

Monday, 19th March, 1928

THE
COUNCIL OF STATE DEBATES
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FOURTH SESSION
OF THE
SECOND COUNCIL OF STATE, 1928



CALCUTTA : GOVERNMENT OF INDIA
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1928

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COUNCIL OF STATE

Monday, 19th March, 1928.

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

QUESTIONS AND ANSWERS.

PAY OF CERTAIN CLERKS IN THE GOVERNMENT OF INDIA PRESS, DELHI.

131. THE HONOURABLE MR. MAHMOOD SUHRAWARDY : (a) Is it a fact that B. Ugarsain, B. Oudh Biharilal, B. Gauri Dayal, clerks, Government of India Press, Delhi, are junior to one Mr. Munawar Ali, clerk ?

(b) Are the formers in the upper grade, Rs. 60—3—105 per mensem ?

(c) Is Mr. Munawar Ali in the lower grade, Rs. 35—2½—80 ?

(d) Are all these said clerks of equal qualifications, i.e., non-Matriculates ?

THE HONOURABLE MR. A. C. MCWATTERS : (a) The two clerks first-named, but not the third, are junior to Mr. Munawar Ali in length of service.

(b) and (c) Yes.

(d) All the three clerks are non-Matriculates.

APPOINTMENT OF RAM BHARAS PANDAY AS A SECTION HOLDER IN THE GOVERNMENT OF INDIA PRESS, DELHI.

132. THE HONOURABLE MR. MAHMOOD SUHRAWARDY : (a) Is it a fact that one Ram Bharas Panday has been appointed Section Holder in the grade of Rs. 100 to Rs. 150 in the Government of India Press, Delhi ?

(b) Is it a fact that Abdul Azim, Abdul Rahman 1st, Sharafat Hussain and Abdul Waheed and others who had been acting Section Holders were senior to him ?

THE HONOURABLE MR. A. C. MCWATTERS :

(a) Yes.

(b) The question of seniority does not arise as the men named are Compositors and Form keepers, while Ram Bharas Panday, before promotion, held the post of Assistant Section Holder. He had been officiating as Section Holder for over a year before he was appointed permanently to that post. This particular vacancy was given to an Assistant Section Holder in accordance with the recommendation of the Piece-Workers' Committee that appointments of Section Holders should be made alternately from Assistant Section Holders and duly qualified Senior Compositors.

ALLEGED DESTRUCTION BY THE HEAD ASSISTANT OF THE GOVERNMENT OF INDIA PRESS, DELHI OF APPLICATIONS FOR APPOINTMENTS FROM MUSLIMS.

133. THE HONOURABLE MR. MAHMOOD SUHRAWARDY : (a) Will the Government be pleased to state whether the Head Assistant and Receiver open the envelopes containing applications for posts in the Government of India Press, Delhi ?

(b) Were any applications from Muslim applicants torn and burnt by the said Head Assistant of the Government of India Press, Delhi ?

THE HONOURABLE MR. A. C. McWATTERS : (a) and (b) The answer is in the negative.

SUPERVISING STAFF OF MUSLIMS AND NON-MUSLIMS IN THE GOVERNMENT OF INDIA PRESS, DELHI.

134. THE HONOURABLE MR. MAHMOOD SUHRAWARDY : Will the Government be pleased to state the supervising staff of Muslims and non-Muslims in the clerical establishment of the Government of India Press, Delhi ?

THE HONOURABLE MR. A. C. McWATTERS : There is no separate supervising staff in the clerical establishment of the Government of India Press, Delhi. The clerical establishment is under the direct supervision of the Head Assistant.

EXHAUST VENTILATORS IN THE GOVERNMENT OF INDIA PRESS, DELHI.

135. THE HONOURABLE MR. G. S. KHAPARDE : Will the Government be pleased to state whether exhaust ventilators are provided in the Government of India Press, Delhi, Monotype Casting Room, for clearing out the gas arising from the Monotype machine metal pots ?

THE HONOURABLE MR. A. C. McWATTERS : No, but the metal pots are, with one exception, electrically heated and the room is large and well ventilated.

PROVISION OF ELECTRIC FANS IN THE MONOTYPE CASTING ROOM IN THE GOVERNMENT OF INDIA PRESS, DELHI.

136. THE HONOURABLE MR. G. S. KHAPARDE : (a) Is it a fact that in the last summer months the monotype casting operatives and mechanics requested the Manager of the Press to provide electric fans to remove the gas arising from lead heating pots ? (b) If so, was the request allowed ?

THE HONOURABLE MR. A. C. McWATTERS :

(a) Yes.

(b) No ; instructions have been issued to provide fans in the monotype casting room this hot weather.

SICKNESS AMONG EMPLOYEES IN THE MONOTYPE CASTING ROOM IN THE GOVERNMENT OF INDIA PRESS, DELHI.

137. THE HONOURABLE MR. G. S. KHAPARDE : Is it a fact that all the men on duty in the casting room fell sick last summer with lead poisoning and one man suffered from hemorrhage of the lungs and was obliged to proceed on long leave ?

THE HONOURABLE MR. A. C. MCWATTERS : The reply is in the negative.

PROVISION OF ELECTRIC FANS IN THE GOVERNMENT OF INDIA PRESS, DELHI.

138. THE HONOURABLE MR. G. S. KHAPARDE : Is it a fact that electric fans are provided in the summer in all branches of the Press with the exception of the Monotype Casting Room ?

THE HONOURABLE MR. A. C. MCWATTERS : No, but fans have been or are being, provided in all branches with the exception of the Machine and Press Room where the nature of the work renders the use of fans impracticable.

GRANT OF LEAVE TO EMPLOYEES OF THE GOVERNMENT OF INDIA PRESS, DELHI, TO WITNESS AND PARTICIPATE IN A FOOTBALL TOURNAMENT.

139. THE HONOURABLE MR. G. S. KHAPARDE : (i) Is it a fact that in September-October 1927 a large number of employees of the Government Press, Delhi, were given one hour's leave daily for about a month to witness football matches ? If so, will the Government be pleased to state what was the total amount of leave in hours granted to—

(a) Salaried hands ; and

(b) Piece-workers ?

(ii) Is it a fact that piece-workers had to take leave and were not given any pay for the time lost by them ?

THE HONOURABLE MR. A. C. MCWATTERS : (i) Early leave was granted to the employees at their own request on certain days in September and October, 1927, to enable them to witness and participate in the football tournament which was promoted and arranged for by the men themselves.

(a) and (b) The information is not available.

(ii) No. Leave was granted at the request of the men.

PAYMENTS TO PIECE-WORKERS IN THE GOVERNMENT OF INDIA PRESS, DELHI, FOR MEAL INTERVALS AND IDLE TIME.

140. THE HONOURABLE MR. G. S. KHAPARDE : Will the Government be pleased to state whether any distinction is made amongst piece-workers in the Government Press, Delhi, in granting payment for meal intervals and idle time ? Is it a fact that some men are paid and some are not ?

THE HONOURABLE MR. A. C. MCWATTERS : The reply is in the affirmative. Men recruited after 1st November, 1922, are not paid for meal intervals and men recruited after 16th July, 1925, are not paid for idle time.

NORMAL WORKING HOURS IN THE GOVERNMENT OF INDIA PRESSES.

141. THE HONOURABLE MR. G. S. KHAPARDE : Is it a fact that in the Government of India Presses the Government has limited the normal working hours to 48 hours a week ? If so, do the 48 hours include rest intervals ?

THE HONOURABLE MR. A. C. MCWATTERS : The answer to the first part of the question is in the affirmative, and to the second part in the negative.

NORMAL WORKING HOURS IN THE GOVERNMENT OF INDIA PRESSES.

142. THE HONOURABLE MR. G. S. KHAPARDE : (a) Is it a fact that in the Government Presses the normal attendance hours from Monday to Friday are 9½ hours a day ?

(b) Is it a fact that under the factory laws in England 48 hours a week includes rest intervals ? If the answers to both (a) and (b) are in the affirmative, why is the same principle not observed in Government Factories and Printing Presses in India ?

THE HONOURABLE MR. A. C. MCWATTERS : (a) The normal working hours of the Government of India Presses are 8½ hours a day from Monday to Friday excluding rest intervals.

(b) Factory legislation in England does not provide for a 48 hour week for all workers. The second part of the question does not therefore arise.

f the C.

