we delayed the development of the Stores Department ; we made a very considerable reduction in expenditure on Civil Works, especially in the North-West Frontier Province ; and there was heavy curtailment of the process of development in the Andamans. The Assembly will be able to judge from the brief description I have given how far the whole process of reduction could be regarded as entirely salutary. I do not desire to argue that point now, but to go on at once to the net result obtained by these reductions. If the House has followed me, it will see that the proposition in the beginning of April last stood as one for the expenditure on ordinary civil heads of Rs. 1,39,18,60,000, voted and non-voted combined, a figure, which, as I again remind the House, was to be reached by a cut in voted expenditure of Rs. 95,72,000. Actually, taking voted and non-voted together—for our economies of course have extended to both—we have as against the reduction of Rs. 95,72,000 asked for, arrived at a total reduction of Rs. 1,10,21,000. Sir, those who frequent what sometimes are considered inferior forms of entertainment such as music halls and revues will remember that when a comedian has made what

he considers to be a first rate joke, and the audience has not risen to the occasion, it is usual for him to make a comic gesture to remind the audience of their duty. I have no such gesture at my disposal, but I have to confess to a slight feeling of disappointment that I did not hear any sign of appreciation from the House when I informed them that as against a cut of Rs. 95,72,000 for which they had asked, we actually effected a reduction to the extent of Rs. 1,10,21,000. (Hear, hear and applause.)

Rao Bahadur T. Rangachariar (Madras City : Non-Muhammadan Urban) : How much of it is voted and how much non-voted ?

The Honourable Sir Malcolm Hailey : I will give the House the exact figures. The figure of 'non-voted' would now stand at Rs. 28,07,20,000 against 28,19,15,000, a reduction of Rs. 11,95,000, and the figure of 'voted' at Rs. 1,10,96,91,000 as against Rs. 1,11,95,17,000 being a reduction of Rs. 98,26,000, the result, I think Honourable Members will agree, gives a very fair proportion between the two.

Mr. Harchandrai Vishindas (Sind : Non-Muhammadan Rural) : Paragraph 3, Sir, of the note says :

"As a result of these instructions, anticipated savings in the original demands have been effected to the extent of Rs. 1,10,21,000 of which Rs. 98,06,000 are voted."

Is that correct ?

The Honourable Sir Malcolm Hailey : The figure is exactly as I have given it now. If the Honourable Member will take the figure of Rs. 1,10,96,91,000 for 'voted' and Rs. 28,07,20,000 for 'non-voted', he will obtain the result which I have given.

Mr. Harchandrai Vishindas : Thank you.

The Honourable Sir Malcolm Hailey : To repeat, the total proposition as against the March proposition of Rs. 1,40,14,32,000 would now stand at Rs. 1,39,04,11,000. But this is not the actual demand which we place now before the House ; the actual proposition for voted and non-voted is Rs. 1,39,19,74,000. The reason why the proposition now stands somewhat higher needs explanation. In spite of the reductions which we were able to make, we have to face a purely supplementary demand of Rs. 15,43,000. I will explain to the House shortly the nature of that supplementary demand. There was, in the first place, as so frequently happens, a number of carry forwards ; that is to say, expenditure which was sanctioned for the previous year but owing to its being incurred at a late date falls into the accounts of the present year. That of course is not fresh expenditure in any way, but merely the result of accounting as a consequence of which it forms a charge against the present year. Such cases will be found in the expenditure on the Jeddah hospital or the famine relief in Baluchistan. Then again, as a second cause—and here again I am afraid it is still a somewhat frequent one, because many of our budgets are prepared for us in regard to Central Departments by Provincial Governments and the whole of our budgeting arrangements has not yet been brought into full accord with the requirements of post-reform finance—there has been incorrect budgetting ; that is to say, certain items often of a purely automatic nature which have been provided for, were not included in the Budget of last year. Thus we have a fairly heavy item for the pay and leave allowances in the Customs Houses at Madras and Calcutta and also grain compensation allowances in some Political Agencies.

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I pass on to the third cause; that is, expenditure which could not have been foreseen but must nevertheless in the circumstances be incurred. A prominent case of that is the loss of £20,000 on account of stores sent by the "Egypt." We may possibly recover part of this money, but in the meanwhile, the High Commissioner has to be provided with money to purchase fresh stores.

Dr. H. S. Gour (Nagpur Division : Non-Muhammadan) : Was it insured,—the cargo on the steamer "Egypt"?

The Honourable Sir Malcolm Hailey : To the best of my recollection the Government does not insure its stores. I speak from memory only, but I think it has been the practice when Government imported bullion in the past to insure it, but it was found more economical on the whole not to insure other stores.

Rai G. O. Nag Bahadur (Surma Valley *cum* Shillong : Non-Muhammadan) : In the newspapers we find it stated that a large part of the loss is recoverable.

The Honourable Sir Malcolm Hailey : We hope that this is the case. But how far it is to be recoverable under the ordinary conditions which govern the conveyance of stores I am not aware. No doubt the Honourable Member in charge of the Commerce Department will be able to give fuller information on that point.

Then we come to the fourth cause. We have a certain expenditure, equally necessary expenditure, which has been forced upon us owing to the changes in the tariff and Postal law introduced at the last budget. That is to say, we have a considerable expenditure for the over-printing of stamps and for the purchase of post cards, and we have also to provide an increase in our customs staff in certain quarters in order to prevent the increased smuggling which always likely to ensue when a tariff is raised as considerably as was done last March. The fifth and final cause arises in certain genuine demands for new services; all of these have been placed before the Standing Finance Committee and passed by them. I would instance expenditure on a committee to inquire into the development of the Indian Mercantile Marine, or expenditure in India on account of the British Empire Exhibition, and then again, an item—a considerable item,—for changes in the Central Printing Press which the Standing Finance Committee accepted as likely to lead to a large saving in recurring charges. A further item of the same nature is the increase of launches in order to prevent the illicit importation of arms.

Those are the five causes which have led up to my placing before you a supplementary budget for a sum of 15½ lakhs of rupees. But I must point out to the Assembly that even so, this is not a net demand for fresh expenditure of 15½ lakhs over the combined proposition of voted expenditure as accepted by them last March. Taking first into account, that our total reductions in voted expenditure exceed by some 2,34,000 rupees the reductions then asked for, and also taking into account the reductions made in non-voted expenditure, the total fresh expenditure over the proposed expenditure as it stood at the end

of the budget amount to something over one lakh of rupees, a result, Sir, I think which cannot be regarded as unsatisfactory in itself. (Cheers.) Indeed, when one remembers what a supplementary budget is apt to be in other countries, the House will, I think, find reason to congratulate itself that I have to place before it to-day such an exceedingly modest proposition in regard to our ordinary Civil expenditure. (Hear, hear.)

Dr. H. S. Gour : I take it that the House does not wish to discuss the various details noted under the various items in the supplementary budget. I shall, therefore, rest content by making certain general observations upon what the Honourable the Finance Member has said on the subject of the supplementary budget. Honourable Members will find that this Assembly at the last Session reduced the demands by roughly 9½ crores of rupees.

The Honourable Sir Malcolm Hailey : The Honourable Member will, I hope, correct that figure. He is doing too great credit to the economies of the Assembly. The exact figure is Rs. 95,72,000.

Dr. H. S. Gour : The Honourable the Finance Member has invited the House to cheer his statement that he has effected economies to the extent of Rs. 1,10,00,000. But I think the Honourable the Finance Member could not be unaware of the fact that the House wanted economies in both the civil and military expenditure. The Honourable the Finance Member has not vouchsafed any reply as to what economies have been effected in the military expenditure of the country. The House merely effected retrenchments at the rate of 5 per cent with a view to induce the Government of India to effect general economies in the total estimates, and I therefore submit that the Honourable the Finance Member has given no satisfactory explanation as to why the military expenditure of the country has not been reduced. Now, Sir, reading the news conveyed in the daily press we find that the Defence Committee in England have turned down all the proposals of the Government of India regarding the reduction of the military expenditure. If that be the case, I should ask the Honourable the Finance Member to place upon the table of this House the recommendations which they sent to the Secretary of State and the replies received from that quarter. We shall then be in a position to say as to who is responsible for the bloated expenditure on the Army of India which is increasing year by year and which at the present moment absorbs over 50 per cent. of the revenues of the Central Government. On the last occasion I asked the Secretary to the Army Department to lay on the table the complete correspondence between the Government of India and the Secretary of State on the subject of military expenditure, and some Honourable Members asked the Army Department to publish the Report of the Military Requirements Committee.

Mr. President : Order, order. I would ask the Honourable Member under which heading army expenditure occurs in the Supplementary Budget ?

Dr. H. S. Gour : I was pointing out that we were not satisfied with the explanation given.....

Mr. President : I am not satisfied that the Honourable Member is in order.

Dr. H. S. Gour : I venture to submit that my general observations upon the Honourable the Finance Member are as much in order as his speech asking this House to vote him an additional sum of 13 lakhs of rupees.

Mr. President : I am afraid the Honourable Member must realise that in this case we must restrict our discussion to matters which arise out of the Supplementary Grant. In order to explain the situation which the Supplementary Grant raises, the Honourable the Finance Member gave a brief resumé of the financial position, but the Honourable Member is now embarking upon a discussion of Army expenditure which would only be in order in the general discussion on the Budget for the whole year.

