THE

COUNCIL OF STATE DEBATES

(Official Report)

VOLUME II

SECOND SESSION

OF THE

COUNCIL OF STATE, 1921

SIMLA
SUPERINTENDENT, GOVERNMENT CENTRAL PRESS
1921

COUNCIL OF STATE.

Tuesday, 27th September, 1921.

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

QUESTIONS AND ANSWERS.

Religious Instruction in Schools.

170. The Honourable Diwan Bahadur V. RAMA BHADRA NAIDU : Will the Government be pleased to issue a general Circular to all the Provinces with regard to imparting religious instructions in schools just on the lines the Madras Government had issued a Communiqué recently on the subject ?

The Honourable Mr. SHAFI : The Government of India have already addressed Provincial Governments on the subject of moral and religious education. This fact was stated in reply to the Resolution moved by the Honourable Lala Sukhbir Sinha in this Council on the 15th instant.

The central paragraph of the Circular issued by the Madras Government is taken verbatim from the Government of India's letter.

Industrial Development of India by Indians.

171. The Honourable Raja MOTI CHAND : (*a*) Will the Government be pleased to state if it is their policy to play an active part in encouraging industrial development of India for India by Indians ?

(*b*) If it is the aim of the Government to make India self-contained in respect of men and material ?

(*c*) If so, do the Government propose to take any steps to give effect to the policy ?

The Honourable Mr. H. A. F. LINDSAY : The answer to each part of the question is in the affirmative. Government have taken, and are continuing to take, such steps as they find possible to give effect to the policy which has been indicated generally by the Honourable Member. I would, however, remind the Honourable Member that the development of industries is mainly a Provincial transferred subject, and active measures for giving effect to the industrial policy of the State are therefore largely in the hands of Provincial Governments.

Indian Educational and Medical Services.

172. The Honourable Raja MOTI CHAND : (*a*) Will the Government be pleased to state if Members of the Indian Educational Service and of the Indian Medical Service are always required to be graduates or licentiates of British or British Colonial Universities ?

(*b*) Do the Government propose to take early steps to eliminate the necessity of a journey outside India for the purpose of securing admission to the Educational and Medical Services ?

The HONOURABLE MR. SHAFI : (*a*) The answer is in the negative. A candidate for the Indian Medical Service must possess a qualification registrable in Great Britain and Ireland under the Medical Acts in force at the time of appointment.

(*b*) A journey outside India is not necessary for securing admission to the Indian Educational Service. The question, as regards the Indian Medical Service, is under consideration.

ABOLITION OF RACIAL INEQUALITY LAWS.

173. The HONOURABLE RAJA MOTI CHAND: Do the Government propose to take early steps so to modify or abolish the laws of the country as to remove racial inequality ?

The HONOURABLE MR. H. D. CRAIK : The Honourable Member is doubtless aware that this question was discussed in another place on the 15th September. A Resolution in the following terms was then adopted. That in order to remove all racial distinctions between Indians and Europeans in the matter of their trial and punishment for offences, a Committee be appointed to consider what amendments should be made in those provisions of the Criminal Procedure Code, 1898, which differentiate between Indians and European British subjects, Americans and Europeans, who are not British subjects in criminal trials and proceedings, and to report on the best methods of giving effect to their proposals.

The Governor General in Council proposes to appoint such a Committee shortly.

SUGAR FLOTATION SCHEME.

174. The HONOURABLE RAJA MOTI CHAND : (*a*) Has the attention of the Government been drawn to a paragraph in the *Leader* newspaper of September 9th, 1921, in which it is stated " We are informed that a new sugar flotation with an authorised capital of 50 lakhs is shortly to be put on the Bombay market. It is reported that Mr. Ambalal Sarabhai, the well-known mill-owner of Ahmedabad, and Sir Thomas Holland, are associated with the venture and may become the first Directors ? "

(*b*) Will the Government be pleased to state if Sir Thomas Holland was interested in the promotion of this concern while still in office ?

(*c*) Do the Government propose to consider the advisability of a convention as to how far and in what circumstances gentlemen occupying high financial and other offices under Government might on retirement or resignation engage themselves in business ?

The HONOURABLE MR. H. D. CRAIK : (*a*) Yes.

(*b*) The Government of India have been informed by Sir Thomas Holland that he had never heard of the suggested enterprise, except in the newspaper canard quoted ; he had never met Mr. Ambalal Sarabhai except when he gave evidence before the Industrial Commission in 1917 ; he has never received any communication from him ; he has never been approached by any one else in this connection ; and there is in fact not the slightest foundation for the allegation made in the newspaper.

(*c*) The attention of the Honourable Member is invited to the Resolution of the Government of India on the subject dated the 21st April 1920, a copy of which is laid on the table.

No. 1140.

GOVERNMENT OF INDIA.

HOME DEPARTMENT.

(PUBLIC.)

Simla, dated the 21st April 1920.

RESOLUTION.

The attention of the Government of India has been drawn to a rule laid down by the Colonial Office that an officer who has retired from the Colonial Service may not accept a directorate of a company the principal part of whose business is directly concerned with the Colony or Protectorate in which he has served, or employment in the Colony or Protectorate under such a company, without obtaining the previous approval of the Governor; and they have had under consideration the question whether it is necessary to lay down some similar rule for retired officers of the Indian services.

2. After consultation with Local Governments and careful consideration of their views, the Government of India have come to the conclusion that, while it is not necessary at the present time to lay down a definite rule, it is desirable that retired Government servants, especially gazetted officers, before accepting directorships, partnerships or agencies of, or employment by any company or firm or individual engaged in, commercial business or associated with the management of land in India, should either obtain the consent of the Government of India, or, if the company is managed in London, the consent of the Secretary of State. The Government of India believe that this procedure will conduce alike to the interests of the officers concerned and to those of the services generally, and are prepared to leave it to the good sense and loyalty of their officers to observe the procedure now suggested.

Order.—Ordered that a copy of this Resolution be forwarded to Local Governments and Administrations and to all Departments of the Government of India for information, and that it be published in the *Gazette of India* for general information.

H. McPHERSON,

Secretary to the Government of India.

EDUCATIONAL QUALIFICATIONS FOR SUB-ASSISTANT SURGEONS AND MILITARY ASSISTANT SURGEONS.

175. The HONOURABLE RAJA MOTI CHAND: Will the Government be pleased to state if it is a fact that :—

(*a*) the minimum general education required of both Sub-Assistant Surgeons and Anglo-Indian Military Assistant Surgeons is one and the same, *viz.*, the Matriculation Examination of an Indian University or an equivalent thereof;

(*b*) the duration of medical training is the same for both, *viz.*, four years;

(*c*) the pay of Sub-Assistant Surgeons is Rs. 50 to Rs. 120 *per mensem* without practically any future prospects;

(*d*) the pay of the Anglo-Indian Military Assistant Surgeons is Rs. 250 to Rs. 1,000 with prospect of rising to the grade of Civil Surgeons, a fixed number of Civil Surgeoncies being guaranteed for them?

(*e*) If the replies be in the affirmative, do the Government propose to abolish the inequality between Sub-Assistant Surgeons and Anglo-Indian Military Assistant Surgeons?

HIS EXCELLENCY THE COMMANDER-IN-CHIEF : The answers throughout are based on the assumption that when speaking of Sub-Assistant Surgeons the Honourable Member refers to Military Sub-Assistant Surgeons.