GRANT OF LEAVE ON FULL AVERAGE PAY TO OFFICiating AND TEMPORARY STAFF IN THE GOVERNMENT OF INDIA PRESS, ALIGARH.

143. THE HONOURABLE MR. G. S. KHAPARDE : In the Government of India Press at Aligarh is leave on full average pay granted to officiating and temporary staff according to the provisions of Supplementary Rule 285 of the Fundamental Rules ? If not, why not ?

THE HONOURABLE MR. A. C. MCWATTERS : Till lately leave under Rule 285 of the Supplementary Rules has not been granted to the officiating and temporary staff in the Aligarh Press. Orders have been issued by the Controller of Printing that leave should be allowed in accordance with the provisions of this rule.

RESOLUTION RE CONSTITUTION OF A SEPARATE BRANCH OF THE SECRETARIAT TO DEAL WITH QUESTIONS RELATING TO INDIANS OVERSEAS.

THE HONOURABLE MR. G. A. NATESAN : (Madras : Nominated Non-Official) : Sir, the Resolution which I have tabled is as follows :

“ This Council recommends to the Governor General in Council to constitute a special branch of the Secretariat with a Secretary at its head for dealing with questions relating to Indians overseas.”

It is a short Resolution, but I venture to think the subject is one of great importance and indeed of growing importance. The history of this question may very briefly be told. At one time Emigration was in the hands of the Commerce Department. At another time it was in the hands of the Revenue and

Agriculture Department, until finally it was shuffled on, if I may say so, to the Department of Education, Health and Lands. It will not be wrong to say that till recently there was no continuity of departmental control in regard to this very important subject of Emigration and it was more or less bandied from one office to another, little regard being paid to the intrinsic importance of this subject. For some years past this question of Emigration has been in the hands of the Department presided over by the Honourable Sir Muhammad Habibullah, the Leader of our House. This Department, if my information is correct, has a Secretary, a Joint Secretary, an Under Secretary, and at present an additional Under Secretary. It deals with a multitude of subjects, all of them important. It deals with Education, Agriculture, Forests, Land Revenue, Archæology, Survey of India, Medicine, and Public Health. To these subjects is also added the subject of Emigration. The question for consideration is whether, in view of the growing importance which this question of Indians overseas has of late been assuming the present staff is quite adequate or whether we should appoint an additional Secretary to look after this very important question. Honourable Members of this House may not be aware that we have nearly 2,395,000 Indians in different parts of the British Empire. You have a considerable number in Ceylon, in Malaya, in Kenya, Zanzibar, Tanganyika, Jamaica, Trinidad, British Guiana, Fiji, Rhodesia, Canada, Australia, South Africa, other places and also in the United States of America ; and I shall not waste the time of the House by narrating the number of Indians in other parts of the world as well. Within the last 20 years, as you might be aware, this problem of Indians overseas has been causing considerable trouble and anxiety to the Government and to the people of this country. I am sure every one is happy to recollect the fact that in this matter of fighting for the rights of our countrymen overseas, the Government of India and the public in this country have taken a wholehearted and united view, and it is because that has been the case that in most of the claims which the Government of India put forward they have been able to succeed. I do not for a moment venture to suggest that this question of the rights of Indians overseas has in any way been neglected. If I remember aright, since the time of Lord Hardinge particularly great and sustained interest has been taken in this question ; and during the last few years, under the guidance of the Honourable the Leader of the House and his able staff it has been achieving considerable success in many cases where success was really despaired of by every body. But, as you are aware, Sir, the interest has more or less been spasmodic. As occasions arose and as trouble arose, the Government have had to apply themselves to the task, and the staff which had other work to do was unable to give its undivided attention to this. You will remember when there was trouble in South Africa, first our able and energetic Secretary, Mr. Bajpai, was sent ; and later on when the trouble grew still further, when it was necessary that a responsible delegation should be sent, it was sent under the distinguished leadership of the Honourable the Leader of the House. During their absence the work of the other departments in their charge was carried on by other people here specially deputed for the purpose. That only makes us ponder over the fact that crises may arise, situations might develop which might make it absolutely necessary that this subject should receive exclusive attention at the hands of a department specially constituted for the purpose. To-day, as you are aware, there are still many outstanding problems in regard to Indians overseas, not only in South Africa, but in East Africa, Malaya and in Ceylon, and it was only the other day that a cablegram was received that in connection with the new constitution which they proposed to have in Trinidad the rights of Indians might be in jeopardy. I am only stating it, though I am told

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that the apprehension of the public in regard to this matter has been unfounded; I wish it were so. Then again this morning news has been received of trouble in regard to the position of Indians in Kenya. All this only shows that you cannot say that this problem has been satisfactorily solved, because even in cases like South Africa where we thought the problem had been solved—and I trust it has been solved very satisfactorily—we occasionally get a report that some new legislation or new trouble might arise in which the interests of Indians there might be affected. The question that I wish to put for the consideration of the House, and particularly of the Honourable the Leader of the House, is whether in his opinion the present arrangements are satisfactory. I am quite willing to admit—and I am sure I am but stating a bare fact—that the work hitherto has been done satisfactorily. But is the department so fully, so satisfactorily manned in personnel that it is enough to cope with the difficulties and new situations that might arise at any time? At any rate our past experience warrants such a necessary question. I think it is absolutely necessary that there should be a special department of the Secretariat which would devote its exclusive attention to this question of Indians overseas. They should make a comprehensive study of these problems of administration and of policy in lands where different races have settled side by side. I also think it is absolutely necessary that provision should be made for facilities to this staff to collect direct experience of conditions under which Indians live in different parts of the Empire, particularly parts to which emigration is at present allowed. And here I might point out that while all other departments of the Government of India publish something like an annual report—a return of the doings and operations of each department—there is absolutely no such return now in regard to the condition of Indian emigrants overseas. Even those who are interested in this subject—and I may claim I have paid some attention to it for the last twenty years—find great difficulty in getting accurate and reliable information regarding the exact position of our countrymen in different parts of the world. Some of us no doubt turn now to a very valuable publication which is at present issued by the Times of India Press, Bombay, called the Indian Year Book; but even that book does not give all the information which one would like to have from an authoritative source; and I do hope that whatever may happen to this Resolution, the Government of India will try its best with the limited staff they have at their disposal to publish an annual report of the conditions of Indians overseas. It will be good from the point of view of the office which will have ready at its elbow a book containing all the available information, and from the point of view of the general public, who have often to discuss these questions and deal with them in some way or other, it will be satisfactory if they are able to turn to an authoritative source giving information regarding the conditions of our countrymen overseas. Honourable Members of this House might also be aware that of late a new responsibility has been thrown upon the Government of India and upon the department which is concerned with it and it is this. Under the new Indian Emigration Act it has to take upon itself the responsible task of the supervision of the work of Local Governments in connection with the administration of the Act.

Now, Sir, I should like to ask the Honourable Leader, who is in charge of the department, one or two questions the answers to which will strengthen my case, unless my information is totally wrong. I would like to ask the Honourable Member how often officers of his department have visited the ports from which emigrants to Malaya and Ceylon go from the Madras Presidency. Let me pause here and say that I am not unmindful of the fact that the Honourable Member while he was in Madras visited Negapatam, and on a very rainy

morning went to Avadi to see the inspection depôt there; but what I am drawing attention to through my question is this : Is it not necessary that officers of the department should be specially deputed to watch this work not only at headquarters but occasionally make tours of inspection to all these places where the work of emigration has to be supervised in some form or other ? Very recently, as you are aware, Sir, a further responsibility has been thrown upon the Government of India to look after those who have been repatriated from South Africa, and many of you might be aware that the South African Government very recently sent an officer here by the name of Mr. Venn, to acquaint himself with the conditions of those who are returned from South Africa and to study other emigration problems. I think I might fairly claim that the growing importance of this question of Indians overseas and the responsibility which has now been added to the work of this department make it necessary that some special staff should be asked to deal exclusively with this question, particularly if one values and believes in continuity of policy in regard to a subject of this description. I may perhaps also draw the attention of Honourable Members of this House that besides looking after these, at present there is a special staff in different places which are under the direct supervision of the Government of India. In the Madras Presidency I believe they have got a Protector of Emigrants, a Medical Officer of Emigrants and other officers ; in Bengal they have a Protector of Emigrants ; in Bombay there is an officer of the same description and also in Karachi. Abroad we have an Agent to the Government of India in the person of the Right Honourable V. S. Srinivasa Sastri with a Secretary and an office ; and we have an agent to the Government of India in Ceylon and also in Malaya. I presume all these officers are constantly in communication with the Government of India and are sending them reports from time to time in regard to questions which affect the interests of our people there ; and one would naturally expect that the work of this department will be growing not only in volume but also in importance.