Dr. H. S. Gour : Very well, Sir. I shall now close my general observations on the Supplementary Grant. I shall very briefly set out the points on which this House should call for information from the Honourable the Finance Member. If they will turn to the first item of Customs, which has been specially noticed by him, Honourable Members will see that the net grant voted by the Assembly is Rs. 60,49,000 and the revised estimates was 64,53,000 and the Assembly cut down the Demand by four lakhs of rupees. That four lakhs which we have cut down during the Delhi Session the Honourable the Finance Member asks you now to restore. In other words, what the Honourable the Finance Member wants to do is to reverse your decision cutting down the four lakhs of rupees. The explanation given was that this was done to prevent smuggling. Now if you turn.....

Mr. President : Does the Honourable Member wish to raise a discussion on each and every item? Before that the Assembly had better take into consideration the suggestion made by the Finance Member that in order to be able to discuss the matters raised in the Supplementary Grant it might be necessary for members to take some time to consider the situation as described by the Finance Member himself and as he invited the House to consider whether they would adjourn further consideration, I think I ought to put it now, if that is really the major question before us for the moment. I understand the Finance Member is perfectly prepared himself to continue the consideration of this question this afternoon, but to meet the convenience of the Assembly he suggests that a postponement till Monday may produce a more intelligent debate.

Dr. H. S. Gour : In that case I move the adjournment of this discussion till Monday.

Mr. President : The question is that further consideration of this motion be postponed till Monday.

The motion was adopted.

The Assembly then adjourned for Lunch till Half Past Two of the Clock.

The Assembly re-assembled after Lunch at Half Past Two of the Clock. Mr. President was in the Chair.

RESOLUTION *RE* IMPERIAL MEDICAL RESEARCH INSTITUTE.

Mr. M. S. D. Butler (Education Secretary): Sir, the motion which stands in my name, and which I now move is :

“ That this Assembly recommends to the Governor General in Council,

First, to approve the proposal of the Governing Body of the Indian Research Fund Association to devote the capital funds at their disposal (a) to the erection of an Imperial Medical Research Institute, and (b) to the formation of a fund for its endowment ;

Secondly, to approve the proposal of the Governing Body of the Indian Research Fund Association that, so long as they receive a sum of five lakhs yearly from Government, they shall devote a sum of 2½ lakhs to the purposes of the Imperial Medical Research Institute, and

Thirdly, to accept the offer made by certain anonymous donors of contributions totalling 1½ lakhs of rupees a year for ten years, and of at least 1 lakh a year after ten years, towards the maintenance of a clinical unit based on the said institute, subject to the condition that the Government of India, will, if and as funds permit, provide that the total annual income of the said institute shall not be less than five lakhs, inclusive of the amounts provided by the Indian Research Fund Association and the said donors.”

Sir, I feel that I owe the House some apology for bringing forward so lengthy a Resolution. But if members had had the privilege, as I have, of reading the voluminous literature on the subject of this Institute, I think they would not murmur at the length of my Resolution, but would feel rather that it was a miracle of compression. Sir, in the circumstances in which I address the House this afternoon, I think it will be better if I do away with ornamentation and proceed straight to the point, and give a plain unvarnished tale of what the scheme is, and what we propose to do. The House will see that there are two offers made to us, one by the Indian Research Fund Association, and the other by certain anonymous donors. The Indian Research Fund Association offers, in the first place, to build an Imperial Medical Research Institute, and proposes to devote as much as 30 lakhs to this object. It also undertakes, so long as it receives its annual subsidy of 5 lakhs a year from the Government, to set apart 2½ lakhs a year towards the maintenance of the Institute. The anonymous donors, in their turn, offer a sum of 1½ lakhs a year for the maintenance of the Institute, the first charge on their liberality being the clinical unit, which is to bear their name, so soon as we can persuade them to forego their modesty and to disclose their identity. Now, Sir, I have been asked by certain friends in this House, ‘ What is the Indian Research Fund Association ? What is it, and what does it do ? ’ It has always distressed me to feel that this beneficent Association is so little known ; and I welcome this opportunity of explaining what it is, and what it does. Indeed to my mind its activities are one of the romances of the not very romantic Indian administration.

The Association, Sir, was founded in the year 1911 by the first Education Member of the Government of India. It is financed, in the main, by Government. In its early stages it received occasional grants of money, but from the year 1913-14 onwards it has received an annual subsidy of

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5 lakhs a year. It has a Governing Body, which is presided over by the Honourable Member for Education and Health, and its other Members are 8 in number. One of them is my unworthy self : the other seven are leading medical specialists in India. The Association has also constituted a scientific Advisory Board, which consists only of specialists. It is the function of this Board to decide the problems which shall be investigated, and to select the teams of researchers who are to carry out the investigations ; for now-a-days research is not done by one man alone, but by teams of workers working in collaboration. The Board also co-ordinates the efforts of the members of the teams, and when results have been achieved, it publishes them to the world in the Indian Journal of Medical Research—a publication which is obtaining a great name throughout the scientific world.

I have also been asked by certain friends as to what exactly these teams of workers are doing, where they are working, and what diseases they are investigating. Well, Sir, their activities extend all over India. At present they are based sometimes on temporarily constructed, and at others on provincial laboratories, whilst some of them are working in the Kasauli Institute itself. I will give just a few instances of what they are doing.

In Calcutta Dr. Muir and Dr. Sudhamoy Ghosh are at work on leprosy. The former deals with the medical and the latter with the chemical aspects of the case. During the last year they have added considerably to our knowledge of leprosy, and material improvement has been effected in the condition of leprosy patients by the use of drugs which have been investigated by them.

Then again in Coonoor we have Lieutenant-Colonel McCarrison, who is assisted by Dr. Mula Singh, working on what are known as deficiency diseases ; that is to say, he is at work on those problems of nutrition and diet which are everywhere important, and most of all perhaps important in a country like this. A short time ago, I think it was year before last, Colonel McCarrison and Dr. Mula Singh were deputed by the Association to Oxford, and there they worked with and learned much from Professor Sherrington, President of the Royal Society in England. Now, they have come back to India and are making their names known in the study of these deficiency diseases.

Then there is a strong team at work on Kala Azar in Assam. Colonel Mackie is at the head of this team. He is assisted by Mrs. Adie and Mr. Awati, whilst Dr. Brahmachari, the well-known Chemist, is aiding them from Calcutta. The results of this inquiry, so far as it has got, have been published in a recent issue of the Journal, and the team has made such progress that the Assam Government have under consideration proposals for extending the scope of the inquiry.

Then again, there is an interesting investigation going on into the disease known as Lathyrism. This is a peculiar disease produced by the consumption of a vegetable, a sort of vetch, which occurs among food crops. It causes a disease of the spinal cord which is ordinarily fatal. This disease is being investigated under the auspices of the

Association by the Government Botanist, Mr. Howard of Pusa, by a Chemist, Mr. Simonsen at the Dehra Dun Institute, and by Captain Anderson, who is a specialist in pharmacology, in Kasauli.

Then again in Trichinopoly a temporary laboratory has been set up in the central jail, and a well-known Indian doctor, Dr. Mhaskar, is in charge of an investigation into hookworm disease. His collaborator in this is the Reverend Father Caius, a Jesuit priest, and a distinguished chemist. These gentlemen have been joined during the year by one of the students from the Rockefeller Foundation, and between them they have been carrying out experiments on certain tea estates in Madras, the result of which has been a marked improvement in the health of the coolies working there.

I could repeat many instances of these inquiries. I need perhaps only mention one more, and that is the inquiry which is going on into plague. That has been carried on at Kasauli by Major Cragg, assisted by Mr. Swaminath. And when I tell this House that these pertinacious investigators have examined no less than 17,339 rat fleas during the year they will see the minutiae into which these officers have to enter.

The other diseases which are being investigated are malaria, yellow fever, pneumonia and so on. But I need not trouble the House with any further details. I hope I have said enough to show how widespread are the activities of the Association at the present moment.

The House will have gathered, I think, from what I have said that a feature of these inquiries is their scattered nature. Work in the field will always be necessary; it will always be necessary for parties to go out and see things on the spot, and to work up their material on the spot. But they do need a centre on which to base their efforts, and if they are to be guided properly they must belong to some central institute, where the finest workers and the best intellects will be stationed, to help them in their work and to co-ordinate their results. This need has been felt for a very long time. For years and years the researchers of this country have longed for a central institute in which all their work might be co-ordinated. When the war broke out, and various doctors who were engaged in this splendid work, were called up for war duties, it was necessary to curtail the activities of the Association, and the wise administrators of that time took the opportunity of investing their savings against the time when they would have enough to build a central institute. In this way, by putting aside here a little and there a little, putting it out to interest and to compound interest, the position has been reached when the Association has now 33 lakhs of rupees invested at six per cent. It is out of this accumulated fund that the Association offers up to 30 lakhs to build a central institute.

I will now turn to the question of the institute itself—how it is to be built and what form it should take. This question has been under very careful examination by the Government from the beginning. Many schemes have been brought out, and finally, when the Indian experts were agreed, the Government of India decided to get an outside opinion also. So they asked the Royal Society in England to nominate a leading specialist from that country to come out here and

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check the ideas and the schemes of the Indian experts. The Royal Society took a great interest in the matter and selected a very distinguished scientist, Professor Starling, Professor of Physiology at University College, London. Professor Starling came out to India and went round the country accompanied by Lieutenant-Colonel Greig, our Director of Medical Research. In the course of his tour he took the opportunity of getting into touch with the leading medical researchers in India. At the end of his tour he produced his report. That was in May, 1920. He recommended that there should be founded a central research institute and that it should fall into two separate parts. There was to be the institute proper and the institute of clinical medicine. In the institute proper he suggested that there should be established at once three sections, one of bacteriology, another of medical biology, to include entomology, protozoology and helminthology, and the third of bio-chemistry. Each of these sections was to have a Director with one or more assistants. He also suggested that later on sections should be developed for pharmacology and medical statistics ; and he also provided for a library and a section for laboratories stores. On the other side, namely, the institute of clinical medicine, he proposed that a hospital of at least 120 beds should be created with laboratories attached. These laboratories were to be chemical, bacteriological and pathological for graphic measurements and for cardiography and radiography. The whole unit he wished placed under a Director with three assistants, one chemical, one bacteriological and pathological and one clinical.