(*a*) No. The standard of preliminary education required of a military sub-assistant surgeon pupil is the matriculation or admission examination of any Indian University incorporated by law, or any other examination or certificate which is regarded by a Local Government or a University as admitting equally with the matriculation to university courses, or any examination recognised as higher than the matriculation.

The standard of preliminary education required of a Military Assistant Surgeon pupil is :—

(*i*) The preliminary examination in Arts recognised by the General Medical Council of the United Kingdom ;

(*ii*) The Intermediate examination in Arts or Science of a recognised University, or the Cambridge Senior Local examination, old standard, according to the revised regulations for 1917 ;

(*iii*) Intermediate examination in Arts of the Madras University, or an examination accepted by the Madras Syndicate as equivalent thereto.

(*b*) No. The duration of the course of medical training is as follows :—

For Military Sub-Assistant Surgeon pupils	...	...	four years.
For Military Assistant Surgeon pupils	...	...	five years.

(*c*) No. The rates of pay drawn by Military Sub-Assistant Surgeons range from Rs. 60 to Rs. 150 per mensem. Proposals for revising these rates of pay are under consideration. In addition to his pay, the Sub-Assistant Surgeon draws certain charge allowances for the sub-charge of an Indian Station Hospital ; these charge allowances vary from Rs. 15 to Rs. 40 per mensem, according to the class of the hospital. A certain number of civil miscellaneous appointments are reserved for military sub-assistant surgeons, in which they drew military rates of grade pay and local allowances.

(*d*) The pay of a Military Assistant Surgeon ranges from Rs. 200 per mensem to Rs. 700 per mensem, according to his grade ; in addition he receives certain allowances. It is a fact that a certain number of civil appointments are reserved for the Military Assistant Surgeon class.

The Government of India do not intend to assimilate the rates of pay drawn by the two distinct classes of medical subordinates. As the Honourable Member will have seen from my answer to part (*a*) above, there is a marked difference, as between these two classes, in the preliminary qualifications required and in the medical courses prescribed. While the military sub-assistant surgeons are trained, for four years, at medical schools, the military assistant surgeons, like the civil assistant-surgeons, undergo training for five years at the Presidency Medical Colleges.

RECRUITMENT FOR MILITARY ASSISTANT SURGEONS.

176. The HONOURABLE RAJA MOTI CHAND : (*i*) Will the Government be pleased to state if it is a fact that :

(*a*) Military Assistant Surgeons are all Anglo-Indians ;

(*b*) all Anglo-Indian Military Assistant Surgeons receive their medical education and training for the service at the entire cost of the Government ?

(*ii*) If the replies be in the affirmative, will the Government be pleased to state the circumstances under which it is necessary to exclude Indians from the service and to spend public money upon the education and training of a particular class of public servants ?

HIS EXCELLENCY THE COMMANDER-IN-CHIEF: (*a*) Recruitment for the Military Assistant Surgeon class is restricted to Europeans and men of European descent.

(*b*) Yes.

The reason why recruitment for the Military Assistant Surgeon class is restricted to Europeans and men of European descent is, that Military Assistant Surgeons are primarily engaged for service with British troops.

In reply to the last part of the question I would point out that Indian Military Sub-Assistant Surgeons also receive their medical education at the cost of the State.

GOVERNMENT MEDICAL SCHOOLS.

177. The HONOURABLE RAJA MOTI CHAND: (*i*) Will the Government be pleased to state if :—

(*a*) Government Medical Schools of the type of the Agra Medical School maintain three different classes, Civil, Military and Private;

(*b*) as a matter of fact the choice of the students lies only between the two classes, Civil and Military;

(*c*) admission of students to the Private Class is either ordinarily not allowed, or restricted, or discouraged;

(*d*) candidates for admission to Civil and Military Classes of Government Medical Schools of the Agra type are required to execute a bond whereby they undertake to indemnify the Government to the extent of Rs. 1,000 in the event of their refusing to enter Government service after completing their course or refusing to execute the agreement;

(*e*) successful civil or military students must execute such a bond as a condition precedent to their receiving the diploma ?

(*ii*) If so, do the Government propose :

(*a*) to remove all restrictions to the admission to the Private Class;

(*b*) to abolish the system of executing bonds ?

HIS EXCELLENCY THE COMMANDER-IN-CHIEF: I lay on the table my reply to this question.

(*a*) Yes.

(*b*) and (*c*) The number of private pupils that can be admitted to the schools in any year depends on the number of vacancies remaining after providing for such civil and military pupils as are recruited to meet the annual requirements of the Civil and Military Administrations.

(*d*) The rules governing the admission of civil students are now a matter for Local Governments. Military pupils, on admission, are required to sign a bond by which they undertake to refund the cost of their education, if—

(*i*) they are dismissed for gross misconduct;

(*ii*) they fail, owing to neglect of their studies, to pass their examinations in a reasonable time; and

(*iii*) they fail, on finally qualifying, to execute a bond binding themselves to military service for a period of seven years, or, in default, to forfeit Rs. 1,000.

(*e*) As regards civil pupils, the Government of India possess no precise information.

Military pupils, who sign bonds to serve Government for seven years or to forfeit Rs. 1,000, are not granted their diplomas so long as they continue to serve in the Indian Medical Department. The diploma is granted to those, however who, on payment of the penalty of Rs. 1,000, are allowed to resign the service before they have served for seven years, or if they are invalided.

In regard to those successful candidates who refuse to enter the Indian Medical Department and have not signed the declaration bond, but have paid for the cost of their education, the question whether they should be granted their diplomas is one for the decision of the State Medical Board which grants the diplomas.

(*ii*) (*a*) In the matter of admissions to these schools, the Government of India are only concerned to ensure that their military requirements are fully met.

(*b*) So far as military pupils are concerned, it is not proposed to abolish the system of executing bonds.

FRONTIER CRIMES REGULATION III OF 1901.

178. The HONOURABLE RAI BAHADUR LALA RAM SARAN DAS:

(*a*) Is it not a fact that section 8 of the Frontier Crimes Regulation, North-West Frontier Province (III of 1901), does not permit the civil suits pending in judicial courts of North-West Frontier Province being withdrawn from the jurisdiction of the said courts for trial by *Jirga*?

(*b*) Is it not a fact that the civil suits of Lala Jiwan Mall Kakkar of Peshawar, which were pending in the civil courts of the Peshawar District, were withdrawn at the instance of Government for trial by the *Jirga*? If so, under what Law or Regulation was action taken?

(*c*) Is it not a fact that the withdrawal of such civil suits has the effect of depriving the aggrieved party from right of appeal to the higher courts?

The HONOURABLE MR. DENYS BRAY: (*a*) Yes.

(*b*) No. According to a report just received from the local administration, no civil suit has been withdrawn for reference to a *Jirga*, and no matter in dispute in such suit has been formally referred to a *Jirga*. It appears that there are connected criminal cases which, centering as they apparently do around the possession of a mosque, have aroused somewhat dangerous excitement in Peshawar, and that, before proceeding further with the criminal cases under the Frontier Crime Regulation, the Deputy Commissioner called for the file of the civil suit, since it was impossible for him, without reference

to the file, to determine what particular matters in dispute were excluded from the scope of the Regulation. The civil suit is still pending and can be resumed by the plaintiff at any time.

(*c*) These being the facts the question hardly arises, but in so far as it does, the answer is in the affirmative.