Perhaps I should state to the House that the suggestion which I have made to-day regarding the constitution of a separate secretariat is not my own. There is nothing original about it. Indeed, the suggestion was made by a very great and distinguished friend of India, a greater and nobler Englishman than whom India has not known for sometime past and one who has identified himself with this work, and whose work, self-sacrifice and labours have been appreciated by everybody and about whom His Excellency the Viceroy has more than once made a public reference, I refer to Mr. Andrews. In October 1927 he drew attention to this question in the columns of the *Pioneer* and he advocated that the time had come for the creation of a Separate Member in charge of External Affairs, of which the treatment of Indians abroad will undoubtedly be the most important one. But he added, and I think very correctly, that it is quite possible regarding that suggestion there may be differences of opinion, having regard, however, to practical politics and in view of the fact that the constitution of the Government of India is at present being examined and there is a Statutory Commission specially to look after that business, I certainly do not think it proper or expedient, nor will it serve any useful purpose, to make this suggestion now. I have therefore confined myself to the second suggestion, that the time has come for constituting a separate Secretariat and staff to look after this question.

Sir, I may be told that it will be a costly business. I therefore took the trouble of examining exactly what the expenditure will be, and I was very glad to find, from the information available in the reports of the Standing Finance Committee, that the Government of India at present derive an income of about 3 lakhs of rupees per annum by levying fees from emigrants whose migration is

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governed by the provisions of the Indian Emigration Act, and unless my information is wrong—and I speak subject to correction—they do not spend more than Rs. 1,10,000 annually out of this sum. And even if the present source of their income was not available, I would press my suggestion on account of the intrinsic importance of the question. I may point out here that in England at one time many questions were under the portfolio of one Minister, but as time and occasion arose, and as emergency demanded, they thought it fit to create separate departments and separate portfolios. Most of you are aware that the problem of the Air Force, for instance, is no longer under the control of the War Office as it was before. So also the problem of Labour and Mines is no longer under the control of the Board of Trade, and for both these questions separate departments have been created presided over by Ministers in charge. This example might well, I think, be followed in this country. I therefore urge, Sir, that the time has come to constitute a special Secretariat with a special staff which will devote itself exclusively to this question of Indians overseas, which will constantly keep in touch with what goes on in all these places where a number of our people are pursuing their peaceful avocations, and which at any time will have all possible information which it might reasonably be expected to have. More than anything else, the moral value of it will be very great. Most of our countrymen who are now carrying on their avocations in the different parts of the British Empire will be specially glad, indeed they will be grateful to the Government of India not only for what it has hitherto done for protecting their interests, but they will feel doubly grateful if they find that the Government of India here have realised the growing importance of this subject and have therefore thought it necessary to constitute a separate department which will devote itself exclusively to this question.

Sir, I will only wind up with one sentence, and it is this. I feel I have put my case as moderately as I can and with as many facts and figures as I could possibly get to support my proposition, and having regard to the fact that for years the Government of India, and the people of India have been taking, if I may say so, an identical view in regard to this question, and having regard to the success which has attended the efforts of Government in this direction, I feel I can safely conclude by saying that the interests of Indians abroad require my suggestion to be adopted. I think the interests of the people of India in their fellowmen abroad justify my proposal. More than anything else, the interest which the Government of India itself have been taking in the condition of Indians overseas strengthens the claim I have put forward.

With these few words, I commend my Resolution to the acceptance of this House.

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH (Education, Health and Lands Member): Sir, I am aware that the Honourable Mr. Natesan, who hails from my part of the world, has been evincing an abiding interest in the status and welfare of Indians overseas for nearly two decades if my memory serves me correctly. Indeed, the pages of the *Indian Review*, of which he is the honoured editor, bear eloquent testimony to such interest. It is, therefore, my duty to confess that any views which he may express on this important question deserve the fullest consideration and respect. I am equally aware, Sir, of the interest which people in India have generally been taking on behalf of their fellow nationals abroad. I hope the Honourable Mr. Natesan will allow me to claim the credit that the Government of India are

ever fully alive to their own responsibility in this matter. I do not think I shall be wearying the House by reciting a full, complete and exhaustive catalogue of our activities during the last two years and more in that direction. I shall merely instance a few cases which I hope will convince the House that the Government of India have never been unmindful of their responsibilities in this important matter. Take South Africa, for instance, The Indo-South African agreement, as it is generally known, may well be regarded as a landmark in the history of the relations between the two great countries of India and South Africa. Its first fruit was the appointment of an Agent in that country, and this, indeed, gave us the opportunity to utilise the services of that distinguished Ambassador, I mean the Right Honourable Srinivasa Sastri, in that capacity. That agreement, Sir, has established between the two countries feelings of amity, good-will and better relations, and as a proof of that fact may I not mention the recent instance which I know, when the announcement was made, gladdened the hearts of Honourable Members. I refer to the announcement which I had the pleasure to make the other day that the South African Union, out of respect for the feelings of the Indians, both in South Africa and India, had decided to withdraw clause 104 from the Liquor Bill even after its second reading in their Parliament. (Cheers.) I will add one more solid proof of the feelings of good-will which have been permanently established between the two countries. If Honourable Members had taken the trouble to go through the pages of that historic document, namely, the agreement between the two countries, they will remember that it was therein agreed that some effort should be made by the South African Government for the purpose of uplifting the Indian community, and that the first attempt in that direction should be an examination of the educational needs of the Indians living there. I believe Honourable Member remember that it was only the other day the Government of Natal had appointed a Commission to investigate into the requirements of the Indian community from the standpoint of their educational needs. They asked us to depute an officer to help this Commission, so that the real view point regarding the actual requirements of the Indian community may be presented before that Commission. We have since deputed one officer from the United Provinces and another lady from Madras, so that they may help the Commission in the solution of this most important problem.

Sir, passing on to Ceylon, Honourable Members will remember that from and after the year 1923 both the Legislatures and the members of the Standing Emigration Committee have been urging the desirability of introducing standard minimum wages for the benefit of labourers both in Ceylon and Malaya, and that such rates of wages should be incorporated in the Statutes of the country to make them obligatory on all employers of Indian labour. It was only the other day that this legislation was passed by the Legislative Council of Ceylon, wherein this provision has been definitely made. It is intended that the rates so fixed should not only enable the labourer to live in reasonable comfort, but should also provide sufficient margin for savings, sickness and old age. There are a few other matters of importance which, thanks indeed to the statesmanship of the Colonial Government of Ceylon, they have been able to sanction in favour of Indian labour. I will merely enumerate a few of these to indicate that our efforts in that direction have been fully reciprocated. The maintenance of dependants of the labourers has been made a charge on the employers of labour. Payments of wages earned by labourers before a prescribed date are prescribed by legislation. Other improvements for the health, accommodation and medical care of labourers have been also provided for. Increased maternity benefits have since been granted. Increased facilities for

[Sir Muhammad Habibullah.]

the education of children of labourers have been and still continue to be provided for, and Indians have now been recognised as eligible for a seat on the Boards which function as Local Option Boards.

Let me turn my attention for a minute to Malaya. I am sure Honourable Members will have noticed with gratification the announcement recently made in the public press that for the first time in the history of Malaya an Indian gentleman has been appointed as a member of the Federal Council of the Federated Malay States, thanks indeed to the statesmanship of His Excellency the Governor of that Colony. Even here standard rates of wages have been introduced already in what are called the key districts in the Federated Malay States, as also in all the departments under the control of the Colonial Government. The idea is that these rates should be introduced gradually into the other districts of the federated as well as the unfederated Malay States. Even here similar facilities for education, accommodation, medical care, etc., have been provided for, as in the case of Ceylon.

In regard to East Africa, about which reference was also made, I shall not at this stage say more than that His Majesty's Government have appointed a Commission which is known as the Hilton-Young Commission to investigate into certain questions according to the terms of reference which have been published. It was pressed on our attention, and we regarded it as a very reasonable request, that we should send a deputation from India to go to East Africa for the purpose of helping the Indians to prepare and present their case before the Royal Commission. We have accordingly deputed the two best men that we could have spared for the purpose, namely, Messrs. Kunwar Maharaj Singh and Ewbank. They were very well received by the Indians there, and we have proof that they have done very useful work. The East African Indian Congress at their special meeting passed a resolution thanking the Government of India for the help that they had received in this matter.