Professor Starling also went into the question of where the institute should be located, and after going round India proposed that it should be located at Delhi. He pointed out that in the past mistakes had been committed in locating institutes in the hills. The hills are very nice places to live in, as we all know, and they offer a very suitable climate for research work ; but modern medicine requires clinical material and it is quite essential that any central institute of the sort contemplated should be based on a big hospital. Now, the only places where there is sufficient clinical material are the Presidency towns and Delhi. Professor Starling's view was that the Presidency towns should develop their schools of tropical medicine, which are schools at a lower stage, and that selected workers from these schools should be sent to the central institute at Delhi. What impressed him among other things was the question of funds. The Local Governments found it hard enough to keep up or start their schools of tropical medicine, and he felt it would be quite impossible for them to run to the expense of keeping going a central institute as well. He therefore thought it best, Delhi being suitable in other ways, that the Government of India should concentrate on the central institute at Delhi, and leave it to the Presidency Governments to develop their schools of tropical medicine in Calcutta, Bombay and Madras. I will read his actual words to the Council :

"After careful consideration of all the suggested alternative sites I have no hesitation in recommending the choice of Delhi. Here the Institute will be at the seat of Government itself. Ample land is available for laboratories and hospitals in New Delhi and in the adjacent area between new and old Delhi. There is sufficient clinical material, which will increase with the development of New Delhi

and with the attraction exercised on population by a seat of Government.....
Moreover,—and I draw the attention of the House to these remarks—the institute would not be complete without a vaccine and serum station, and the obvious course would be to retain the institute at Kasauli as the vaccine and serum annex to the Imperial Research Institute, so that workers in Delhi could move up to Kasauli during the hottest months and continue their work in the laboratories at Kasauli.”

At Kasauli, I should say, is situated the present institute of the Government of India, which under the new scheme will become mainly a vaccine and serum institute. There is an additional good reason for locating the institute at Delhi in that the anonymous donors have given their money on the condition that the institute is located there.

I now turn, Sir, to the question of maintenance. Professor Starling gave it as his opinion that the institute should have an annual income of five lakhs; and the anonymous donors make it a condition of their donation that they should be assured that such a sum will be available. Now, if we subtract the Rs. 1½ lakhs which the anonymous donors are to provide, it leaves the sum of Rs. 3½ lakhs to be paid by the Indian Research Fund Association and by Government. The Indian Research Fund Association offers, as I have said already, to earmark Rs. 2½ lakhs out of its annual grant of Rs. 5 lakhs for so long as it receives this grant, and it is for the Assembly to approve generally the policy that has been followed since 1913-14 of giving this money. If the Assembly, as I am sure it will, approve this well-established expenditure, then there remains only Rs. 1 lakh to be accounted for. The endowment fund which the Association proposes to establish will account for much if not all of this. As the House will remember, the Association at this moment has Rs. 33 lakhs in hand and it is invested at 6 per cent. The interest accruing on this comes roughly to Rs. 2 lakhs per year. Our engineers tell us that they cannot erect the institute in under five years, and during that time the Association will be adding annually to its capital. There will thus be at work a double process of adding to the original Rs. 33 lakhs; fresh capital will be added and interest will also accumulate. On the other hand expenditure will be going on on buildings. It is not possible to work out any exact sum as the speed at which building will be possible is unknown, but it is quite possible that the endowment fund will reach Rs. 16 lakhs in the course of the next five years. In that case, the Assembly will observe, Government will incur no liability. At the very least we may take it that the endowment fund must total Rs. 8 lakhs. In that case the Government would need to find some Rs. 50,000 a year, and that only four or five years hence, when the institute comes into working order. There is thus very little danger to be feared. The Finance Department has carefully examined the scheme, and is satisfied, and the Resolution expressly lays down that the deficiency, if any, will be made good if and as funds permit. I think the Assembly will agree that it can safely approve this proposal also.

I think, Sir, that is all that I need lay before the Assembly at the present stage. If there are any questions to be asked, I shall be very happy to answer them in my reply. I am afraid I have occupied a longer time in propounding this scheme than I had intended, and I feel that I have trespassed somewhat on the good nature of the House in so doing. I feel also that I have been at some little disadvantage in putting forward a scheme of this complexity and importance on the first occasion that it has been my privilege to address the Assembly. But I take comfort in the fact that this House is always kind to a new speaker and will not allow

[Mr. M. S. D. Butler.]

the cause which I have advocated, and which is very near my heart, to be prejudiced by any failure of mine in the presentation of the case. Sir, I will delay the House only a few minutes longer, and that to express what I feel sure the House will wish me to express, that is, the gratitude which we owe for the offers which have been made to-day. This gratitude will remain, whatever the opinions held about the merits

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of the scheme. To the Indian Research Fund Association itself we owe much for their careful stewardship of the funds entrusted to them, and for the pains with which they have worked out the present scheme. To the anonymous donors we owe much more. It is fairly easy to be poor—many of us here have achieved this goal already. It is not so very difficult, if one gives one's mind to it, to become rich. But it is very hard, having become rich, to use one's riches wisely and for the general good. The anonymous donors have shown us all an example of the right use of wealth. The ideal they have set before themselves is explained finely in one of the conditions they have made. The main object of our endowments, they say, "shall be to carry on medical research, to train Indians in the methods of such research, to secure for this country the services of the best available men in the subjects with which the Institute will deal, and under their direction and teaching to create an atmosphere in which to cultivate Indian talent to cope with the Medical and Health problems affecting the people of this country." This condition has been accepted by the Government, and will, I know, commend itself to the House. In the old days, whether in Europe or in Asia, men, good men, used to sit down resignedly before disease and suffering; later on they built hospitals, to which the sick might resort to be cured or at least to die in peace. Modern medicine has a different aim. The note now is one rather of prevention than of cure. The leaders of modern medicine have learnt that the best form of defence against disease is to attack it, and throughout the world they are marshalling their forces to this end. The real foes of India are ignorance and disease, the two evils which the Department of Education and Health was formed to combat, and will, I believe, long continue to combat. In the struggle with disease Europeans and Indians, as I have already shown, are linked hand in hand. On this fellowship of effort, on this comradeship in arms against human suffering I feel that a blessing must rest, and in this confident belief I commend the scheme which I have propounded to the support of every member of this Assembly. (Applause.)

The motion was adopted.

RESOLUTION *RE* SUPREME COURT FOR BRITISH INDIA.

Dr. H. S. Gour (Nagpur Division : Non-Muhammadan) : Sir, I beg to move :

"That this Assembly recommends to the Governor General in Council to be so pleased as to take early steps to move the Secretary of State in Council to institute in this country a Supreme Court for British India."

Rao Bahadur T. Rangachariar (Madras City : Non-Muhammadan Urban) : Sir, I take it you have given leave for this matter to be brought

to-day. It is not on the agenda. I do not know if Honourable Members are aware that this is coming on to-day.

Mr. President : I think it is purely an accident that it does not appear on the agenda to-day in view of the announcement made by the Honourable the Home Member that he would put it down at the end of business every day until it was disposed of.

Dr. H. S. Gour : Sir, on the 26th March last year, I tabled a similar Resolution. Honourable Members will find that I then stated why a Supreme Court for India was necessary. After discussion my motion was accepted in a modified form by the Honourable the Law Member on behalf of Government who promised to make inquiries on the subject of a Supreme Court for India. The public opinion of the provinces have since been elicited, and Honourable Members will find that of the 12 provinces consulted, no less than 6 are in favour of the establishment of a Supreme Court for India. These provinces are the Madras Province, where the Judges of the High Court as well as the Government favour the establishment of a Supreme Court for India. The United Provinces, the Punjab, the Central Provinces, Coorg and the North-West Frontier Province approve of the proposal. The Bombay Government and the learned Judges of the Bombay High Court say that this is a matter for the members of this House and for the public opinion to decide. I would like Honourable Members to hear what Sir Frank Sly, whose name is honourably associated with the present Reforms, said on the subject of a Supreme Court. He has made out a very strong case for the establishment of a Supreme Court for India. He says :—" His Excellency in Council considers that the arguments based on the delay and expense involved in appealing to the Privy Council have great weight, and it appears that the only suitable method of meeting them fully is to establish a Court of ultimate appeal in India. The Governor in Council also agrees with those who maintain the desirability of implementing the recent reforms by making India more or less autonomous in its judicial as well as in its executive administration. From the formal constitutional point of view it is anomalous to have the administration of the various provinces of India subject to the Central control of the Government of India, and at the same time to have the judicial administration of the various Provincial High Courts subject to the control of a body sitting in London. From a more practical point of view, it must be admitted that an Indian Supreme Court of Appeal may not reach the same high level as the Privy Council, but the loss in the minds of the great bulk of the Indian people will be more than made good by the indigenous character of the Court ". Honourable Members will find that in all the major colonies of Great Britain, such as Canada, Australia and South Africa, the grant of the constitution was accompanied by the establishment of a Supreme Court, and the reason for it is obvious. As Dicey in his Law of Constitution points out, as soon as a country is granted a written constitution it becomes necessary to interpret and uphold that constitution, and for the purpose of interpreting and upholding that constitution the establishment of a central judicial authority is necessary. In India we have the Central Legislative Assembly and the Council of State and in the various provinces we have the Provincial Legislative Councils. The powers of