NEW COUNCIL CHAMBER, DELHI.

The HONOURABLE THE PRESIDENT: Before we proceed to the business of the day, I would ask the Honourable Member in charge of the Public Works Department whether he is in a position to make a statement to this Council as to the progress which has been made with the new Council Chamber in Delhi.

The HONOURABLE MR. B. N. SARMA: Sir, before doing so, may I be permitted to express my regret to this Council for not being present in the Council Chamber when the Honourable Mr. Ram Saran Das rose to put a question standing in his name. I can assure the Honourable Member and the House that my absence was entirely due to a mistake and was not intentional.

With reference to the question put to me by the Honourable the President, the latest information I have received from Delhi is that endeavour is being made to complete the new temporary Chamber there by the 31st December 1921, but that it may not be ready until some time in January next.

I can assure Honourable Members that every endeavour will be made by my Department, at an early a date, to complete the building at as early a date as may be practicable in order that Honourable Members of this House may not be inconvenienced.

The HONOURABLE THE PRESIDENT: I am sure that Honourable Members will be very gratified by the statement which has just been made by the Honourable Member in charge of the Public Works Department, and if the same pressure can be brought to bear as was done in the case of the Assembly building, Honourable Members may rest assured that the building in question will be ready.

LAND ACQUISITION (AMENDMENT) BILL.

The HONOURABLE THE SECRETARY OF THE COUNCIL Sir, in accordance with rule 38 of the Indian Legislative Rules, I lay on the table a copy of the Bill further to amend the Land Acquisition Act, 1894, as amended and passed by the Legislative Assembly at its meeting of the 26th September 1921.

JOINT COMMITTE ON THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

The HONOURABLE THE PRESIDENT: With reference to the message received in this House yesterday, or the day before, in which the Legislative Assembly agreed to the appointment of a Joint Committee to consider the Bill further to amend the Code of Criminal Procedure, I understand that the Honourable Mr. Craik wishes to make a motion.

[Mr. H. D. Craik.]

The HONOURABLE MR. H. D. CRAIK: Sir, I beg to move that the following six Members of the Council of State be nominated to serve on the Joint Committee to consider and report on the Bill further to amend the Code of Criminal Procedure, 1898, and the Court-fees Act, 1870, namely:—

The Honourable Sir Maneckji Dadabhoy,

The Honourable Saiyid Raza Ali,

The Honourable Sir Benode Chandra Mitter,

The Honourable Mr. Phiroze C. Sethna,

The Honourable Mr. H. Moncrieff Smith, and

The Honourable Sir Zulfikar Ali Khan.

The Motion was adopted.

MAINTENANCE ORDERS ENFORCEMENT BILL.

The HONOURABLE MR. H. D. CRAIK: Sir, I beg to move that the Amendments made by the Legislative Assembly in the Bill to facilitate the enforcement in British India of Maintenance Orders made in other parts of His Majesty's Dominions and Protectorates and *vice versa* be taken into consideration.

The Motion was adopted.

The HONOURABLE THE PRESIDENT: Honourable Members have with them a statement of the Amendments in question. I propose to put each Amendment separately, and it is open to Honourable Members to speak on them if they wish to do so.

The HONOURABLE MR. H. D. CRAIK: Sir, I have not received notice of any Amendment.

The HONOURABLE THE PRESIDENT: The Honourable Member has put an Amendment down himself, but presumably he did not give notice to himself.

The question is that this Council do concur in Amendment No. 1, that is at the end of sub-clause (*1*) of clause 1 the following Amendment be concurred in it inserts new sub-clause (*2*).

'(*2*) It extends to the whole of British India including the Sonthal Pargannas and British Baluchistan.'

The Amendment was adopted.

The HONOURABLE THE PRESIDENT: The Amendments to clause 2 are stated in* paragraphs 2, 3, 4 and 5. The question is that the Amendments made by the Legislative Assembly be concurred in.

The Amendments were adopted.

---

* 2. In clause 2 in the paragraph containing the definition of the word 'dependants' the words 'other than illegitimate children' within parenthesis have been deleted.

3. In clause 2 in the paragraph containing the definition of the words 'maintenance order' for the words 'an order' the words 'a decree or order' have been substituted and between the words 'order' and 'for' the following has been inserted:

'other than an order of affiliation made by a Court in the exercise of civil and criminal jurisdiction.'

4. In clause 2 after the definition of the word "prescribed," the following has been added:

"'Proper authority' means the authority appointed by, or under the law of, a reciprocating territory to receive and transmit documents to which this Act applies; and"

5. In clause 2 in the definition of the words 'reciprocating British possession,' for the words 'British possession,' the word 'territory' has been substituted and the words 'outside British India' have been deleted.

The HONOURABLE MR. H. D. CRAIK : Sir, I beg to move that in clause 2 in the definition of "reciprocating territory" the words "outside British India" be inserted after the word "Dominions."

Perhaps I should explain that this is purely a drafting Amendment. The words I propose to insert appeared in the Bill as passed in the Council of State. The definition then ran "reciprocating British possession." The word "possession" has now been amended to "territory" and means "any part of His Majesty's Dominions outside British India." By an unfortunate error, these words were omitted when the Bill was printed at some stage in its progress through the Legislative Assembly. It is obvious that "reciprocating territory" cannot include any part of British India. It is therefore necessary to restore these words in the Bill. I regret the error, especially as I understand the Bill will have to be referred back to the Legislative Assembly, but the omission is a serious one and ought to be put right.

The HONOURABLE THE PRESIDENT: This is not an Amendment made by the Legislative Assembly, but, in view of the statement made by the Honourable Mr. Craik that it is an error and obviously necessary to the Bill, I think we are entitled to do it.

The HONOURABLE MR. H. MONCRIEFF SMITH : Sir, may I suggest that we are entitled to make Amendments that are consequential.

The HONOURABLE THE PRESIDENT: I am not quite sure that this Amendment is a consequential one ; it appears to be a clerical error.

The Amendment was adopted.

The HONOURABLE THE PRESIDENT : I think the reason for the Amendment which has just been adopted should be explained in the statement which will go down to the Legislative Assembly.

If Honourable Members will turn back to their Amendment papers again they will see that the Legislative Assembly have made* two Amendments in clause 3 ; the question is that the Amendments made to clause 3 of the Bill be concurred in.

The Amendments were adopted.

The HONOURABLE THE PRESIDENT: If any Honourable Member wishes to speak on these Amendments, he is at liberty to do so; I will put them as they come.

The Legislative Assembly have made Amendments to clause 4 of the Bill (paragraphs† 8 and 9 on the paper). The question is that this Council do concur in the Amendments to clause 4 made by the Legislative Assembly.

The Amendments were adopted.

---

* 6. In sub-clause (*1*) of clause 3 for the words "British possession," the words "part of His Majesty's Dominions" and for the word "possession" occurring for the second time, the word "part" and for the word "possession" occurring for the third time, the words "part of His Majesty's Dominions" have been substituted.

7. In sub-clause (*2*) of clause 3 before the word "State" occurring in the first part of the sentence the words "in respect of any" have been inserted, and for the words "British possession" the word "territory" has been substituted.

†8. In sub-clause (*1*) of clause 4 the words "in Council" after the words "Governor General" where they first occur have been deleted.