I have merely enumerated a few of these items not in a spirit of self-adulation but for the purpose of convincing the House that the Government of India has never lagged in its interest on behalf of Indians overseas, and that gradually it has been able, thanks indeed to the good-will of the Colonial Governments concerned, to secure for our Indian nationals living in those Colonies such concessions as it was possible to secure. When I have said all this I do not in the least intend to join issue with my friend Mr. Natesan. Perhaps he is aware—for the details which he has furnished to the House make me feel that he has made rather a critical analysis of the various officers who function in the Department of Education, Health and Lands, and the duties which they have got to discharge in the several departments under their control—that practically from August 1925 we have added an officer temporarily to our establishment so as to enable the permanent officials holding superior posts to devote as much time as they legitimately ought to the important question of Indians overseas, and I may add that such help has enabled them to discharge their duties in this respect very efficiently and very satisfactorily. But at the same time, Sir, the Resolution asks that the Governor General in Council should constitute a special branch of the Secretariat with a Secretary at its head for dealing with questions relating to Indians overseas. I do not expect that the Honourable Mr. Natesan would ask from me now and at once on the floor of this House an expression of my opinion as to what I would do when I consider his Resolution after the preoccupations of this Session of the Legislature are over and I have some leisure at my disposal to devote to the consideration of this question. The only thing I can tell him at the present moment will be that we shall certainly consider his Resolution with sympathy. We

must I think try and steer clear not only of false economy but also of avoidable extravagance. The best method of securing assistance, if indeed assistance were needed, would be determined by various considerations, and I cannot now at this stage bind myself or the Government to any definite action which it may be possible to take on this Resolution. I must be left to exercise my discretion in the best manner that I can, keeping in view of course the importance of the question; and from our past record of work, some of which I have ventured to place before the House to-day, am I asking too much if I ask the House to trust me? I can assure them that such trust will not be misplaced. In view of this brief statement, Sir, which I considered it necessary to make at the earliest stage possible, I feel sure that my Honourable friend from Madras—the city to which I also have the honour to belong—will not press his Resolution but that he will withdraw it on the assurances that I have already given him.

THE HONOURABLE MR. G. A. NATESAN: Sir, I should only like to say a few words in reply. I desire to thank the Honourable Member in the first place for his kind remarks about me, and I am sure the public will be very much interested to have the account given by him of the work done by his Department in regard to Indians overseas. It must be cheering news to those Indians to know that the Government of India is working wholeheartedly in their interests.

I think I did make a mistake in not referring to the fact that a special officer has been added to the staff since August 1925, and I am glad the Honourable Member drew my attention to the fact which somehow or other escaped my attention. But I may point out that the whole point of my Resolution is that such an officer should be made a permanent feature of the Department and that he should devote himself exclusively to this question of Indians overseas.

I am certainly aware that we should avoid false economy on the one hand and extravagant expenditure on the other; but if it is admitted that a special Secretary or a special officer with the necessary staff is required and is necessary, it will cost not more than Rs. 30,000 annually, and, having regard to the fact that the Department realises as much as 3 lakhs of rupees from Emigration fees, I think the claim I have made is not in any way an excessive one nor an unreasonable one. However, I feel after the remarks that fell from the Honourable Member that this question will receive his attention and I should not press my Resolution. I will not therefore detain the House any longer. I beg therefore in accordance with the rules for permission to withdraw my Resolution.

The Resolution was, by leave of the Council, withdrawn.

RESOLUTION *RE* TRIBUNALS FOR THE TRIAL OF OBJECTIONS TO, AND APPEALS AGAINST, ASSESSMENT TO INCOME-TAX.

THE HONOURABLE MR. P. C. DESIKA CHARI (Burma : General): Sir, I move the Resolution standing in my name and which runs as follows:

“This Council recommends to the Governor General in Council to introduce legislation to amend the Indian Income-tax Act with a view to the trial of objections to, and appeals against, assessment by tribunals presided over by judicial officers other than the income-tax authorities.”

Honourable Members of this House are well aware what the income-tax law is, as most of them have been at one time or another the agents of the income-tax administration or the victims of it. Sir, it is therefore unnecessary for

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me to occupy the time of the Council long over this Resolution. The Council is aware that the Government in the Income-tax Department and in the matter of disposing of appeals and objections to assessment sits as a judge in its own cause. I would even go further and say that the Government through its income-tax authorities is party, advocate, judge and witness all combined. This position is clearly brought out in the Report of the Taxation Inquiry Committee though they have not suggested any practical remedies for it ; but Dr. Paranjpye, one of its members, made certain practicable suggestions which can very well be followed. I dealt with those suggestions on a former occasion and it is unnecessary for me to repeat them here. This characteristic of combining in one the position of party, advocate, judge and witness is so patent that one of the great experts on fiscal matters and especially in income-tax—I mean Mr. Sundaram who is Secretary to the Central Board of Revenue in his able, masterly and most exhaustive work on income-tax—took very great pains to argue the matter out in this way : he said though the income-tax authorities are courts legally authorised to take evidence, the proceedings before those courts are not judicial proceedings except for the purposes of the provisions of sections 193 and 228 of the Indian Penal Code and that the rules of evidence as found in the Indian Evidence Act do not apply to such proceedings. Sir, he had to take up the position of an apologist for the income-tax official because, as Secretary of the Board which is responsible for the administration, he was bound to do so and to go through this painful process of arguing and practically putting forward an absurd argument for the purpose of obviating the necessity of admitting that the Government through its Income-tax Department acts as party, judge and witness. Sir, the position has been considered by several High Courts. The Madras High Court in the case of *Guruva Pillai v. the Commissioners of Income-tax* called upon the Income-tax Commissioners to state a case on the ground that the income-tax officer disbelieved the returns and the accounts of the assessee and based his assessment on other materials gathered by himself from other sources. This would show that the Madras High Court is of opinion that the law of evidence and the Evidence Act applies to these income-tax officers. In another case, I believe, in the Punjab—*Bajinath v. the Commissioner of Income-tax*, the High Court distinctly held in 2 Income-tax Cases, 176, that the income-tax officer should be governed in his procedure by judicial considerations and should act only on legal evidence and not on hearsay. There again this principle that the income-tax authorities should be bound by the Evidence Act was affirmed. But the position is forcibly put in a case reported in 50 Calcutta in *re Bushan Priya Chowdhriani*. There the assessee made a return stating that he had no income from a particular source. The income-tax officer called upon him to prove that negative statement—an outrageous procedure—and in the absence of such proof the income-tax officer framed an arbitrary assessment on information available to himself from some sources. There was an appeal and the Assistant Commissioner of Income-tax—as all Assistant Commissioners of Income-tax do in such cases—supported the income-tax officer and upheld the decision. The matter went up to the Commissioner of Income-tax and there happened to be a fair-minded Commissioner—a rare specimen of it—in Calcutta. This is what he said :

“ The question stated admits in my opinion of one answer. The ordinary principle of evidence applies and the burden of proof is on the party who would fail if no evidence were produced, that is, the officers of the Income-tax Department. The latter cannot proceed on general assumptions and reject the assessee's verified statement. If an assessee states that he has no income from a certain source and the officers of the department disbelieve him, it is for them to prove that he has so much income and not for him to prove the reverse. Any assessment based on the inability of the assessee to prove his negative statement and on general assumptions only is bad and should be cancelled.”

Sir, the High Court very rightly upheld this view. I would therefore submit that it is absolutely clear that the position of the income-tax authorities in India is that of a party as representing the Government and the income-tax officer cannot claim to be placed on a better footing than the assessee himself who is the opposite party in the matter of trials of income-tax cases. Sir, if I may be permitted to use a strong expression, the income-tax proceedings under the present Income-tax Act are opposed to all principles of justice, equity and good conscience, and I would say they are a travesty of justice.