[Dr. H. S. Gour.]

all these bodies are defined and contained in the Government of India Act. Whenever a question arises as to whether the powers of the Central Government are within the jurisdiction of the Legislative Assembly and the Council of State or are matters to be determined by the Provincial Legislature whenever a question arises as to the interpretation of any section of the Government of India Act, the procedure followed and laid down by the Government of India Act is that the decision of the Governor General in Council shall be final. But in the Colonies, the procedure is that, in all questions relating to the interpretation of the constitution, the decision of the Supreme Court is taken. I will refer you to section 60 of the Canadian Constitution which lays down that in all cases, whenever there is a question about the interpretation of any Act of the Legislature, the matter may be referred to the Supreme Court and the Supreme Court, after following the procedure therein laid down, shall decide the question at issue. Honourable Members will find that within the last few months several questions dealing with the interpretation of the Government of India Act have come up for adjudication. My friend, Mr. Ginwalla's Resolution on the subject of votable and non-votable items and the interpretation of a section of the Government of India Act dealing with it, for instance. Now, Sir, if we had a Supreme Court and if we had followed the procedure laid down in the Colonial Constitutions, this matter could have gone up before the Supreme Court for adjudication. And there are several other questions upon which the present Government of India Act makes the Governor General in Council the sole and final judge. My submission is that the establishment of a Supreme Court is well justified by reason of the fact that now that India has got a written constitution, it should also have a Supreme Court to interpret and uphold it. So much from the constitutional point of view. In the mass of evidence and the mass of opinions collected in this compilation, the other facts which I set out on the last occasion are admitted. I pointed out that it is a far cry to appeal to Their Lordships of the Privy Council, that the establishment of a local Court would work for economy and more expeditious justice, that it would be convenient to all parties and that it would be in accordance with the growing national sentiment. I also pointed out, Sir, that in criminal cases it is highly desirable that there should be a Supreme Court for the purpose of revising these sentences passed by the various High Courts. The establishment of a Criminal Court of Appeal in England strengthens my argument that we require a central authority to dispose of important criminal cases in revision. I also then pointed out that the deficiencies of the existing Privy Council are admitted by such well-known legal experts as the present Lord Chancellor and the Ex-Chancellor, Lord Haldane. As Honourable Members know, the Privy Council is not a Court at all. It is an advisory body which gives advice to the Sovereign and the Sovereign technically ultimately decides the question. The Advocate General of Madras, who was consulted on the subject, has set out, as Honourable Members will find, a very strong note in support of my motion. He gives cogent reasons why a Supreme Court should be established in this country. I need scarcely say that the Governor in Council concur with the reasons adduced by the Advocate General of Madras.

On page 2 of his opinion, the learned Advocate General points out that :

“(a) It is felt in many quarters that the Judicial Committee has not been sufficiently responsive to the growth of legal ideals and the advances made by Indian Society.

(b) The drawbacks of the system of delivering a single judgment and the consequent impossibility of a free discussion of principles by all the members of the Court are being commented upon.

(c) The costliness of an appeal to the Privy Council is a matter of complaint.

(d) In spite of recent attempts to remedy the evil by the framing of rules as to the printing of records and the prescribing of shorter periods of limitation, the inevitable delays of such appeals have to be borne in mind.

(e) In the conditions of this country and in view to the distance between London and India the transmission of instructions in writing to English Solicitors who are often unfamiliar with the subjects in question and the impossibility of personal contract between Solicitor and client are matters for serious consideration.

(f) The prospects of an Indian Barrister whose work would necessarily be confined to Privy Council Practice are not very bright from the financial point of view and it is therefore idle to expect the growth of an Indian Bar in England competent adequately to instruct the leaders that may be engaged in the cases. *A fortiori*, it is in the highest degree unlikely that any leader of the Indian Bar would settle down in London with an eye to Privy Council Practice. This system has led and must lead to an imperfect appreciation of many aspects of a case especially where the personal law of the parties or any matter involving an examination of customs or religious or quasi-religious usages or legal doctrines are concerned.”

Now, Sir, I have already pointed out that at least six of the provinces have supported my motion. Of the six High Courts consulted, I find three of them equally favourably to my motion. In Madras we have a strong majority of five judges against two in support of my Resolution. The Bihar and Orissa High Court also supports my proposition.

The Bombay High Court is non-committal. They say that if public opinion favours it, they have nothing to say. The only High Court that is decidedly against my motion is the High Court of Calcutta, and I may point out, Sir, that the High Court of Calcutta winds up its opinion with the following remarks which need no comment :

“The Honourable the Chief Justice and Judges would add as a separate matter, because one as to which the Court cannot claim to be disinterested, that the establishment of an ultimate court of appeal in India will affect prejudicially the position and reputation of the High Courts hitherto the highest courts, in the country. It is not more important to inquire whether this will be reasonable on the part of the public than to recognise the certainty that it will happen.”

They are naturally more jealous of their own rights and privileges than are alive to a public demand or to public convenience. In their opening the learned Judges point out that the “Chief Justice and Judges desire to confine themselves to considerations bearing directly on the efficiency of the judicial system. If any other considerations are admissible, they would appear to be of a character mainly political or arising from matters of national sentiment.” So that, they have addressed themselves to a very limited question, and they have safeguarded their remarks by saying that they are dealing only with the question of necessity and efficiency and the preservation of their own rights as the highest Court of appeal in this country. I do not wish to take this House to the other opinions of the High Courts in this country, but I rest my case upon the

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ground which I urged on the last occasion and which I do not think any Honourable Member of this House will challenge, that a local Court would be conducive to more economy and convenience and will in the end be more popular than a Court which is situated at a place six thousand miles away. I therefore, submit, Sir, that my Resolution should receive the support of this House, and I beg to move it.

Mr. President : The question is :

"That this Assembly recommends to the Governor General in Council to be so pleased as to take early steps to establish in this country a Supreme Court for British India."

MESSAGES FROM THE COUNCIL OF STATE.

Mr. President : Before we take further proceedings certain Messages from the Council of State will be read by the Secretary.

Secretary of the Assembly : Sir, three Messages have been received from the Council of State. The first one runs as follows :

"I am directed to inform you that the Bill to provide a penalty for spreading disaffection among the Police and for kindred offences which was passed by the Legislative Assembly at its meeting on the 18th September 1922 was passed by the Council of State at its meeting on the 23rd September with the amendments indicated in the attached statement.

2. The Council of State requests the concurrence of the Legislative Assembly in the amendments."

The second Message runs as follows.....

Dr. H. S. Gour : Will you kindly read out the attached amendments ?

Mr. President : I have just told the Secretary that he need not read out the amendments. They will be circulated this evening.

Dr. H. S. Gour : I thought that it was part of the Message from the Council of State.

Secretary of the Assembly : The second Message runs as follows :

"I am directed to inform you that the Message from the Legislative Assembly to the Council of State, desiring its concurrence in a motion to the effect that the Bill to amend and consolidate the law relating to the Regulation and Inspection of Mines be referred to a Joint Committee of the Council of State and of the Legislative Assembly and that the Joint Committee do consist of 18 Members, was considered by the Council of State at its meeting to-day, and that the motion was concurred in by the Council of State.

3. The following Honourable Members of that body were nominated to serve on the Joint Committee, namely :

The Honourable Mr. H. Moncrieff Smith,

The Honourable Diwan Tek Chand,

The Honourable Sir Alexander Murray,

The Honourable Mr. Lalubhai Samaldas,

The Honourable Sir Maneckji Dadabhoy,

The Honourable Mr. Khaparde,

The Honourable Rai Bahadur Lala Ram Saran Das,

The Honourable Sriji Chandradhar Barua, and

The Honourable Mr. Kale."

The third Message, Sir, runs as follows :

"I am directed to inform you that the Council of State has, at its meeting of the 23rd September 1922, agreed without any amendments, to the following Bills which were passed by the Legislative Assembly :

- (i) A Bill further to amend the Negotiable Instruments Act, 1881.
- (ii) A Bill further to amend the Court Fees Act, 1870.
- (iii) A Bill further to amend the Parsi Marriage and Divorce Act, 1865.
- (iv) A Bill further to amend the Official Trustees Act, 1913, and the Administrator General's Act, 1912."

RESOLUTION RE SUPREME COURT FOR BRITISH INDIA.

Maulvi Abul Kasem (Dacca Division : Muhammadan Rural):
 Sir, I regret very much that it is my misfortune to stand up to-day to oppose the motion which is placed before the House by my learned friend Dr. Gour. For want of learning I cannot go into the constitutional aspects of the Resolution itself, but I will place before this House the question from the point of view of "the man in the street." My friend says that a country which has got a written constitution in order to be self-contained ought to have a Judicial Court of the highest order. My objection to that is that it will not be practicable for us to get very great lawyers and jurists from England to come out and serve on the Bench of that Supreme Court. If I may say so without disrespect to His Majesty's Judges, I might say that conditions at the present moment are not very attractive to get even moderate lawyers and jurists to adorn the Benches of our High Courts. The second question that unfortunately I have to admit is the sense of public service and patriotism which is developed to such an extent that distinguished lawyers like Dr. Gour will condescend to serve on the Bench if it affects their purse. I say it, Sir, from a knowledge that High Court Judgeships have been offered to members of the Bar who have a large practice and they have refused it because it will affect their position financially. We are a poor country, and be it a poor or rich country, no country can pay their Judges more than what the leaders of the Bar get. The Bar is a very lucrative profession. But then in other countries the leaders of the Bar accept office of Judges for the dignity that it carries with it. In this country unfortunately we measure everything by the salary and the emoluments that go with an office. Under these circumstances, Sir, how can we expect that we will get eminent lawyers to serve on the Bench? Another grave objection which I feel is that as soon as a Supreme Court is formed in this country, the first question will be that we must have a mixed Bench of European and Indian Judges, and when the Indian Judges come in, the communal question will naturally arise, and in choosing Judges for the Supreme Court, the palladium of justice, we will not have to consider the ability, the legal knowledge or independence of the man but the territorial and communal representation of the various provinces or communities, and naturally the Government of India will be placed in the unfortunate position of making a "Hobson's choice."