9. In sub-clause (*1*) of clause 4 and in clause 5 for the words "British possession," and "possession" the word "territory" has been substituted, and for the word "prescribed" where it occurs before the word "authority" the "word" "proper" has been substituted.

[The President.]

The HONOURABLE THE PRESIDENT: Items* 10, 11, 12, 13 and 14 are Amendments made in clause 6. The question is that the Amendments made in clause 6 by the Legislative Assembly be concurred in.

The Amendments were adopted.

The HONOURABLE THE PRESIDENT: Items† 15, 16, 17 and 18 refer to Amendments in clause 7. The question is that the Amendments made in clause 7 by the Legislative Assembly be concurred in.

The Amendments were adopted.

The HONOURABLE THE PRESIDENT: Item‡ 19 refers to clause 8. The question is that the Amendment made in clause 8 be concurred in.

The Amendment was adopted.

The HONOURABLE THE PRESIDENT: A new clause,§ clause 9, has been added. The question is that this Council concur in the addition of clause 9 made by the Legislative Assembly.

The Amendment was adopted.

The HONOURABLE THE PRESIDENT: The Amendments made in Items 21, 22 and 23 are consequential. The question is that this Council concur in those Amendments.

The Amendments were adopted.

---

*10. In the marginal subject of sub-clause (*1*) of clause 6 between the words "power" and "to make" the words "of Summary Courts" have been inserted and in that sub-clause for the words "British possession," "if a summons had been duly served on that person and he had failed to appear at the hearing" and "possession" the words "territory," "if that person had wilfully neglected to attend the Court" and "territory" have respectively been substituted.

11. In sub-clause (*3*) of clause 6 for the words "prescribed" and "possession," the words "proper" and "reciprocating territory" have, respectively, been substituted.

12. In sub-clause (*4*) of clause 6 for the words "British possession," the word "territory" has been substituted.

13. The proviso to sub-clause (*6*) of clause 6 has been shown in a separate sub-paragraph, and in that proviso for the words "prescribed" and "possession," the words "proper" and "reciprocating territory" have, respectively, been substituted, and between the words "confirmed" and "and that," the words "or to which it was sent for confirmation" have been inserted.

14. Sub-clause (*7*) of clause 6 has been deleted.

†15. In sub-clause (*1*) of clause 7 for the words "British possession," the word "territory" has been substituted, and the words "in Council" after the words "Governor General" where they occur for the first time, have been deleted.

16. In sub-clause (*4*) of clause 7 between the words "may" and "confirm," the words "notwithstanding any pecuniary limit imposed on its power by any law for the time being in force in British India" have been inserted, and to that sub-clause the following proviso has been added:

"Provided that no sum shall be awarded as maintenance under this section, or shall be recoverable as such, at a rate exceeding that proposed in the provisional order;"

17. In sub-clauses (*5*) and (*6*) of clause 7 for the words "so remit the case and adjourn the proceedings for the purpose," the words "for that purpose send a certified copy of the record to the Governor General in Council for transmission to that Court through the proper authority of the reciprocating territory, and may adjourn the proceedings" have been substituted.

18. Sub-clause (*7*) of clause 7 has been deleted.

‡19. In sub-clause (*1*) of clause 8 between the words "High Court" and "and that Court," the words "in the exercise of its civil jurisdiction, or in such Civil Court subordinate to that High Court as may be named by the High Court in this behalf" have been inserted.

§20. The following has been added as clause 9:

"9. A Court in registering or confirming an order for maintenance in accordance with the provisions of this Act shall direct that the charges for the transmission to the Court, from which the order has been received or in which the provisional order has been made, as the case may be, of the sum awarded as maintenance shall be borne by the person against whom the order has been so made or confirmed, and shall be recovered from him in addition to the sum awarded as maintenance and in addition to and in the same manner as such other costs and charges as may be awarded or levied by the Court."

Payment of charges for transmission of sums awarded as maintenance and other costs and charges.

¶21. Clause 9 has been re-numbered as clause 10.

22. Clause 10 has been re-numbered as clause 11, and for the words "British possession" the word "territory" has been substituted.

23. Clause 11 has been re-numbered as clause 12, and between the words "for" and "all matters," the words "for the levy of the costs or charges for anything done under this Act and" have been inserted.

NEGOTIABLE INSTRUMENTS (AMENDMENT) BILL.

The HONOURABLE MR. H. A. F. LINDSAY: Sir, I beg to move 'that the Bill further to amend the Negotiable Instruments Act, 1881, as passed by the Legislative Assembly,' be taken into consideration.

A year ago, Sir, this Act was amended in order to provide for delays in the presentment of Bills for payment where such delays were caused by circumstances beyond the control of the holder. In the course of the correspondence relating to that amendment, two further suggestions for amendments were brought up. It was decided, however, not to suspend the original Amendment but to proceed with it, and to consider the two suggestions later. The original Amendment has now taken its place in the Act as section 75-A. The two suggestions for further amendments are now before the House. The first Amendment affects sections 63 and 83 of the Act, and relates to the period allowed for acceptance of a Bill of Exchange. This period in some countries is 24 hours, but, in the special circumstances of this country, it has been thought that we should extend the period to 48 hours. Local Governments and commercial bodies have been consulted and are unanimous in their support of this Amendment. The first Amendment therefore is that 48 hours should be substituted for 24 hours in sections 63 and 83 of the Act.

The second Amendment affects section 75-A to which I have already referred. It has been represented that unavoidable delay should be held to excuse not merely presentments for payment but also presentments for acceptance. This suggestion also has the unanimous support of Local Governments and commercial bodies, and Government have agreed to adopt it by the substitution in section 75-A of the words "for acceptance or payment" for the words "for payment." I trust that when the Bill is taken into consideration both the Amendments will have the support of the House.

The HONOURABLE THE PRESIDENT: The question is that the Bill further to amend the Negotiable Instruments Act, 1881, as passed by the Legislative Assembly, be taken into consideration.

The Motion was adopted.

The HONOURABLE MR. H. A. F. LINDSAY: Sir, I beg to move that the Bill, as passed by the Legislative Assembly, be passed.

The HONOURABLE THE PRESIDENT: The question is that the Bill further to amend the Negotiable Instruments Act, 1881, as passed by the Legislative Assembly, be passed.

The Motion was adopted.

CARRIERS (AMENDMENT) BILL.

The HONOURABLE MR. H. A. F. LINDSAY: Sir, I beg to move 'that the Bill further to amend the Carriers Act, 1865, in order to empower the Governor General in Council to make by notification additions to the Schedule to that Act, and to free a common carrier from liability under that Act for loss or damage, arising from the negligence of himself or of any of his agents or servants, in respect of any property which, being of the value of over one hundred rupees and of the description contained in the Schedule to that Act,

[Mr. H. A. F. Lindsay.]

has not been declared in accordance with the provisions of section 3, as passed by the Legislative Assembly,' be taken into consideration.

The first Amendment, Sir, which it is proposed to make in this Act, is designed to remove a certain inconsistency. Section 3 of the Act states that :

'No common carrier shall be liable for the loss of or damage to property delivered to him to be carried exceeding in value one hundred rupees and of the description contained in the Schedule to this Act unless the person delivering such property to be carried or some person duly authorised in that behalf shall have expressly declared to such carrier or his agent the value and description thereof.'

and section 4 proceeds to empower the carrier to make special charges for carrying goods which have been declared to him. The inconsistency arises really in section 8 of the Act which declares that—

'Notwithstanding anything hereinbefore contained, every common carrier shall be liable to the owner for loss of or damage to any property delivered to such carrier to be carried where such loss or damage shall have arisen from the negligence or criminal act of the carrier or any of his agents or servants.'