Sir, one of the very first Resolutions which I tabled as soon as I came to this Council was to move for a small change in the personnel of the Assistant Commissioners of Income-tax. I moved a Resolution in 1926—Delhi Session—recommending that in all cases of future appointments only officers of judicial training and experience be appointed as Assistant Commissioners of Income-tax. I thought when I tabled that Resolution that I was asking for the acceptance of a self-evident proposition. On that occasion I reviewed the various provisions of the Income-tax Act under which the Assistant Commissioners had to exercise judicial powers as courts. I showed how necessary it was for an officer doing appellate work of a really legal character to have a fair knowledge of the rules of the Civil Procedure Code and of the Evidence Act, and a special knowledge of the income-tax law, a judicial frame of mind and a thorough legal and expert training in law, to enable him to decide the various complicated questions that come up for decision. Sir, as Honourable Members are

aware, that Resolution was opposed by Government. They
12 NOON. said that the primary duty of an Assistant Commissioner of Income-tax was to check and supervise the duties of income-tax officers, and that the appellate powers of an Assistant Commissioner of Income-tax were of a secondary nature. They further said that if my Resolution were accepted, it would wreck the whole of the Income-tax Department. Sir, I had no chance of getting my Resolution through at that time, and so I withdrew it. I waited, because I could not bring another Resolution on the same subject within one year from that time, and as soon as I could do it I tabled a Resolution during the last Delhi Session advocating the adoption of the equitable principles of the English Income-tax law inclusive of the very successful system which has been giving the utmost satisfaction in England by devising a scheme corresponding to the Additional and General Commissioners, a body of fair and impartial men with expert local knowledge. Sir, an amendment was tabled and adopted to appoint a Committee of the two Houses of the Legislature to make an inquiry and to suggest changes on the lines recommended by my Resolution. The Government, if I remember aright, did not even challenge a division. In the other place in answer to a question the Government said in all their wisdom that no useful purpose would be served by taking any action on the Resolution which was adopted by this House, at any rate by the non-official side, unanimously. That is a very good compliment indeed to people who can claim to speak with some authority at least on income-tax questions.

Sir, the object of my Resolution is to tell the Government that a very great and useful purpose will be served by doing something effectively to overhaul thoroughly the whole of the outrageous system of income-tax tribunals which we have in this country and which in actual working results in a travesty of justice as I have already stated. Sir, income-tax is a form of direct taxation which has been long in existence in several western countries, and all the western countries have thought it fit to introduce equitable legislation to reconcile the people to the existence of this form of direct taxation, and all those western countries which have got this direct form of taxation have also got

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a just and impartial tribunal where the Government agent of income-tax and the assessee are placed on exactly the same footing in the matter of rights, and in the matter of opportunities for stating their case and for substantiating their objections. Sir, on the last occasion I described at great length the system in vogue in England, and I do not like to repeat it. I find, Sir, that a system similar to that is in vogue in several other European countries, and I would just refer to two European countries. Under the Austrian system what is called a body of trusty individuals representing the tax-payers are elected by the local District Councils. In cases of doubt, these trusty individuals prepare a list and hand it over to the Assessment Commission comprising the President appointed by the Minister of Finance and the other representatives one-half of whom are elected by the tax-payers and the other half appointed by the Government. There is a further appeal from this to another body a Central Commission of 12 Members and from that to the highest court. Then again in Italy a list is prepared of income-tax payers by the Municipal Council in the various communes. There I am told, and I read from various authors and persons who are in a position to judge of it, that the fiscal agent is very moderate and that he is very anxious to come to an amicable settlement with the assessee.

THE HONOURABLE THE PRESIDENT: The Honourable Member is dealing to a considerable extent with matters leading up to the assessment. His Resolution does not deal with that subject. It deals solely with the trial of objections and appeals. I would ask him to start with the assessments as an established fact and get on to the objections and appeals.

THE HONOURABLE MR. P. C. DESIKA CHARI: So far as I am aware, Sir, I have only dealt with one sentence with regard to the way in which assessment is made, and I am not aware of any transgression in other directions. However, I will confine myself only to the provisions relating to the tribunals for dealing with objections and appeals. If anybody is dissatisfied with the assessment by the fiscal agent there is an appeal to a tribunal composed of the President appointed by the Prefect and four representatives elected by the taxpayers. As against this there is an appeal to a provincial council consisting of one representative of the Government, *i.e.*, one representative appointed by the Prefect, who is the President, one representative of the Chamber of Commerce, two representatives of the department of direct taxes, and if anybody is still dissatisfied, there is a further appeal to the Central Commission. On question of law there is a further appeal to the courts.

Sir, my object in detailing to some extent the tribunals adopted in other countries which I have stated is to show that even in western countries they have definitely recognised the principle that Government is as much a party as the assessee himself, and as in the case of civil disputes between the Government and the party, there are fair and impartial tribunals to adjudicate upon disputes and differences between the two sides in income-tax cases. Sir, when we have thought fit to introduce this western system of taxation, why should we not introduce also those tribunals which naturally go along with that system of taxation. You may say that that particular system is not quite suitable to India, but why not devise a system on those lines whereby you can obviate this objection and do justice to every one concerned?

I do not propose to labour this self-evident proposition that it is necessary to have an impartial tribunal. I would proceed and ask that, if any change is necessary, what is the next solution of the problem?

Sir, the civil courts and the civil judges have established a reputation for independence, for integrity and for a sense of fairness, which will not be denied by anybody. These pillars of justice, which are the greatest props of British rule, are available, and why should we not take advantage of them? I would suggest that these courts and judges may be availed of for the purpose of disposing of income-tax appeals. But it may be said that these civil courts are already overworked. What is the harm in appointing additional judges who would deal with income-tax cases and in those very courts? Similarly, it was said that the present Income-tax Act provides generous provisions, inasmuch as there is reference allowed to the High Court on questions of law and it is proposed to extend the scope even to questions of fact. This is all very well, but before a man can go to the High Court he must first submit himself to humiliation by submitting to the judgment of his opposite party the income-tax officer, and then he will have to submit to another ordeal in the shape of a farce of an appeal before the Assistant Commissioner. Then he will have to go and petition the opposite party once again, that is the Income-tax Commissioner, to state a case to the High Court. The proposition has simply to be stated to be rejected. This system is obviously unfair. If for any reason it is considered that the civil courts are not the proper tribunals, there is one other alternative, namely, of having separate tribunals. There would be no objection so long as you have those tribunals presided over by civil judges, and provided also you place these judicial officers under the control of the High Court and not of the Income-tax Department. This I say only as an alternative, if regular civil courts cannot be utilised.

Then I come to the actual working of the Act by the Income-tax authorities. The Act confers vast powers on income-tax officers incommensurate with their status and official position. I find the average income-tax officer proceeds on the assumption that it is his duty to consider that in a vast majority of cases the assesses' returns are incorrect and that the assesses' accounts are wrong. Taking advantage of the position which the law gives him he proceeds on that false assumption, and the result is he gives a final assessment which is of a very crushing and unjust character. I think these Income-tax officers are under the impression that the only criterion by which their work will be judged is the extent to which they can show a progressive yield in the areas under their charge and in the case of the appellate authority, the Assistant Commissioner of Income-tax, he is also actuated by the same laudable idea of showing a larger yield in the larger area under his charge. The income-tax authorities are actually encouraged in this sort of idea. In the case of an appeal from one subordinate officer to another in the same department, both have the same objective. The superior officer feels himself in duty bound to support his subordinate; if for nothing else, to show that the administration is not diseased at the root. In these circumstances it goes without saying that there is a very great discontent among the upper and lower middle classes, not to speak of the captains of industry and trade, who are also labouring under this crushing and ruinous burden in most cases unjustly imposed.

Sir, I would say, as I have stated on former occasions, that the way in which the Income-tax Act is operated and the present income-tax tribunals established work in this country, it leaves people under the impression that these income-tax authorities are—to use the expression used by Sir John Trevelyan in 1860 in connection with income-tax—avatars or incarnations of the evil deity come out to poor India in all their nakedness to impose an effective means of torture.

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Sir, I appeal in the name of British justice to do justice to the assesseses and also to the income-tax officers who would certainly give a better account of themselves and make themselves more useful if they are not by this system deprived of all human ideas of feeling, sense of justice and of conscience.

With these words I commend the Resolution to the acceptance of the House.

THE HONOURABLE RAJA NAWAB ALI KHAN (United Provinces : Nominated Non-Official) : Sir, I rise to support the Resolution which has just been moved by the Honourable Mr. Chari, on three grounds. In the first place the present procedure is objectionable in itself, because under it the authority assessing the income-tax is the same which hears objections against it. Now, Sir, if the principle of combining the prosecutor with the judge in one and the same person is bad, as undoubtedly it is according to all juristic notions, then I submit that the system of which Mr. Chari complains is positively vicious.