Sir, if we want to be self-contained or to purify the administration of justice, the best course would be to create circumstances which would make our High Courts in the country more efficient and let them command more respect and confidence at the hands of the people than they do at

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present. (*Rao Bahadur T. Ranguchariar* : " They do command great respect.") Secondly, I do not think that the establishment of a Supreme Court will prevent us or will deprive us, the people of this country, from the right of appealing to His Majesty, which means the Judicial Committee of the Privy Council, and naturally instead of having one appeal, the system of litigation will become more complicated, and this, in a country where litigation is carried on more as a pastime than as a necessity, is neither desirable nor profitable. Lastly, I think that there is a more important question at the present time, because I have been told and it is a fact that at the present time when any member of the Service or of the Bar is raised to the Bench he feels that he has got the highest appointment or office that he need aspire to. If we open a Judicial Committee here, the independence of our Judges will be interfered with (Hear, hear) and the idea of getting a little lift from the High Court to the Supreme Court may interfere with the independence of the High Court Judges, which will be suicidal to the interests of the administration of justice in this country. Therefore, Sir, I am sorry that I cannot support the Resolution of my Honourable friend, and as this House is composed of very distinguished lawyers I expect to get light from them on the legal aspect of the question. My Honourable friend has said that on the point of cost we ought to have a Supreme Court in India itself. I beg to differ from him. I believe it will be more costly to fight out a case in the Supreme Court in India than it would be on an appeal to His Majesty's Privy Council, and that for this simple reason, that the Supreme Court, if it is to be established, will only be established at Delhi, or at some other central place, and a man who comes to fight a case before the Supreme Court will have to indent for his lawyers either on Nagpur, Bombay, Calcutta, or that land of lawyers, Madras, and I am afraid that the leaders of the Bar in all these places will charge fancy fees for coming up to Delhi to conduct cases and that will be more ruinous to the litigant than sending his case with all necessary papers to a Solicitor in England and paying perhaps the leading Barrister there his one or two days' fees in fighting out the case. Again, as the Privy Council is now located in London, 6,000 miles away, that prevents many people from continuing their litigation, so that naturally a large percentage of the cases reach finality in the High Courts. If you establish a Supreme Court here, you will find that every decision of a High Court will be appealed against just as every decision of a Subordinate Judge is sent up to the High Court for revision, because we know generally that the man who loses a case believes that he has lost the case because the Judge who tried the case was in the wrong, and sometimes, I am sorry to say, he is made to believe by his lawyers that if he goes up to the High Court he will get better justice. (*A Voice* : " No, no.") In any case I have found that whenever we lose a case we try to get at every avenue of appeal that lies in our power ; at any rate, I do so. So the only thing is that if the second appeal is made easily accessible to the people of this country litigation will be enormously increased and become more complicated, and I think that it is far better that in one or two cases some injustice should be done—the High Court Judges might be wrong—rather than that a

crop of litigation should grow up in this country, bringing ruin with it to the people at large. Therefore, I hope that this House will not accept the motion for the establishment of a Supreme Court in this country. When we get a constitution which will make this country autonomous, then it will be time to consider whether we ought to have a Supreme Court here or not, but to have a Supreme Court before we have got an autonomous Government is to put the cart before the horse.

Mr. Harchandrai Vishindas (Sind : Non-Muhammadan Rural) : Sir, I also join with the last speaker in opposing this Resolution. Mr. Abul Kasem has said that he does not know the constitutional aspect of the question and therefore he does not want to dabble in that, but that he would oppose the motion from the point of view of the man in the street. Well, I myself am not a very distinguished lawyer, but I know a little bit of law and therefore, in my humble capacity I am prepared to challenge some of the points that Dr. Gour has put forward before us. The first is as regards the constitutional aspect. Now, he says that every colony that has received a written constitution has along with it received the privilege of a Supreme Court. Have you received that constitution? When have you received dominion constitution? We are only at the earliest stages of responsible Government and does Dr. Gour deny that no dominion in its earlier stages ever got a Supreme Court? Moreover, I think that is not a very relevant or justifiable argument at all. We do not know the conditions of those dominions. We do not know what material they can be able to produce for the purpose of manning this Supreme Court. I daresay they have got very satisfactory material, and had it not been for that, they would not have made any such attempt. Here, we have been very properly pointed out the difficulties that arise in the way of communal divisions in this country and territorial divisions, which I daresay do not exist in the case either of Canada or Australia or South Africa. So far as regards the constitutional aspect of the question.

Another point that Dr. Gour has raised is that the Judicial Committee is only an advisory body. With all due deference to Dr. Gour, I say that that is an extremely unfair argument, because as a matter of fact, has there been any case, any decided case up to now in which the advice of the Judicial Committee has ever been disregarded by His or Her Majesty? It is merely formal that the Judicial Committee say, "We shall advise His Majesty" to decide the case like that. [*The Honourable Sir William Vincent* : "Humbly advise."] Yes "humbly advise"—thank you, Sir William. As a matter of fact, that cannot form part of a rational or legitimate argument at all for the establishment of a Supreme Court here.

Then, so far as the question of economy is concerned, that was one of the arguments that was urged by Dr. Gour. Now, I think we are quite free—I mean this Legislative Assembly's finances are quite free—from the cost of a Supreme Court. But if a Supreme Court were established, how much cost would this country be saddled with every year? I suppose some lakhs of rupees. Is that economical for the resources of this country? But if you consider it economical from the point of view of litigation, I think that also has been pointed out

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by Mr. Abul Kasem to be a fallacious argument. But if it is costly at the present time for a litigant to carry his litigation up to the Judicial Committee of the Privy Council, so much the better. As Mr. Abul Kasem has pointed out, litigation is an evil, and the less we have of that evil the better. Mr. Abul Kasem will pardon me for telling him that he has been rather inconsistent here, because in the first place he said that the litigation in the Supreme Court in India would be more costly than litigation in England. Then again he said that the people would be deterred from going to England because litigation there would be more costly. [Dr. H. S. Gour : "The Honourable Member is ascribing to me a statement which I have never made."] Not you, but Mr. Abul Kasem. In my opinion, the litigation in the Privy Council so far as it exists at the present moment is quite satisfactory and I do not think it is so expensive. People who have got experience of sending cases to the Privy Council know that there is an established body of lawyers, solicitors and barristers, who devote themselves exclusively to Indian work, who have specialised in Indian law, and therefore the litigants here do not feel the slightest difficulty in having their litigation carried on most satisfactorily.

The Members of this House must be aware that eminent lawyers who have retired from practice in India have oftentimes established themselves in England and devoted themselves exclusively to the practice of the Privy Council, men like the late Sir William Rattigan, the late John D. Mayne, the late W. C. Bonnerjee, Sir George Lowndes, Mr. Dube and many others. Even the Right Honourable Sir Amir Ali used to practise before he was appointed to the Privy Council. So, the difficulty pointed out by Dr. Gour, that there is no efficient bar in England capable of coping successfully and efficiently with Indian cases from the Indian stand-points of law, falls to the ground. (Dr. H. S. Gour : "That is distinctly a mis-statement. I only cited the opinion of the Advocate General of Madras.") At least Dr. Gour cited that opinion of Mr. C. P. Ramaswamy Aiyar with approval, unless he wants to repudiate it, in which case I would quite agree with him. Then Dr. Gour with his usual dexterity quoted the opinions of some High Courts, namely, Madras and Bihar and Orissa. Bombay, he says, is non-committal. Bengal is against him but on grounds of protecting its own privileges. Are there no other arguments used by the Bengal High Court on the merits of the question? Does the Bengal Government confine itself to the question of its privileges and dignity? I think, Sir, it will appear to this House that the motion as put forward is on its face one that will not be acceptable to this House. Now the most paramount consideration is this. When you have got the Court of the highest appellate jurisdiction which is final and from whose decisions no appeals or revisions lie, then the first consideration is that it should be entirely beyond reproach both as regards its impartiality and efficiency and its knowledge of law. It is a matter for congratulation and gratification to see that the personnel composing the present Judicial Committee of the Privy Council as well as the past has inspired the utmost confidence in the people of this country. It is the most eminent Judges that have always adorned the Privy Council. What kind of men are we likely to get here?

No better than the present Judges of the High Court, as Maulvi Abul Karem has pointed out. The leading members of the Bar here are unwilling to accept even High Court Judgeships. Besides there will be a scramble on the part of the various communities for the distribution of seats and the unfortunate and deplorable result will be that efficiency will be sacrificed to politics. Government will find themselves in a very embarrassing condition. A Jew will come up and say, 'I want a seat in the Privy Council because I am a Jew.' A Parsi will come up and say, 'I must also have the loaves and fishes of office' and so on the other bigger communities. Look at it from every point of view, from the point of view of its effect on the exchequer of this country, of the facilities afforded to the litigants at present in England, from the point of view, constitutional or otherwise, the proposition is such as will be completely rejected by this House. I think this country will think it to be in its interests to have the last Court of appeal in England. It is not in its interests at the present stage of its development to have the highest Court established here. Now, one consideration put forward by Dr. Gour was that at present there is no criminal jurisdiction vested in the Privy Council and that the highest criminal jurisdiction is in the High Court. As to that, is it not a desirable thing that even criminal litigation should not be carried on any further than it is now? But if it is considered desirable that in some important cases the case should be carried forward further than the High Court, then the remedy is entirely simple. That remedy is to have a chapter in the Criminal Procedure Code in which it can be stated that appeals from the decisions of the High Court should lie to the Privy Council on the same lines as you have got now in the Civil Procedure Code. I do not mean to say that on its merits I would vote in favour of this but I suggest that that is the simplest means by which this object can be easily achieved. For all these reasons I earnestly inform the House that in my humble opinion it is not in the interests of the country that Dr. Gour's Resolution should be accepted and therefore they should unanimously reject it.