Under section 9, the onus of proof does not lie on the plaintiff in a suit for damages against the carrier. It is not necessary for the plaintiff to prove that the loss or damage of which he complains was due to the negligence or criminal act of the carrier, or his agents or servants. It is for the carrier to prove that no such negligence and no such criminal act took place.

In a recent case before the Calcutta High Court Their Lordships held that a steamship company which was carrying a consignment of silk thread, one of the articles mentioned in the Schedule to the Act, was liable for damage although the value of the consignment had not been declared. Their decision was based on those words " notwithstanding anything herei: before contained." Their Lordships remarked in this connection :—

'Reading sections 3 and 4 with section 8, it appears that, although a common carrier is not liable for the loss or damage of property of a certain description above one hundred rupees in value, unless the value or description thereof are expressly declared by the person delivering them to be carried, and although the carrier is entitled to charge a higher rate for such properties, he is liable for the loss or damage to such property if such loss or damage arises from the negligence or criminal act of the carrier or of any of his agents or servants.'

We do not propose to interfere in any way with the liability of the carrier in respect of any criminal acts which he performs. But with regard to negligence, we think that he should only be held liable for negligence in cases where the value and nature of the property have been declared to him. It is proposed therefore to amend section 8 of the Act by omitting the words " negligence of " and to insert a new section which will free a carrier in respect of scheduled articles, not declared under section 3, from loss or damage arising from negligence on his part or on the part of his agents or servants. That, Sir, is the first Amendment.

The second Amendment is as follows. At present no addition can be made to the list of scheduled articles without in each case an amendment of the Act. This procedure is a cumbrous one. The Railway Act empowers Government to add to the Schedule merely by a Notification in the Gazette,

and it is thought that in the case of this Act also a similar confidence might be placed in the Executive Government.

The HONOURABLE SAIYID RAZA ALI : Sir, I will briefly say that the measure that is before the Legislature is of some importance to those who employ carriers to take their goods from one place to another. The inconsistency between sections 3 and 8 of Act III of 1865 is really so glaring that it is surprising that it should not have been found before now either by the Legislature or by the Courts. The point really is quite clear. On a comparison of the two sections, it appears that the entire effect of section 3—I should say almost the entire effect of section 3—is nullified by section 8. It is very necessary to make the intention of the Legislature quite clear, and to limit the liability of the common carrier. This intention has been quite clearly brought out by the Amendment that is before the House, and I hope the House will accept the Amendment which is an important one.

The HONOURABLE THE PRESIDENT : The question is 'that the Bill further to amend the Carriers Act, 1865, in order to empower the Governor General in Council to make by notification additions to the Schedule to that Act, and to free a common carrier from liability under that Act for loss or damage, arising from the negligence of himself or of any of his agents or servants, in respect of any property which, being of the value of over one hundred rupees and of the description contained in the Schedule to that Act, has not been declared in accordance with the provisions of section 3, as passed by the Legislative Assembly,' be taken into consideration.

The Motion was adopted.

The HONOURABLE MR. H. A. F. LINDSAY : Sir, I beg to move that the Bill, as passed by the Legislative Assemby, be passed.

The HONOURABLE THE PRESIDENT : I may say that I have never seen such a short Bill with such a long "long title."

The question is 'that the Bill further to amend the Carriers Act, 1865, in order to empower the Governor General in Council to make by notification additions to the Schedule to that Act, and to free a common carrier from liability under that Act for loss or damage, arising from the negligence of himself or of any of his agents or servants, in respect of any property which, being of the value of over one hundred rupees and of the description contained in the Schedule to that Act, has not been declared in accordance with the provisions of section 3, as passed by the Legislative Assembly,' be passed.

The Motion was adopted.

INDIAN LAC CESS BILL.

The HONOURABLE MR. H. A. F. LINDSAY : Sir, I beg to move 'that the Bill to provide for the levy of customs-duty on lac exported from British India, as passed by the Legislative Assembly,' be taken into consideration. I should like to say in introducing this Bill that, although it is to some extent a child of my own, as it originated from recommendations made in the report which Mr. Harlow and I wrote together on the subject of the lac industry, I do not wish to pose as too fond a parent, and I will appeal to the

[Mr. H. A. F. Lindsay.]

head rather than to the heart of the House. The object of the Bill, Sir, is to assist the industry (and in that term I include manufacturers, shippers and brokers of lac and shellac) and to establish the industry on a sound footing.

I may be pardoned perhaps if I go back a little way into the history of the lac industry, to explain why the necessity for this Bill arose. In its origin the industry existed chiefly for the sake of the lac dye, which was however killed in about the year 1880 by competition with German synthetic dyes. Fortunately, at about the same time, electrical machinery began to come into favour and the valuable properties of shellac were discovered as a non-conducting varnish which was essential if any progress was to be made in the development of electricity.

Now, Sir, India has a monopoly of the lac industry, and that monopoly is a very valuable one. Shellac is being used more and more all over the world, not only for electrical goods and for varnishes, but also for gramaphone records and numerous other uses too many to specify. The demand under present conditions has exceeded the supply. The result is that prices have risen enormously, and the industry, if I may say so, tends to become top heavy. The price of shellac which ten years ago was between Rs. 30 and Rs. 40 rose to Rs. 250 early last year, and now stands between Rs. 130 and Rs. 140. In the ordinary course, Sir, economic laws would have provided the proper remedy; that is to say, with an increased demand, the supply would have increased, and prices would have fallen to their normal level. Unfortunately, the industry is so constituted that the value of the lac as an article of commerce may be greater than its value for brood purposes. That is to say, the temptation to the cultivator is to use all his brood lac at the moment and not to save it for further reproduction; so that we have this law of self-preservation and self-interest on the part of the cultivator cutting across the natural economic law under which production expands to meet exceptional requirements. The remedy for this state of affairs can be described in one word—trade organisation. I have discussed this matter with manufacturers at Mirzapur, Balarampur and other manufacturing centres in India, and I may say confidently that organisation appeals to them very strongly. Now organisation must follow two particular lines in order to be successful. The first will take the form of a request to the Forest Department to do what they can to improve the supply of brood lac and generally to establish Departmental cultivation on a sound footing. The second, to which this Bill more closely relates, is trade organisation proper. An Indian Lac Association has been formed in Calcutta with representatives all over India and has appealed to Government to impose this cess in order to maintain them in funds. The funds will of course come from the trade themselves and will be applied by them for purposes of chemical and other scientific research. There will be the closest possible communication between the Forest Department and the Association, and special arrangements are being made that all information secured by the Association shall be widely disseminated.

I think, Sir, that this Bill will have the support of the House as one which goes far to assist in the development of an industry which, although it is prosperous and may be considered almost too prosperous, is exposed to the constant danger of a synthetic substitute. That, Sir, is one of the reasons underlying the formation of the Association and the appeal for funds for the Association. I have checked the course of inventions both in Europe and

America towards the discovery of a synthetic substitute, and I may say very confidently that great progress has been made. We do not want a repetition of the indigo trouble and we want, if possible, to secure this industry against all forms of synthetic competition. We hope that trade organisation will secure this increased production, reduce the price, establish the industry on a healthier footing, and I trust that the House will support these objects as formulated in the Bill before us.