My second ground is that the income-tax is levied from a very large class of persons ; a class much larger than those who come under the criminal law, and therefore having regard to the numerical strength of the class affected by the income-tax laws, it is necessary, particularly in view of the present atmosphere of political distrust, that the administration of this branch of fiscal law should not only be pure but also above suspicion. Sir, the memorable observation of Sir Harvey Adamson in connection with the separation of the judicial from the executive applies with equal force—I will go further and say that it applies even with greater force with regard to the income-tax.

My third ground is that the procedure now followed compares unfavourably with the procedure followed in cases under the Land Acquisition Act. The valuation by the Land Acquisition officer if unsatisfactory is determined by judicial tribunals. Now, Sir, if for the sake of a few persons an ir-reproachable procedure is provided, why do Government inflict a hardship on a much larger class of persons who have a grievance on account of the excessive assessment of the Income-tax ? Sir, in justification of the existing practice two points may be urged—first, that a similar procedure prevails in England, and secondly that the final appeal lies with the High Court in this country. With regard to the first I submit, Sir, that it is hardly fair to justify the procedure prevailing in this country on the analogy of that prevailing in England or any other country where the Executive is responsible to the people. As regards the appeal to the High Court, the trouble and expense after a case has been before two income-tax tribunals is extremely discouraging and even prohibitive.

With these words, Sir, I support the Resolution.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab : Non-Muhammadan) : Sir, I rise to support the Resolution in principle although, Sir, I do not agree with my Honourable friend Mr. Desika Chari on the adverse criticisms that he made upon all the income-tax officers.

THE HONOURABLE MR. P. C. DESIKA CHARI : You cannot afford to ?

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : No, you are wrong in holding this view. I do not like your strictures as these strictures have unjustly been passed on every income-tax officer. My own experience in the Punjab supports me. In the beginning in the Punjab income-tax officers were mainly recruited from the judicial and executive services of the province. Later on, in response to public opinion, it was decided and probably prescribed that every income-tax officer must undergo an examination in accounts.

Knowledge of accounts, Sir, naturally forms one of the chief qualifications which an income-tax officer ought to possess and, as far as my information goes, Sir, every one of the income-tax officers in the Punjab at least has now to pass the accounts examination.

The second point, Sir, is secrecy and in case the income-tax officer has to go before the ordinary judicial courts I think secrecy will suffer besides unusually long delays to which appeals may be put. As far as I know, in the ordinary judicial courts cases now take a very long time, and business people cannot afford to wait so long for appeals in their income-tax assessments to be decided. Therefore, Sir, I would suggest that independent judicial officers, who may have the accounts qualifications as well as technical knowledge of the subject be employed solely upon income-tax appellate work to hear and decide appeals. It is therefore simply on the principle that I support the Resolution.

THE HONOURABLE MAJOR NAWAB MAHOMED AKBAR KHAN, (North-West Frontier Province : Nominated Non-Official) : Sir, I am wholly in accord with the Resolution brought forward by the Honourable Mr. P. C. Desika Chari demanding the introduction of legislation to amend the Income-tax Act so as to provide for the disposal of the objections and appeals against assessments by a tribunal presided over by judicial officers other than the income-tax authorities. At present there is no provision to that effect in the Income-tax Act, with the result that the assesses cannot prefer their appeals against assessments in any judicial court. The only course open to the assesses is to prefer appeals against assessments before the Assistant Commissioner or the Commissioner of Income-tax, who, as part and parcel of the same Department, cannot be expected to disagree with what have been established by their subordinates or the assessing officers otherwise known as the income-tax officers. Now a good many of these officers have no judicial training at all and consequently they are not fit to make proper decision of several points connected with the assessments from a judicial point of view. In many cases of assessment there arise several complicated questions of law which the income-tax authorities are not able to decide for want of judicial training.

I do not think that ample instances are forthcoming in which the appellate courts under the Income-tax Act have not upheld the assessments made by the income-tax officers. On the other hand, there is a tremendous lot of such cases in which the Assistant Commissioner and the Commissioner of Income-tax have thought it wise to confirm the assessments made by the assessing officers in spite of their being highly excessive and merely based on conjectural grounds. It follows, therefore, that this absence of the provision regarding disposal of the objections or appeals against the assessments by a judicial court has invested the income-tax officers with powers before which the assesses have no choice but to succumb on account of their helplessness in asking for their redress in a judicial court. The income-tax officers are making assessments to their own liking in absolute disregard of the facts and figures produced by the assesses and this highhanded action of theirs is chiefly to be accounted for by the fact that they have no fear of judicial proceedings against them in the shape of appeals against their assessments in judicial courts. They know full well that appeals against assessments are to be made to no other but their immediate officers who, in view of their being members of one and the same Department, cannot disagree with the conclusions arrived at by them in respect of the income-tax assessments. The result is that assessments are being made in absolute disregard of the facts and figures produced by the assesses with regard to their incomes and in certain cases no regard is even had to

[Nawab Mahomed Akbar Khan.]

the accounts of the assesseees, and assessments are based on mere conjectures of the income-tax officers. In other words the income-tax authorities are acting as the assessing authorities, the witnesses to assessments and the judicial officers at one and the same time. This state of affairs is investing them with high powers of assessment, to do away with which it seems fairly reasonable that the Income-tax Act should be amended as to the disposal of objections and appeals against assessments, and I think it will be a sure relief to the assesseees if the disposal of these appeals is made subject to a tribunal presided over by judicial officers.

Another point that I would like to refer to in this respect is with regard to the transfer of income-tax authorities from one station to another. I suppose that at present the income-tax authorities are allowed to stick to the station to which they were posted at the time of the inauguration of this Department. This prolonged stay of theirs at one and the same station is at the root of all their highhanded actions in making excessive assessments or confirming the same. In case they are transferred from one station to another after a reasonable period of four or five years, I do not think there will be as much scope for complaint against them as there is at present on account of their being stationed at one station. Apart from this their action in making excessive assessments is deemed to be valuable service to the Government, and thus they are more inclined to make heavy and unjustifiable assessments since they have no fear of any judicial appellate proceedings against their arbitrary assessments.

With these remarks, Sir, I extend my hearty support to the Resolution of my Honourable friend, Mr. Desika Chari.

THE HONOURABLE MR. E. BURDON (Finance Secretary): Sir, I had expected that my Honourable friend, Mr. Chari would on this occasion once more develop his longstanding complaint against the Income-tax Department that it is a judge in its own cause. He repeated this complaint the other day in this Council, even though on that occasion he was supporting the motion of which I was in charge. Now, Sir, the phrase "Judge in its own cause" is a catch phrase and like many other catch phrases, if it is closely analysed, it is found to be misleading; and my contention is that in this particular case the phrase is seriously misleading. Carefully analysed, what is the accusation which in general the phrase conveys? The accusation depicts in general an individual, who is not qualified to be a judge at all, being allowed to decide finally a matter in which he is personally interested and deciding in his own favour not because that decision is right but because he seeks his own personal gain. I submit, Sir, that the matter has only to be put in this plain and direct way to make it obvious that the charge does not fit the case of the Income-tax Department and the work which that department does by way of assessment, the hearing of objections, appeals, revisions and so forth. The Income-tax Department is, I submit, thoroughly well qualified by knowledge and experience to carry out these duties, and it is not in any way an unusual or irregular arrangement that they should be entrusted with very considerable powers of deciding disputes which may arise. It is on the contrary quite an ordinary arrangement. It is a normal feature of the distribution of administrative functions not only in India but in other civilised countries as well. Again it appears to me to be an incorrect use of words to suggest that the Income-tax Department in its decisions is influenced by considerations of personal gain; and I hope I shall be able to prove to the Council a little later by a few statistics that the department is not in fact moved by considerations even remotely resembling personal considerations. Moreover, just as that—possibly mythical—

time has passed when the successful subordinate magistrate was he who was able to show in his periodical returns a large number of convictions—and later, perhaps, an equally high proportion of decisions reversed on appeal—so in the Income-tax Department it is well recognised that increase of revenue, pure and simple, is not the object to be aimed at ; nor is it the sole test by which efficiency is judged. It must also be emphasised that the various grades of income-tax officials are of course not final judges in regard to the matters with which they deal. Their work comes under review, and a reputation for high assessment, where such assessment is not accurate, is not regarded as a good kind of reputation to have. In the Income-tax Department, as elsewhere, there is a strong incentive to make decisions which will survive subsequent scrutiny inside the department and also, if necessary, by judicial authorities outside the department. Sir, I demur very strongly to the charge laid against the Income tax Department that its position or its conduct is that of a judge in its own cause. The charge necessarily conveys among other things a suggestion of departmental moral obliquity which, in the light of the facts which I have stated, can only be described as irrational.