Mr. Pyari Lal (Meerut Division : Non-Muhammadan Rural) : I am sorry to have to oppose my Honourable friend Dr. Gour's proposal. Much as I should like to be in his company, I find it impossible to do so to-day.

Sir, to me the proposal does not seem to be a sound one. Our Supreme Court is now situated in London and it will be robbing it much of its dignity and prestige to remove it from the metropolis of the Empire and plant it in the uncongenial soil of this country torn with communal and religious differences. Then again, we in this country are accustomed to associate our final Court of appeal with our King and Sovereign presiding over it and it does seem to me a bit incongruous that we should have our Supreme Court of Appeal in India and that our Gracious Sovereign be residing in England. It may be a sentimental objection only but there it is, and sentiment must be respected in an oriental country like India. Sir, as long as this country continues to be a component part of the British Empire, it is both to our dignity and stability that we should partake as much of its life as we can, and have as close a living contact with it as possible. All

[Mr. Pyari Lal.]

our life-giving institutions to-day are derived from England and English, people whether they be in the region of politics or in the region of law. We have just started on the onward march of progress and it would be a case of mere presumption on our part, pure and simple, to assert, as some of us are doing, that we are already as advanced as people in England. England is the chief source of all our learning as far as jurisprudence is concerned, and there only, you can meet persons with a thorough and profound grasp of its principles and practice. I maintain it is impossible for us to have the same atmosphere for our Supreme Court here as in England. The English atmosphere, at once so serene and calm, is what is required for the solution of the intricate law problems which go to England from all parts of the Empire, India included. On this ground alone, if for no other, I would not for a moment favour the establishment of Court of ultimate appeal in India.

As to the ground of expense and inconvenience which appeals to the Privy Council are alleged to cause, I submit, it is more of an imaginary grievance than real. Who are the persons who go up in appeal to the Privy Council? Those only who, more often than not, can afford money for it and are otherwise well off; persons, who have large interests at stake, and, who therefore can grudge no expense in having their difficulties solved. Generally people engage Solicitors in England through their friends, who again engage lawyers for them and are not troubled with their appeals any further. Even such persons as go with their cases in person to England, I submit, are none the worse for it; they return home much wiser and happier for their trouble, as having seen things otherwise not possible for them in this country, and as having moved in an atmosphere though for a time only which was out of the question in India.

Then there are other local difficulties also in establishing a Court of final appeal in India which have to be reckoned with. First, where is such a Court to be located, that is, in what part of the country? Surely not in Delhi for years to come, nor in Calcutta, with its sultry climate, nor in Bombay, nor in Madras, nor in Lahore, nor in Nagpur, the headquarters of my learned friend, Dr. Gour. The essentials in this matter are that the climate of the place must be healthy all the year round, that it must be centrally situated in such a vast country like India, and that there must be a Bar there of men learned in law and able to help the Court. I admit there are some men of brilliant ability in Calcutta, Bombay and Allahabad and possibly in Nagpur, but their number is so small; and I believe they would think twice before they would migrate to any other place and leave their province. If the Court were to be located in Simla, I am afraid the same howl and clamour will be raised as they do over the exodus of the Government of India to Simla. Lastly, there is the fact and it is the most important of all: where are we to get our Judges,—men of supreme legal ability and independence, of mature and ripe experience, to adorn such Court? Already the High Courts in India have to indent on England for some of our Judges. For the proposed Court you will be all the more obliged

to do so. Will you be able to get the right type of men to come out to India,—and will you pay them enough, and will the Indian atmosphere, both political and intellectual, suit them, even if they did come? I have already observed that the Indian atmosphere is not the same thing as English for judicial calmness or serenity of temper. Now-a-days it is more a fashion than anything else to run down Englishmen and everything English, but I beg to say that it would be a dangerous course to pursue if persisted in too far. It is pleaded that we want to be self-contained and wish to be independent and do not wish to depend on England for anything, but there is such a thing as patience. Time in the eternal order of things will bring you all you desire. I am one of those who believe firmly that a mysterious Providence in its inscrutable wisdom has linked up our destinies with England, and with it we must rise or fall. A Court such as Dr. Gour suggests will be a mere travesty of the Privy Council, lacking alike in dignity and its glorious traditions and its calm and detached atmosphere, and in fact in all that we are hitherto accustomed to associate with that august institution. With these words, Sir, I oppose Dr. Gour's motion.

The Honourable Sir William Vincent (Home Member): Sir, on the 26th of March the Honourable Member moved a Resolution in this Assembly which recommended to the Governor General in Council a proposal that he be pleased to collect the opinions of Local Governments and other legal authorities and ascertain public opinion generally on the desirability of establishing such a Court as the Honourable Member recommends. That amendment was accepted by the Government, and opinions were invited. The Government themselves have not had adequate time to consider these very bulky opinions that have been received.

Rao Bahadur T. Rangachariar (Madras City : Non-Muhammadan Urban): May I point out, Sir, that they have not been circulated.

Mr. President: Order, order.

The Honourable Sir William Vincent: I did not say that they had been circulated. I said that we even have not had time to examine them ourselves, but by the courtesy of the Home Department a copy of the opinions was supplied to Dr. Gour. Therefore, the Government have, with regard to this motion, not come to any definite decision; and I suggest to Honourable Members that it is therefore premature for this Assembly, also, to accept a proposal of such great moment, of such grave importance. It is not a small matter,—it is a question, as I say, of the greatest moment and importance to this country, not to be decided before Members of this Assembly have had an opportunity even of studying the various opinions that have been given. I hope to be able to place later on copies of these opinions in the Library; and I think that, in the circumstances, what the Honourable Member ought to do is to withdraw this Resolution; otherwise, if it is put to the vote, I feel that the sense of the House will be very much against him. There are advantages, no doubt in the proposal.... (At this stage Dr. Nand Lal rose to speak—**Mr. President**: "Order, order.") If the Honourable Member will let me finish my speech without interruption, I shall be very grateful. I am neither for nor against the Resolution. I have explained to the Assembly,

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or attempted to do so, that the Government have not considered it,—they have not had an opportunity of doing so any more than Honourable Members have. If Dr. Nand Lal wishes later to support the Resolution, I am sure his valuable support.....

Dr. Nand Lal (West Punjab : Non-Muhammadan) : If I shall be given the opportunity.

The Honourable Sir William Vincent : Will carry great weight with the Assembly. There are of course advantages in the proposal. But in view of the fact that there have already been such able advocates,—such as Dr. Gour and Dr. Nand Lal, it would be impertinence on my part to supplement these arguments. There are, however, arguments the other way which appeal to me. I am speaking from a personal point of view only. I only want to put them before the Assembly for what they are worth—not as opposing this Resolution, which I have no authority to do ; Government will not oppose it in any sense except to the extent of advising the Honourable Member to withdraw it. But if you have a Supreme Court in India, I venture to suggest—I want again to make it quite clear that I am not representing the views of the Government of India in this matter, I am merely putting forward before you personal points for consideration—that one question which will have to be considered is whether it will or will not increase the litigation. If there is an appeal to the Supreme Court here, and a further appeal to the Privy Council, this will add another link to the chain of appeals. I do not say that is necessarily a bad thing, it may be a very good thing, but it is a point for you to consider. In criminal matters also, as was put by Mr. Harchandrai Vishindas, it is for this Assembly to consider whether it is or it is not advisable that there should be some finality once a case has gone to the High Court,—whether there is any use, after a sentence of death has been confirmed for instance, in keeping the man in suspense ; whether it is right that a man should be so kept in suspense pending a further appeal ; that is a matter on which I express no opinion, I merely leave it to the Assembly to Judge. They have also to consider whether they could secure in this country a Court which would have the authority and command the confidence of the Privy Council, whether we could induce Judges of eminence to come from England or whether we should have to depend entirely on Judges selected in India. As for the expense, we know that the maintenance of a Court of 5 or 6 or 7 Judges would entail considerable expenditure—and we do not know how many Judges would be needed. (*Mr. T. Rangachariar* : “ They would have to be enough to hear appeals from the judgments of about 50 Judges.”) I was putting the number low ; but there is no doubt that there would be considerable expense involved in the entertainment of these Judges. Further it has been suggested to me by my Honourable colleague that, such is the passion for litigation amongst a certain class in this country, that the establishment of such a Court would at once give opportunities for increasing litigation and appeals. I do not know whether that is correct or not, but I am clear that there might be great difficulty in securing Judges of the proper calibre. Even now in this country it is

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a difficult question often to select Judges of High Courts with the required qualifications. If Members have listened to the questions asked in this very Assembly, they will realize that Government is constantly questioned as to the number of Muhammadan Judges appointed, or the number of Hindu Judges. And even in that home of learning, Madras, communal questions have crept in ; at least I have heard this said.... (A Voice : "Brahman and non-Brahman.") Far be it from me to make any statement in respect of that land of lawyers, but I have heard it stated that the communal question has to be carefully considered in appointing Judges for any particular Court. This is a question which is only of importance at the present juncture and I have every confidence that it will disappear in time.