The HONOURABLE SAIYID RAZA ALI : What is the value of the lac and refuse lac that is annually exported from this country, if the Honourable Member can tell me ?

The HONOURABLE MR. H. A. F. LINDSAY : Three crores of rupees.

The HONOURABLE MR. LALUBHAI SAMALDAS : While I do not want to oppose this Bill I wish to say that it would have been better if the Rules of the Association had been laid on the table for our information. We have been told by the Honourable Mr. Lindsay that he does not want the lac industry to be killed by the synthetic substitute (which is likely to be started), in the same way as the indigo industry has, I believe, been already killed. There I entirely agree, but when the Council approves of levying duties specially for the purpose of assisting any industries, I think it is necessary that the Government which levies the duty and which collects money should have some representative on the Lac Association. So far as I understand the Honourable Mr. Lindsay there is no representative of Government on the Lac Association. It may be said that on the Tea Association or the Indigo Association there are no representatives. .....

The HONOURABLE MR. H. A. F. LINDSAY : May I explain this point ?

The HONOURABLE THE PRESIDENT : The Honourable Member will reserve his remarks till the end of the Honourable Mr. Lalubhai Samaldas' speech.

The HONOURABLE MR. LALUBHAI SAMALDAS : The Honourable Mr. Lindsay made it quite clear that the Forest Department will be in touch with the Association, but we are not quite sure whether the Forest Department will have any voice, or whether they will have a representative on the Board of the Association. We shall have in future more demands of this kind. I may say that most probably next Session we shall have to consider a proposal for levying a four annas duty on cotton bales – at least the Central Cotton Committee has submitted this proposal for the consideration of Government. There need be no objection to this levy as there are Government officials of the Agricultural Department on the Committee, and have as Secretary a highly paid officer who was lately Director of Agriculture in the United Provinces. Unless we have some guarantee that the money will be utilised properly I do not think this Council will be justified in levying any duty either on lac or cotton or tea or indigo. In the case of tea or indigo, the duty was sanctioned long ago when the predecessor of this Council did not perhaps think it necessary that Government should have some representation on an Association which was spending money sanctioned by this Council. I am awaiting the explanation to be given by the Honourable Mr. Lindsay, but if there is no representative at present, either of the Forest Department or of the Industries Department on this Association, I think there should be two

[Mr. Lalubhai Samaldas.]

representatives, one from the Forest Department and one from the Industries Department to help them, to guide them and, if necessary, to control their expenses. With these words I support the motion before the House.

The HONOURABLE SIR MANECKJI DADABHOY: I welcome this legislation which is drawn up on the lines of the Indigo Cess Act and the Tea Cess Act. These three Acts are evidently a distinct departure from the principles of other Acts which are generally framed by legislation. The object of this Act is to collect money for the improvement of the methods of cultivation and manufacture of lac, for scientific research and for dissemination of knowledge generally. The traders would be very glad to pay a cess which would be appropriated for the improvement of the industry in which they are interested. I only hope that the principle involved in this legislation would before long be extended to several other industries in which material improvement is necessary, and where scientific research would add to the general improvement of such industries. I understand that about a lakh of rupees will be collected by the imposition of this cess, which is a handsome sum and which will materially help the Lac Association in carrying out improvements in the methods suggested. I therefore approve of this legislation and I give it my cordial support.

The HONOURABLE MR. V. G. KALE: As the principle underlying this legislation and similar other legislation has been discussed, I should like to raise the general issue as to why such export duties should be imposed upon any commodities for the benefit of those who are engaged in that particular industry or those particular industries. In this country I often found that many charitable and philanthropic funds have been started and established by certain mercantile classes, and when I went on to inquire how those funds came to be collected, I was rather amazed to see that the funds came out of contributions levied by merchants upon customers and upon those from whom they purchased commodities. Those are funds which are supposed to be the funds of the mercantile classes, and large amounts are thus collected and expended upon charitable purposes. I have nothing to say with regard to the charities which are assisted by the mercantile classes through the funds....

The HONOURABLE SIR MANECKJI DADABHOY: This is not a charitable purpose.

The HONOURABLE MR. V. G. KALE: I find that those funds go in the name of particular merchants or classes, while the money comes from the pockets of the customers or the producers, so that little credit belongs to those who establish those funds or have charge and management of those funds. In the case of an export duty on lac, the export duty may have its effect upon the price of the commodity. Consequently, it may have an adverse effect on those who produce the lac and upon those who consume it. I do not see why those who make profit out of the trade in lac should not themselves establish a fund for the purpose of carrying on research. If they benefit by the trade, it is their business to find the money for making research and for improving their particular industry. I do not see why they should come to the Legislature and ask it to levy duties, import or export, in this fashion. I therefore call in question the very principle underlying this kind of legislation inasmuch as the question has been raised. I should like to have more time to consider the whole question before I support this motion.

The HONOURABLE MR. PHIROZE C. SETHNA : Sir, I do not quite agree with the last speaker. His point is that the tax is levied from the consumer and that it would be preferable if it was raised from the merchant himself who is making all the profit. If it was levied from the merchant, the merchant would naturally increase his price and eventually it would be the consumer who would have to pay, so that there is no difference between the system which he advocates and the system which is advocated by the Bill.

In regard to the point raised by my friend on my right (the Honourable Mr. Lalubhai Samaldas), I would request the Honourable Mr. Lindsay to inform the House as to the manner in which the administration of the Tea Cess and the Indigo Cess has been carried on. We understand that there are no Government representatives on the bodies which administer these cesses. If, however, they have been administered satisfactorily, I should think it would be an unnecessary interference if we ask the merchants connected with the shellac industry to have, as suggested by the Honourable Mr. Lalubhai Samaldas, one or two officers of Government associated with them in the administration of this Cess.

The HONOURABLE MR. H. A. F. LINDSAY : Sir, I am glad of the course this discussion has taken, because it shows a distinct interest in the objects of the Bill before us.

I can assure the Honourable Mr. Lalubhai Samaldas that an official will be associated with the Committee entirely in an honorary capacity, and I think that probably will meet his requirements ; that is to say that he is there as a friend of the court and can give the Committee the benefit of his advice as required.

The Honourable Mr. Kale has raised the question of the source from which this revenue will be obtained. Now, Sir, I think that the House will be perfectly justified in coming to one conclusion regarding that payment, and that is, that it is the unfortunate foreign consumer who will pay the duty. In most cases of export duty, the duty is collected from the producer in so far as it adds to the cost of marketing the produce ; that is to say, an export duty on rice or on wheat would increase the handling charges and by that amount would handicap Indian rice or wheat in its competition with foreign rice or wheat in the world's markets.

But in the case of shellac, as also of jute, India has a monopoly. There is no other producing country which competes with it, and, therefore, no other country can market the same produce in the world's markets at a substantially lower price. I think, therefore, that the House will agree that no better commodity could have been selected for—I cannot call it an experiment because it has already been tried successfully in tea and indigo—no better commodity could have been selected for this organization than shellac, where, not India, but the foreign consumer will shoulder the burden.

The HONOURABLE THE PRESIDENT : The question is 'that the Bill to provide for the levy of customs-duty on lac exported from British India, as passed by the Legislative Assembly', be taken into consideration.

The Motion was adopted.