Now, Sir, as my Honourable friend has said himself, the existing procedure in the matter of assessment, investigation, appeal, review, etc., is generally known to Honourable Members ; and I do not think it is necessary to go into the details of the system which is exceedingly intricate, the elaborations being designed as much to protect the tax-payer as to protect the revenue. Broadly speaking, there is a right of appeal on questions of fact to the Assistant Commissioner with a further right to petition the Commissioner for revision, and practically unrestricted right of reference to the High Court and to the Privy Council on questions of law. These are the main features of the procedure in India. In the United Kingdom the main duties of assessment and important powers to decide appeals are given to authorities either belonging to or appointed by the Revenue Department ; that is to say, these functions are recognised as internal functions of the administrative department concerned with the income-tax and the principle is recognised thereby that income-tax law and income-tax practice are matters which require to be dealt with very largely by technical departmental experts. My Honourable friend is of course well aware, and he has mentioned it in the course of his speech, that in certain important respects the procedure and practice in the United Kingdom differ from the procedure and practice in India, notably in regard to the employment of members of the general community with special knowledge of business and trade to assist the official element in their administration. That, however, does not affect the question of principle which I am discussing. I would only add that in the United Kingdom as in India, there is a right of reference to the High Court on questions of law in respect of certain decisions of the Income-tax Commissioners, etc. In the United States of America I find that assessments are made by an official of the Revenue Department, and against these assessments the assessee has two alternative remedies : he may either invoke the assistance of the civil courts or he may appeal to the Board of Tax Appeals. The Board of Tax Appeals is an independent agency in the executive branch of the Government, and I find that in practice the people prefer to appeal to the Board of Tax Appeals rather than to institute suits in civil courts, since the latter course frequently involves delay. I could quote precedents of other countries also ; but I do not think the House will expect me to say too much on this particular point, and I will therefore close this portion of my observations by saying that I claim to have established my proposition that this is a perfectly ordinary and well recognised arrangement that in

[Mr. E. Burdon.]

the main the work connected with appeals should be disposed of within the department and that judicial tribunals should have a limited, though very important, jurisdiction in such matters.

Now, Sir, I think the Council will be interested to hear how Government claim that they can justify the manner in which the system works—the system which we have in India. The argument which I have to contend against is that the Income-tax Department are naturally anxious to keep up the revenue, and to support their own subordinates and therefore cannot be expected to deal impartially with appeals. Now, Sir, I should like to explain to the Council that we have taken this criticism very seriously indeed and have studied most carefully all the facts and information which bear upon its truth or falseness. Honourable Members are aware of course that to-day is not the first occasion on which this criticism has been levelled against the department. Well, Sir, as I have said, having studied the matter most carefully, we have come to the conclusion that the charge has at the present day no substantial foundation.

I will read to the House an extract from a report which Mr. Loftus-Tottenham, the Senior member of the Central Board of Revenue, has recently made on the subject. He says :

“ I have travelled for months yearly all over India, meeting Chambers of Commerce, Indian and European, and other bodies of all kinds representative of the commercial communities, and have read the records of innumerable assessments and appeals. A few bodies with whom I have had interviews have suggested that some non-official machinery should be set up for disposing of appeals. This was also discussed and rejected by the Taxation Inquiry Committee. I need not discuss it again. A proposal that appeals should be heard by the civil courts was placed before me by the Commission Agents of Peshawar and the Hides and Skins Merchants of Amritsar. The latter, however, did not press it and said that they had come to the conclusion that the less they had to do with ‘civil courts the better.’ ”

That, I wish to make it clear, is the opinion of the individuals mentioned and not of Mr. Loftus-Tottenham.

Mr. Tottenham goes on to say that he has never seen any reason to suppose that Assistant Commissioners do not dispose of appeals impartially. In the year 1926-27 the total number of assesses was 3,04,000. In that year the number of appeals disposed of was 18,588. Out of these, 8,565 were successful. In the same year the number of applications for review disposed of was 2,434 and in 855 of these the original orders passed were modified. In the same year, the number of references to the High Court was 35, of which only 10 were successful. The amount of revenue remitted as a result of appeals, review petitions and references to High Courts was Rs. 29,77,283 out of a total revenue collected of Rs. 17½ crores. As the Central Board of Revenue has remarked in one of its Income-tax Reports, the figures go to prove the impartiality of the appellate authorities and the confidence placed in them by the public. Moreover, I wish to emphasise the fact that Assistant Commissioners are subject to the supervision of Commissioners whose impartiality nobody that Mr. Tottenham has interviewed has ever ventured to impugn. In the Punjab itself, Mr. Tottenham has been repeatedly told that the business community have full confidence in the Commissioner. Commissioners generally, and the Commissioner of Income-tax, Punjab, in particular, have repeatedly impressed upon their subordinates that the aim of the Income-tax Department should be not revenue at all costs but accurate assessment. Commissioners of Income-tax have extensive review powers, and any assessee who is dissatisfied with the order of an Assistant Commissioner on appeal can apply to the Commissioner to exercise these powers.

Now, Sir, let us consider what the situation would be if my Honourable friend's proposition were to be accepted and assesses who were dissatisfied

with an order of assessment were required to apply to a civil court for that remedy and were not allowed to have recourse to any other agency. In dealing with this part of my subject, I have already received considerable assistance from the observations made by Rai Bahadur Lala Ram Saran Das. To hand over the appellate work to the civil courts would mean that appellants living at places, where such courts do not sit, would be deprived of the convenience of having their appeals heard at or near their places of residence or business by the touring officers as at present. They would also have to engage pleaders, whereas, at present, under section 61 of the Act, an assessee may be represented before an Assistant Commissioner or Commissioner by any person authorised in writing on his behalf. There would undoubtedly be repeated adjournments of the hearing of appeals and this would not only mean great delay and inconvenience to the appellants, but would increase the expense to which they would be put, both on account of pleaders' fees and on account of journeys to and from the court. It would probably be suggested that during the pendency of an appeal the collection of the tax should be suspended. If so, the effect on the revenue would be extremely serious. If, on the other hand, there were no such provision, the successful appellant would be deprived of the refund due to him for a much longer period than at present. Where questions of law arise in income-tax cases, assesseees can already claim a reference to the High Court. We have recently amended the Act so as to provide further for an appeal to the Privy Council. Again, Sir, the necessity of weighing evidence, properly speaking, hardly arises in income-tax cases. If complete and accurate accounts are produced, there can hardly be any dispute as to the facts. The only cases which remain are those in which owing to the failure of assesseees to produce complete evidence, the assessment has to be based on an estimate. It seems too obvious to need elaboration that the framing of such estimates is not a process that is properly the function of a court of law, nor is there any reason to suppose that judicial officers would be specially well qualified, by training or otherwise, to perform it. Further, and this is a point which was very forcibly put by my Honourable friend from Lahore, assesseees are extremely sensitive about the leakage of information regarding their affairs. I do not know whether it would be suggested that these appeals to the civil courts should be held *in camera*. If they are not so heard, the assesseees' affairs will be dragged into the full glare of publicity. Even if they are so heard, there will be much greater opportunities for leakage than at present.

From the point of view of Government, the proposal is thoroughly objectionable. The possible disturbance in our financial arrangements owing to delays in disposal of appeals has already been mentioned. The Government would be put to the expense of engaging pleaders to represent Government before civil courts all over the country. The expense would be considerable, and experience in the High Court shows that we should have great difficulty in finding competent representatives. Finally,—here I think the whole Council will agree with me—we know that the civil courts are in most places already overburdened with work, and in some cases, at all events, the additional burden that would be cast on them might make it necessary to create new courts.

Now, Sir, I trust the Council will be able, on what I have said, to come to the conclusion that our existing arrangements are not open to the serious charges which have been levelled against them and that they provide sufficiently satisfactory means of protection for the tax-payer, and I feel sure that, in any case, the Council will agree that it would not be a satisfactory

[Mr. E. Burdon.]

alternative, from the point of view either of the tax-payer or of the revenue, that the work of deciding appeals should be handed over to the ordinary civil courts.