Another point is that if a Supreme Court is established in India, it is a question whether we should get Judges of the same calibre and of the same class as you do at present for the High Courts. We get the men now because that is the highest Court in the land. If you had a Supreme Court would that still be the case ? I do not know ; it might be that in many places we should get men of the same calibre ; but we might not but that is a point which might be considered.

There is one other point only which to my mind is of importance. I myself believe that the welfare of this country is bound up very greatly with that of the Empire. (Hear, hear.) Speaking personally, I am myself very unwilling to do anything, have always been unwilling to do anything, that may loosen any bond between this country and Great Britain. (Hear, hear.) I believe also that the Judicial Committee of the Privy Council, although in recent years it has been the habit to decry it, commands the greatest confidence and has a great reputation for wisdom and learning and impartiality. And I myself fear that it would be difficult at present to obtain a Supreme Court in this country which would command exactly the same confidence here.

As to the opinions received, as Honourable Members have not seen them, I should like to say a few words. I have no doubt that they will accept Dr. Gour's description of them, but perhaps I might supplement it by a few words, particularly as I want to advert to one criticism of his and deal with it very shortly.

The Madras Government are in favour of this proposal for reasons given by the Advocate General ; from which I conclude that they accept everything that he has said. The High Court Judges were, I think, divided, though there was a majority in favour of the proposal. (Dr. H. S. Gour : "Five to two.") The United Provinces Government also favour the proposal, but the Judges are divided. The Punjab Government favour it, but there again the Judges are divided. I think I am right in saying that the majority are against the proposal, including the Chief Justice Sir Shadi Lal. In Burma the Government and the Judges are alike against it. The Bihar Government say the proposal is premature but the Judges favour it. (A Voice : "What province?") Bihar and Orissa, a very important province. (Laughter.) The Central Provinces support the proposal. The Bengal Government and the Calcutta High Court definitely oppose it : and the Bombay Government also opposes it,

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the Judges I think being divided. (*Mr. Harchandrai Vishindas* : " Dr. Gour told us that Bombay was non-committal.") I think I am right : this is what is recorded in my note on the Bombay opinion :

" The weight of argument is distinctly against such a Court. The High Court and Chief Justice say appeals will be made more costly on account of travelling expenses. Present delays are mostly due to dilatory conduct....."

He continues to criticise the proposal but ends by saying, if public opinion favours it, he (the Chief Justice) would defer ; and I think that two other Judges—and they are the only two whose opinions I have seen—support that. But when Dr. Gour suggests that the High Court of Calcutta oppose his proposal merely from a desire to preserve their own authority and prestige, then I joint issue with him, and I believe that every one in this Assembly will support me. (Hear, hear.) If, when gentlemen in the position of Honourable Judges of a High Court are asked for their opinion on important questions and they give a frank honest opinion free from political bias, they are to be attacked in this manner, then in future they may rightly say, " We will not expose ourselves to this unfair criticism in our absence for opinions which you ask us to give and we seek to do our duty." (Hear, hear.) What is there to justify this suggestion that the Calcutta High Court have acted from motives of this character ? I believe there is nothing. I know the Court ; I have known most of the Judges in it for many years ; there are many others here who know them ; I do not believe for one moment that the Judges would be influenced for one moment on a matter of this kind by the motives suggested—not stated—by Dr. Gour. What they do say is this—it is to my mind a judicial and eminently sound pronouncement :

" Confining themselves to considerations bearing directly on the efficiency of the judicial system, and expressing no opinion which would depend on sentimental or political considerations, their Lordships think it plain that the proposal must primarily be judged by its probable effect upon the decision of cases and upon the confidence felt in India as to the justice and soundness of such decisions. In the case of an ultimate Court of Appeal everything depends on the reputation of the Court in the eyes of the legal profession, which is the condition of wider prestige. Viewing the matter in this light, the judges are unanimous that the proposed Court is undesirable because it would entail a distinct sacrifice of efficiency and of the conditions of public confidence."

They go on in a similar strain. I think I may say that that is a well-balanced and considered opinion deserving at the hands of this Assembly of more consideration than the Honourable Dr. Gour has given it. To me, naturally, having served in the judicial line in Bengal for many years, the opinion of the Calcutta High Court is of great weight and moment ; and not lightly to be disregarded. Sir, in conclusion I want again to explain the attitude of Government. If I have in any way tended in the course of my speech to show bias one way or the other I have no authority to do so on behalf of Government, and they are only personal views, but I do suggest to the Honourable Member that he would do well to allow the Members of this Assembly a full opportunity of examining the papers and seeing for themselves the reports on the proposal. I do suggest that the Resolution is premature and that he could with advantage withdraw it at the present juncture. After all this is not a matter of

great urgency ; it does not matter much whether it comes up in this Session or in the next, and I think he would do very well if he took the advice that I have given him.

Mr. S. C. Shahani (Sind Jagirdars and Zamindars : Landholders) : Sir, It is only fair that the other side of the question should be represented in this House. I feel that on this occasion the Assembly has given a very sorry account of itself. One member after another has come forward to say that India is not ripe for a Supreme Court, and for what reason ? I have examined the reasons that have been advanced. It has been said that it will be very difficult for us to secure good Judges in India and that they will not be, firstly, sufficiently erudite. I question the correctness of this statement. India has a genius all her own that can hold comparison with the genius of the people of any other country ; and it will not be difficult to find instances in which the judicial learning of our lawyers has surpassed the judicial learning of the lawyers of other places. Besides, we are linked, as it is said, to an Empire, and it should not be difficult for us to secure the services of some of the most eminent and disinterested lawyers in the Empire. To state that India cannot furnish Judges of the right type is, I think, to pervert facts and to pervert them in a way that is bound to be extremely disagreeable to the public outside this House. Considerable emphasis has been laid on India's difficulty in securing disinterested Judges. We suffer, it is said, from communal differences ; and we have different religions. But are we right in imagining that our best men will allow themselves to be subjected to the communal or religious ailments or maladies from which our common people do suffer ? Again, if our highest and best men are to be cheated of any such propensity to selfishness and malice, what would be the best way of securing that result ? The best way of securing that result would be to entrust them with positions of trust and responsibility. To come forward and say that we are a mixed people, that we have got many religions and many communities, and that on that account we should never aspire to have our own institutions like the proposed Supreme Court, is, I think, to make a statement which is radically wrong. You might on similar grounds object to the Assembly itself. You might on such grounds object to India having a Parliament of her own. We shall never be deemed fit on this reasoning for any autonomous institution in the land. That several people should come forward and say "hear, hear" and "we agree" to objections of the kind in question is, as I have said, to make a very sorry exhibition of ourselves here in this Assembly. Another reason has been assigned and that is this : that the Supreme Court will cost a great deal, that appeals will have to be entertained against the decisions of fifty Judges, and that on that ground it will be necessary for us to engage 6, 7 or more Judges. What would that matter ? If the Supreme Court is an institution which ought to find favour with us, if without this institution our Government would not be complete, if without this institution our development will be defective, nay, will come to be retarded, why is it that on account of considerations of expenditure we should decide not go in for this necessary institution ? We are spending extravagantly upon the military ; we are adopting a wrong commercial policy ; we are going in for cotton excise duty and we are not raising our import duties. It is therefore that our revenue does not meet our expenditure. Moreover, very little of our

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revenue is being applied to our education, and still we are contented with this condition of things. Ours is a disgraceful condition of affairs which we ought not to allow to continue. It has been further alleged that litigation would increase on account of the creation of a Supreme Court such as has been proposed by Dr. Gour. What an idea ! Litigation would increase ? If it increases wrongly, other ways should be found of smothering it ; but wherever innocence suffers, do not, pray, for any considerations, contrive a situation in which innocence must go without the requisite remedy. These are namby-pamby arguments, almost childish arguments, I might say, that have been advanced against the creation of a Supreme Court in India. No reference has been made to the delay, the unconscionable delay, that occurs in the decision of judicial cases at present. Very lightly has the question of the cost and delay to which the people are at present subjected been dealt with by the previous speakers. It has been also said that by the creation of a Supreme Court here the independence of High Court Judges would be impaired. How ? Because they would aspire to rise to seats in the Supreme Court and would be amenable to control from Government. Exclude retired Judges and admit Judges of recognised pre-eminent ability, and see if those do in any manner swerve from principle in the decision of their cases, simply because it is permissible to them to entertain a desire or aspiration to rise to the highest Court. Lastly comes a reason which I at any rate would be ashamed to advance, and it is this : in creating a Supreme Court in India you would be lessening the bonds between India on the one hand and the Empire on the other. How shall we, by organising ourselves better, be promoting our severance from the Empire ? The Empire, if it is to be an organism, must place every opportunity in our way to organise ourselves efficiently ; and the more efficiently organised we are the better disposed shall we be to adhere to the Empire. No one can rightly say, "Do not have the central or highest institutions here, but have them in England, because then and then alone will you be reckoned a part of the British Empire." This is an argument, as I have said, of which I should be heartily ashamed. I am not at all convinced that there should be no Supreme Court here. One argument advanced by the Honourable the Home Member has, however, found favour with me, and that is this, that the Government have not yet considered the opinions that have been received and that the Assembly too has had no opportunity of scanning for themselves the nature of the opinions that have been received on such an important measure. On that consideration and that consideration alone we might not at this stage seek to pass the Resolution that has been placed before us. But I do trust, that when the right opportunity offers, we shall consider the question carefully and unanimously vote for the Resolution that has been so disinterestedly and with such prescience moved by Dr. Gour in the interests of the great country to which we all belong.

Mr. J. P. Cotelingam (Nominated : Indian Christian) : I move that the question be now put.