The HONOURABLE MR. H. A. F. LINDSAY : I beg to move that the Bill, as passed by the Legislative Assembly, be passed.

The Motion was adopted.

INDIAN POST OFFICE (AMENDMENT) BILL.

The HONOURABLE MR. H. A. F. LINDSAY : Sir, I beg to move :

' That the Bill further to amend the Indian Post Office Act, 1898, as passed by the Legislative Assembly '

be taken into consideration.

The objects of this Bill are very simple and can be explained in a few words. India, like other countries, is a member of the Postal Conventions and has agreed to certain prohibitions and restrictions confirmed at those Conventions. One of those prohibitions was that no dutiable articles shall be allowed to be transmitted by the letter post, and the prohibition in the case of India has taken shape as one of the Postal Rules in the Indian Postal Guide. Unfortunately, Sir, evasion has not been difficult. The method by which this prohibition is sought to be enforced at present is that the officer in charge of the Post Office of delivery, when he suspects a letter packet to contain dutiable articles, calls on the addressee to attend at the Post Office and witness the opening and, if necessary, the assessing of the contents. Now, Sir, that procedure works very well at the port towns where the customs and postal authorities are in close touch, but upcountry postmasters are not experienced in assessing goods to customs duty. There are frequent disagreements as to the amount of duty to be paid, and in some cases the articles have to be sent back for assessment by the customs authorities. We have every reason to believe that a large number of dutiable articles are entering the country by means of the letter post, particularly articles of small bulk and high value, such as jewellery, silk handkerchiefs, silk ties, and so on. It has been found on inquiry that the total amount of duty collected, for example, at Bombay during one year was 16 lakhs of rupees on goods entering the country in this way, and out of that total, only Rs. 3,000 was contributed by upcountry post offices. It is quite obvious that there is a leakage somewhere, and, in these difficult times, it is especially incumbent on us to check any leakage where we discover it.

The House will clearly understand that so far I have referred only to the letter post.

I now turn for a moment to the procedure in regard to the parcel post. There, we have the provisions of the third proviso to section 24 of the Post Office Act. A parcel may be opened by the customs authorities, examined, and its contents, if necessary, assessed to duty. I have referred to this procedure because it is so obviously the simplest and easiest way of dealing also with the letter post ; and the first Amendment before the House, is, if I may say so, an amalgamation of those two procedures, or rather that we should dispense with the unnecessary procedure of calling on upcountry postmasters to assess letter packets to duty and that both letter p ckets and parcels should be dealt with by customs officers at the port of entry. The actual form which the Amendment will take will be that certain postal officers, specially empowered in this behalf, will be authorised by order to detain any postal packets which they suspect to contain dutiable articles and hand them over to the customs officer, who will be specified in the order, and who will deal with the articles under the provisions of the Sea Customs Act or of any other law for the time being in force. The third proviso to section 24 of the Act will thus be omitted, and a new section 24-A., will be inserted containing the provisions which I have just described.

The second Amendment I will merely refer to. It is merely an incidental amendment to section 67 of the Act.

There is one point on which Honourable Members will require a very careful assurance before they accept the Amendments now submitted. They will require an assurance that the new procedure will not involve any delay in the handling of the mails. The bulk of dutiable articles which, as we know, enter this country through the letter post at present come by means of the registered letter post. The Director General of Posts and Telegraphs, Mr. Clarke, will be able to arrange with the General Post Office of London and with the Continental and Colonial sorting offices, who are interested in helping us, to pick out from the ordinary Indian mail and place in separate packets any letters which they suspect at their end of containing dutiable articles. Only these separate packets will be detained for customs examination and for the assessment of dutiable article which they may be found to contain. The unregistered letter post is in any case sorted on arrival, and it will not be difficult, and there will be no delay, in setting aside letters suspected of containing dutiable articles, as they are sorted. The two primary objects in these Amendments are, firstly, that we shall maintain our promise to the Convention to do all that we can to suppress the transmission of dutiable articles by letter post, and, secondly, if articles arrive, that we shall see that they are properly assessed to duty.

I move, Sir, that the Bill be taken into consideration.

The HONOURABLE SIR MANECKJI DADABHOY : I do not propose to oppose this Bill, but it must be acknowledged that this Bill gives very wide powers to Post Office officers.

My friend the Honourable Mr. Lindsay has said that there would be no delay in the delivery of the mails by the passing of this Act, but I also hope that executive instructions will be issued by Government, when this Act is passed, to Post Office officers that the powers embodied in the Act will be exercised with a great deal of caution and only in cases where the suspicion is very, very strong and well-grounded. This Bill gives very extensive powers of detaining letters by Post Offices, and, therefore, these powers should be exercised in such a way as to cause the minimum of hardship.

With these words, Sir, I support the Bill.

The HONOURABLE MR. A. H. FROOM : Might I inquire, Sir, whether the Amendments to this Act will do away with the system that exists at present in seaport towns, where there are customs authorities ?

The HONOURABLE MR. H. A. F. LINDSAY : Sir, with reference to the question raised by my Honourable friend, Sir Maneckji Dadabhoy, I do not think there will be any difficulty, or that too many powers will be given to the Post Office Officials, because there will be very few Post Office Officials to select—only men of experience at the few port towns.

On the question as to procedure, I think the Honourable Mr. Froom will probably find himself in a much better position than he was before. Letters, with dutiable contents will be sent straight to the Customs, assessed and then delivered with a small bill stating how much Customs-duty will have to be paid on them,

[The President.]

The HONOURABLE THE PRESIDENT: The question is 'that the Bill further to amend the Indian Post Office Act, 1898, be taken into consideration.

The Motion was adopted.

The HONOURABLE MR. H. A. F. LINDSAY: Sir, I move that Bill, as passed by the Legislative Assembly, be passed.

The Motion was adopted.

INDIAN PENAL CODE (AMENDMENT) BILL.

The HONOURABLE MR. H. D. CRAIK: Sir, I beg to move 'that the Bill further to amend the Indian Penal Code, as passed by the Legislative Assembly,' be taken into consideration.

Sir, this Bill has not hitherto come up for discussion in this Council, so perhaps I may be permitted to make a few remarks in regard to it. The Bill was introduced in the Legislative Assembly on the 19th of February last, and the motion originally made was that the Bill be taken into consideration. But, ultimately, discussion on the Bill was adjourned for a week and then on the 17th of March a motion was brought forward by the Member who represented Government that the Bill should be referred to a Select Committee. That motion was carried and the report of the Select Committee is now in the hands of Honourable Members.

I will allude later to the changes, among which there is one change of importance, made by the Select Committee. Before referring to those changes, however, I will briefly explain what the object of the Bill is. It deals with those provisions in the Indian Penal Code which relate to punishment by forfeiture of property. That is a form of punishment which in modern times has grown more and more into disuse, and Government felt that the time had come when its employment should be restricted to the narrowest possible limits. The effect of the Bill in its present form, not in the form in which it was introduced, but in the form in which it has been passed by the Legislative Assembly, will be that the punishment of forfeiture will disappear from the Penal Code altogether. Under the law, as it stands at present, whenever a person is convicted of an offence punishable with death, the Court may direct that all his property shall be forfeited to Government, and whenever a person is convicted of an offence for which he must be transported or sentenced to imprisonment for seven years or more, the Court may direct that the rents and profits of his property shall be forfeited to Government during the period of his transportation or imprisonment. Those provisions appear in section 62 of the Penal Code, which Honourable Members will see is to be repealed by this Bill, as also is section 61.