My Honourable friend Mr. Chari mentioned another possibility—that of having special courts, but I do not think that he himself was very enthusiastic in his support of this possibility. It is an expedient which might be found to be practicable in smaller countries, but certainly in India it would be an extravagant and impracticable arrangement. Personally I hold the view that in any country it conflicts with sound principles of administration to have permanently constituted judicial tribunals for the purpose of income-tax work alone, and to recruit a special service of officers to preside over such tribunals.

For these reasons I am compelled to oppose the Resolution of my Honourable friend, and trust that the Council will support me in rejecting it.

Speaking the other day on the Income-tax Amending Bill, my Honourable friend, Sir Arthur Froom—he was on that occasion in opposition to me—paid a very graceful and, if I may say so, a very just tribute to the Central Board of Revenue as at present constituted, saying in effect that so long as Mr. Tottenham remained in charge of the Income-tax Department he was sure that the income-tax law would be fairly administered, and that assesses need not fear oppression. I think my Honourable friend might actually be prepared to go further and agree with those who hold that the institution of the Central Board of Revenue itself has been a very great improvement on the old system, and that in itself it has led to the accomplishment of very desirable reforms in the income-tax administration, to the advantage not merely of the revenue but to the advantage also of the tax-payer. While I wish to associate myself with what the Honourable Sir Arthur Froom said of Mr. Tottenham, I would venture to add that I am personally convinced that the principles and methods of administration, for which Mr. Tottenham stands, will endure beyond his tenure of his present office, and that the Central Board have succeeded, and will further succeed, in establishing a good tradition that will endure. (Cheers.)

Sir, complaints of the Income-tax Department are not peculiar to India. It is hardly possible to pick up a copy of the *Times* or *Punch* without finding some serious complaint or sardonic joke on the operations of the tax collector. It is not only the oriental world that dislikes direct taxation in general and the income-tax in particular. But all reasonable men know that the tax is at any rate a necessary evil, and it will be admitted that it is an irrational proceeding to condemn the administration of those who have to collect the tax as a means of expressing dislike of the tax itself. Yet I am sure that many of our critics, if they were to search their consciences, would find that this is their position.

THE HONOURABLE MR. P. C. DESIKA CHARI: Sir, I wish to reply to one or two remarks which fell from the Finance Secretary. He gave one an impression that if the Resolution were accepted, the parties would be required to have recourse to civil courts. The ordinary course of events when two people have disputes applies equally to the parties in income-tax cases. The present income-tax authorities would be there, and there is nothing to prevent the other opposite party, that is, the assessee, from coming to some agreement or compromise with the income-tax authorities. They will be in a better position to induce the income-tax authorities to have a more reasonable

frame of mind in coming to some amicable understanding. In connection with the right of appeal the assessee distinctly stands to gain and would be placed in the same position as the income-tax authorities themselves in negotiating for a compromise. I do not think there is any force in the statement that if this Resolution were accepted the parties would be compelled to have recourse to civil courts, and would be deprived of their right of going to the higher departmental authorities to have redress. They will not be deprived of such right.

Then we are told by my friend the Honourable Lala Ram Saran Das that the introduction of this tribunal would interfere with secrecy. What is there to prevent them from having recourse to the proper income-tax authorities even if these tribunals are established? The assessee will know that they can go to the income-tax authorities and they will also have the right of appeal to a third party, and this fact will change the angle of vision of these income-tax authorities.

As regards the other portion of the speech of my Honourable friend Mr. Burdon, I would only say that I have absolutely no objection to the claim put forward that Government is not the only party, judge and witness in their own cause but they are something more. I have absolutely no objection to their constituting themselves into a mutual admiration society. That is what they have done. That is a very reasonable thing. I don't think any reasonable person will say anything to that course of mutual admiration.

The reasons which I have given have not been sufficiently met, and with reference to the system of taxation in England, I believe the Honourable Mr. Burdon said that there is the official system in England and practically the same sort of procedure is employed there; but I would say that the surveyor of taxes represents the Crown in all cases of dispute between the Crown and the assessee, so that they have got two parties concerned standing in the same position in the matter in income-tax cases. I want the same principle to be introduced here in some other form, in a form that is more suitable to this country.

I also noticed from his speech that he made a reference to the official tribunal in America in addition to the Civil tribunal. I was myself about to dilate on the position in the United States when I was cut short by the Chair. I say if there is any such bias in favour of the official tribunals, there is no harm done to those people who are for the official tribunal, because they will have them in addition to Civil Courts. You are not going to abolish these offices of Assistant Commissioner and Commissioner of Income-tax, and the people will always have an opportunity of going to them and representing their grievances without going to the civil courts.

With these words I submit that the arguments in principle and the arguments advanced as regards the actual working as is found in India stand good, and I believe that no person who is entrusted with the proper administration of the income-tax would demur to the Resolution which I commend to the acceptance of the House. I therefore hope that this Council with one voice will support the Resolution which all people possessed of a sense of justice should support.

Sir, I press my motion.

THE HONOURABLE SIR ARTHUR FROMM (Bombay Chamber of Commerce): Sir, may I rise to a point of explanation? After the Honourable Member has just replied I do not of course wish to make a speech.

1 P.M. The Honourable the Finance Secretary quoted me as speaking

[Sir Arthur Froom]

in unqualified praise of the present Senior member of the Central Board of Revenue. What I said was "we *may* have great faith in the present Central Board of Revenue but who knows what it is going to be in years to come." I contend, Sir, my saying we *may* have great faith did not commit me to sayings that I *had* great faith in the present Board. However, Sir, on this occasion might I tell the Honourable the Finance Secretary that I think by accepting this Resolution we might be substituting King Stork for King Log!

THE HONOURABLE THE PRESIDENT: The question is:

"That the following Resolution be adopted:

'This Council recommends to the Governor General in Council to introduce legislation to amend the Indian Income-tax Act with a view to the trial of objections to, and appeals against, assessment by tribunals presided over by judicial officers other than the Income-tax authorities.'

The Council divided:

AYES—11.

Akbar Khan, The Honourable Major Nawab Mahomed.
Akram Husain Bahadur, The Honourable Prince A. M. M.
Charanjit Singh, The Honourable Sardar.
Chettiyar, The Honourable Sir Annamalai.
Desika Chari, The Honourable Mr. P. C.
Khaparde, The Honourable Mr. G. S.

Mehr Shah, The Honourable Nawab Sahibzada Saiyad Mohamad.
Nawab Ali Khan, The Honourable Raja.
Padahah Sahib Bahadur, The Honourable Saiyed Mohamad.
Ram Saran Das, The Honourable Rai Bahadur Lala.
Umar Hayat Khan, The Honourable Colonel Nawab Sir.

NOES—19.

Abdul Karim, The Honourable Khan Bahadur Maulvi.
Burdon, The Honourable Mr. E.
Corbett, The Honourable Sir Geoffrey.
Das, The Honourable Mr. S. R.
De, The Honourable Mr. K. C.
Froom, The Honourable Sir Arthur.
Godfrey, The Honourable Sir George.
Gray, The Honourable Mr. W. A.
Habibullah, The Honourable Khan Bahadur Sir Muhammad.
Haig, The Honourable Mr. H. G.

Hatch, The Honourable Mr. G. W.
Latif, The Honourable Mr. A.
Manmohandas Ramji, The Honourable Sir.
McWatters, The Honourable Mr. A. C.
Miers, The Honourable Rai Bahadur Pandit Shyam Bihari.
Muhammad Hussain, The Honourable Mian Ali Baksh.
Suhrawardy, The Honourable Mr. M.
Vernon, The Honourable Mr. H. A. B.
Weston, The Honourable Mr. D.

The motion was negatived.

STATEMENT OF BUSINESS.

THE HONOURABLE KHAN BAHADUR SIR MUHAMMAD HABIBULLAH (Leader of the House): Sir, the House will meet to-morrow to enable the Bills, if any, passed by the Legislative Assembly to-day to be laid on the table. The Honourable Mr. McWatters will also move a Resolution recommending that the Council should not ratify the Draft Convention nor accept the Recommendations adopted by the Tenth International Labour Conference. There will be no meeting on Wednesday, the 21st. Thereafter the Council will meet on Thursday, the 22nd, for disposal of Government business.

The Council then adjourned till Eleven of the Clock on Tuesday, the 20th March, 1928.