The motion that the question be put was adopted.

Dr. H. S. Gour : Sir, I shall very briefly reply to the various criticisms that have been levelled against my Resolution. In the first

place it has been said, and that statement has been repeated very often, that we cannot get Judges of sufficient calibre, independence and integrity to sit in the Supreme Court of India.

(At this stage Rao Bahadur T. Rangachariar took the Chair.)

Speaking for myself, I have seen this statement with a good deal of shame, for Honourable Members will realise that if they cannot get men of sufficient intellectual calibre (*A Voice* : "Character"), character, in the Supreme Court, what is their view of those distinguished Judges who sit in the existing High Courts ? (Hear, hear.) One Honourable Member even went so far as to say, 'Your Supreme Court would be a glorified High Court'. But what is the Privy Council ? Do Honourable Members know it ? Let me read to you the names of the High Court Judges who have sat and are sitting at the present moment in the Privy Council. Sir Barnes Peacock, Sir Lawrence Jenkins, Mr. Amir Ali, Sir Arthur Wilson. (*A Voice* : "Not altogether"). Somebody ejaculates 'not altogether'. The present distinguished members of the Privy Council are Sir Lawrence Jenkins, Sir John Edge and Mr. Amir Ali, and Honourable Members will see that they were Judges of the Indian High Courts (Hear, hear), and to talk of loss of independence and intellectual calibre are words without any meaning, and I am surprised member after member hurled words at the Chair which have absolutely no meaning and which signify nothing. My Honourable friends have expressed that it will promote litigation. How will it promote litigation, I ask that old experienced Judge who has spoken on behalf of the Government ? Are there not means and methods to stop unnecessary litigation, and does he regard all litigation as an evil ? Does he ever imply by his statement that litigation which takes place in this country is not for the purpose of furtherance of justice ? I submit that is a statement which this House will never accept.

Then it has been said, and it has been repeated, that if a Supreme Court is created in this country it would lead to communal and provincial complications. Well, Sir, who is the author of this communal, territorial and provincial complications ? I say it is the Government. (*Cries of 'No, no' from one part of the House*). It is the Government who have encouraged these provincial and territorial complications, it is they who have made the palladium of justice besmirched with communal blots. I repeat it, the best of men regardless of communal and territorial claims should be appointed to the Judgeships of High Courts. If this had been done in the past this agitation which has been aroused, this fear which has been pressed would not have found expression on this occasion. It is for this House to establish a constitution and a convention, it is for them to see that the Judges of the Supreme Court are men of undoubted intellectual eminence and possess the other attributes that make for a good Judge. It is not, as my friends have suggested, that the Supreme Court would fail in its effect because rival claims would be put forward and which will have to be met. Let me hope, Sir, that within a very short time this question will recede into the background and the national consciousness will be awakened to that expression which I long for as necessary for the creation of self-Government in this country. Those who speak of communal rights, those who exhibit that want of self-confidence in themselves and in their fellow countrymen, do not condemn my proposal for a Supreme

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Court but condemn all self-Governing institutions in this country. (Hear, hear.) Those who condemn my proposal on the ground that Judges do not possess that intellectual halo of lustre which they ascribe to the present Judges forget that a beginning has to be made for a Supreme Court, and that in course of time the Supreme Court will hold its own as it is holding its own to-day in all the major colonies. Read the pages of that historian on constitutional law, Lord Bryce. What does he say? He speaks of the Supreme Court of Canada and Australia and of South Africa, where a handful of people live as compared with the vast population of this Asiatic Continent, that the Supreme Courts in all these larger colonies have justified themselves, they are popular with the people and the Judges who sit in them have received the utmost confidence.

Then it has been said, Sir, and it has been repeated by various speakers, that it would increase expenditure. I ask, Sir, to place in the balance the consideration of justice, the consideration of efficiency, convenience and its general usefulness, and in the other pan of the scale, place your expenditure and then weigh the balance of advantages and disadvantages. I say, Sir, whatever may be the expenditure, it will not be, it can never be, excessive when we have to give to the people of this country what we ask, absolute and undiluted justice.

Then, Sir, it has been said, and it is a statement which the Honourable Members of this House will find repeated in the compilation of opinions which the Honourable the Home Member has promised to place in the library, that if a Supreme Court is established in this country, it will sap one more link which connects England with India. I have no fears, Sir, on that account. On the other hand, in view of the English traditions re-inforced by English Judges of eminence, I feel that a Supreme Court in India will not only justify its existence but would be the proudest monument of British connection in this country. (Hear, hear.)

Sir, if I had to put my Resolution to the vote I feel confident that, in spite of the eloquent appeal made by the Home Member, I should carry the majority of the House to-day. But I, Sir, accede to his appeal for an adjournment. The Government are not prepared to express an opinion one way or the other and Honourable Members in this House have not had an opportunity of reading the collected opinions of the various provinces and the learned Judges of the High Courts. I think in these circumstances a demand for more time is both reasonable and just and I therefore, Sir, gladly accede to the request made by the Honourable the Home Member and desire this House to allow me to move this Resolution in the ensuing Delhi Session. I therefore move for the adjournment of my motion.

The Honourable Sir William Vincent: Sir, I suggested to the Honourable Member that he should withdraw his Resolution. He said—at least I understood him to say in his reply at one time, that he proposed to accede to that request. I hope I have got his words correctly. I think Honourable Members of the Assembly heard him. He now proposes, after having debated this Resolution fully here, not to withdraw it but to adjourn it,—when, as I understand, (I was not in the House) the motion that the question be now put has been accepted. I am bound to say that

I think the Honourable Member would be acting wisely if he did withdraw his Resolution. I think perhaps he would thus pursue the more prudent course. I am not so confident as he is that he would obtain the support of this House to his present motion. I am not confident that Members of this Assembly will vote a Resolution of this moment, of this importance, without even having read any of the papers on the question—except of course (I apologise) Mr. Shahani.

Mr. S. C. Shahani : Mr. Shahani is for it. The Home Member is drawing upon his imagination.

The Honourable Sir William Vincent : I was only drawing what I may call an inference—not upon my imagination.

On the merits of the question I did not hear the Honourable Mover say much ; there was however a good deal of declamation, very eloquent language,—indeed the Honourable Member is a master of that form of oratory, but when he suggested to this House that the question of expenditure should not deter them from obtaining absolute undiluted justice, I say that that is not putting the case fairly. If the House was satisfied that pure undiluted justice is not obtained from the Privy Council, if the House is satisfied that they would get a real improvement in the quality of justice if it were administered by a Supreme Court in this country, then of course the question of expenditure would not really count in the balance. But that, I submit, is not a fair way of putting this case. It has never been suggested that anyone would grudge the expenditure if it was necessary for that purpose, and all I have asked Honourable Members to do is to wait and examine the papers to consider if the administration of justice would be improved before they come to a conclusion of this kind. I do not think that this is an unreasonable request. It is suggested in the interests of the Assembly. It is suggested in the interests of this country. Later, the Honourable Member used another argument—He said—“ Look at the Judges in the Privy Council. Why, you have Indian High Court Judges who would be appointed to a Supreme Court and have had them on that body for years.” Now, the first point is that those are not the only Judges who sit on the Judicial Committee. They are, as every one knows, assisted by English Judges whose eminence and knowledge no one in this House would dare question for a moment and the like of whom are not to be met in India. Further, if you take the very names he has given, are we fortunate enough in this country to get Judges equal to Sir Barnes Peacock or Sir Lawrence Jenkins on many occasions. Very rarely, indeed, do we see men of such great legal attainments and knowledge on the Bench in this country. It is idle, therefore, I submit, to argue, on a basis of that kind by selecting one or two names—two others were also mentioned—Sir John Edge and Amir Ali—to argue that you could necessarily get a number of Judges in this country of anything like the same calibre and who would command the same confidence as the Judicial Committee of His Majesty's Privy Council. I therefore again suggest to the Mover that he should take the course which he said he would take.

Rao Bahadur T. Rangachariar (In the Chair) : It is not open to him. The question has to be put.

Dr. H. S. Gour : Sir, I wish to say

Rao Bahadur T. Rangachariar : What does the Honourable Member wish to speak about ?

Dr. H. S. Gour : I want to explain what the Honourable the Home Member said.

Rao Bahadur T. Rangachariar : I am afraid I cannot allow it.

Dr. H. S. Gour : I am moving, Sir, for the adjournment of the debate.

Rao Bahadur T. Rangachariar : Order, order. Will you kindly resume your seats ? The question has been decided to be put, and, if Honourable Members will look at paragraph 57 on page 19, my only duty now is to put the question on the paper. I cannot allow any further discussion. The only discussion that could have been allowed was to Members who are entitled to reply and the Government Member has replied already. Therefore, I put the question on the paper as it is.

The question I have to put is :

“ That this Assembly recommends that the Governor General in Council will be so pleased as to take early steps to move the Secretary of State in Council to establish in this country a Supreme Court for British India.”

Dr. H. S. Gour : I will withdraw my Resolution for the present.

Rao Bahadur T. Rangachariar : I cannot allow that under the Standing Orders.

I am bound to put the question.

I think the “ Noes ” have it. (“ Ayes ” called.)

Division.

Rao Bahadur T. Rangachariar : Order, order. The motion before the House is :

“ That this Assembly recommends to the Governor General in Council to be so pleased as to take early steps to move the Secretary of State in Council to establish in this country a Supreme Court for British India.”

Dr. H. S. Gour : I do not want a division.

Rao Bahadur T. Rangachariar : Does any Honourable Member press for a division ?

(There was no response.)

The motion was negatived.

The Assembly then adjourned till Eleven of the Clock on Monday, the 25th September, 1922.