Apart from that, there are two sections of the Code—121 and 122—which make it obligatory in the case of convictions for certain treasonable offences, that is to say, waging war against the King or making preparation to wage war against the King, to sentence any person convicted of these two offences to forfeiture of property. The Court has no option in the matter. The retention

of compulsory sentences of forfeiture is not consistent with actual modern practice, and we have found on examination of the figures for the last ten years or so, that in nearly all these cases the Local Government, under the statutory powers conferred on it by the Code, have remitted the sentence of forfeiture. Such sentences have in practice hardly ever been carried into effect.

As originally introduced, the Bill proposed to give the Court discretion to impose the penalty of forfeiture in the case of those treasonable offences; the idea was to retain that discretion because in certain parts of the country the punishment had been found to be useful, *e.g.*, in Burma and the North-West Frontier Province. But the Bill has now been amended by the Select Committee so that forfeiture as a punishment for treasonable offences and all other offences disappears altogether. If the Bill is passed, there will in future be no reference to the punishment of forfeiture in the Penal Code. A man convicted of the treasonable offences to which I have referred will be liable to be punished with death or transportation for life, or with fine in the case of waging war, and in the case of preparation to wage war he will be liable to be punished with transportation for life or to be imprisoned for ten years, or with fine.

Honourable Members will observe that, in the report of the Select Committee, a reference is made to the fact that the form of punishment which it is now proposed to substitute for forfeiture, namely, fine, cannot be recovered from the immoveable property of the offender, and the Select Committee have recommended that a provision should be made in the Bill for the amendment of the Code of Criminal Procedure, that has been just referred to a Select Committee of both Houses, for the recovery of fines from immoveable property when they cannot be recovered from the moveable property. But that is a point which the House need not take into consideration at the present stage.

I hope the Council will agree to take this Bill into consideration and accept the principle that forfeiture as a form of judicial punishment is now out of date and should be abolished. I now move, Sir, that the Bill be taken into consideration.

The HONOURABLE SAIYID RAZA ALI: Sir, I rise to give my support in general to the Amendments that are now before the House. It was very necessary that sections 61 and 62 should be amended at any early date, and I am very glad that the Government have seen their way to amend these sections.....

The HONOURABLE MR. H. D. CRAIK: Sections 61 and 62 are being repealed, not amended.

The HONOURABLE SAIYID RAZA ALI: I am sorry, Sir. Now sections 61 and 62 are going to be repealed entirely, and under sections 121 and 122, instead of the offender being subject to forfeiture of property, we are going to have a provision that he shall be liable to fine.

This of course does not mean that fines should be imposed in every case. That will depend upon the view the Court takes of the law, and if the sentence of forfeiture of property which—as pointed out by the Honourable Mr. Craik—was remitted in a large number of cases either by the Local Government or by the Government of India, is to be substituted invariably by a sentence of fine, then verily it will be a case of 'from the frying pan into the fire,' which I trust will not take place when the law is administered by our Judges. The important point in this connection is that, so far as I gather from the intention

[Saiyid Raza Ali.]

of the Government—and that intention has been made quite clear by the repeal of sections 61 and 62, Government want to provide a lesser punishment under sections 121 and 122 than that which is prescribed in those sections. But there is a very important point on which I expected something from the Honourable Mr. Craik, on which he has unfortunately kept silent. Let us turn to section 121-A and let us see how that section stands at present, and whether the Government have proposed any amendment to it, and, if so, whether it errs on the side of severity or leniency.

Section 121-A provides for the punishment of transportation for life or imprisonment which may extend to ten years, and there it ends. There is not a single word in the section to the effect that the offender shall be liable to forfeiture of property or the imposition of a fine, and we now find that Government propose to put in that very section an additional sentence of fine which is not to be found in the section as it stands at present. I do not know, Sir, how this mistake or error has occurred, and I do hope it is not intentional and that nobody meant that to section 121-A, which does not provide for a sentence of fine, that sentence should be added. As I pointed out, I take it that the intention of Government is to lessen the severity of the sentence for certain offences which are to be found in Chapter VI of the Penal Code; all the same, I do not know whether the imposition of the same can be said to constitute part and parcel of leniency, a policy of which, I believe, Government have embarked. Nothing is further from my mind or my intention than to suggest that offences under Chapter VI of the Penal Code should be encouraged or should not be checked, or that punishment should not be dealt out properly. But I take it that the proposed amendment is entirely inconsistent with the statement made by the Honourable Mr. Craik and also with the debate that was held on this subject in the other House last Session. I would be very glad if the Honourable Member would satisfy me as to how leniency is to be shown to unfortunate offenders by imposing an additional sentence of fine upon them.

An Honourable friend of mine just whispers the word 'forfeiture' into my ears. Now, my contention is that in section 121-A there is no sentence of forfeiture whatsoever prescribed. You are going, as a matter of fact, to make the law more penal than it stands to-day. If that is really the intention of the Government, the Government are quite welcome to do so. But, if that is the intention, Sir, I for my part very strongly object to it. In fact, no reason has been given—none whatsoever. There is no Statement of Objects and Reasons appended to this paper. The Honourable the Mover has entirely failed to deal with it. No case whatsoever has been made out for imposing an additional sentence. In fact, you ought to show greater leniency to these men, and if this is the way in which this leniency is to be shown, I submit, Sir, that the House should veto the Amendment. On the contrary, if the intention is deliberate, then it is not an occasion for unmixed pleasure, because, as I have pointed out, these cases of forfeiture are dealt with either by the Local Government or the Government of India, so that the nett result is that these sentences are not carried into execution. For various reasons, Government think it proper to—and in fact do—set aside these sentences. Now, in the place of those sentences we are going to have a sentence of fine which may be imposed in a number of cases by the Judges concerned. Therefore we do not get

much. But here you provide a penalty which is not provided in the law as it stands to-day, and I submit it is entirely inconsistent with the policy on which these Amendments are based. I hope that the Government will find their way not to press the amendment to section 121-A. As a matter of fact, I do not propose any Amendment to the proposed Amendment before us because none is necessary. I oppose it. I submit that when the time comes for putting these Amendments, they may be put one by one. But so far as this Amendment is concerned I strongly.....

The HONOURABLE THE PRESIDENT: The point now under consideration is the general principle of the Bill. I think the Honourable Member has made his point sufficiently.

The HONOURABLE SAIYID RAZA ALI: So far as the general principle is concerned, I have already made myself quite clear. I put it to the Council that here we are erring on the side of severity for which no justification exists and which has not at all been explained to this Council either in the Statement of Objects and Reasons which is simply non-existent in the present case or by the Honourable Member in charge of the Bill.

The HONOURABLE SIR MANECKJI DADABHOY: Sir, I welcome this Bill as it seeks to remove in my opinion a long-standing stain on our penal legislation. In the course of my professional career I have often experienced cases of great hardship, where, in addition to the ordinary sentence, the sentence of forfeiture of property was imposed. This power regarding the imposition of a sentence of forfeiture of property seeks not only to punish the offender, but has the effect of punishing his family, his children and his other dependants. In many cases I had the sorrow of knowing that, when a sentence of this nature was imposed, the whole family was practically ruined and they had not even the bare means of existence. I quite agree with the Honourable Mr. Craik that this part of the law is now an anachronism in the present state of our civilization, and I am very very glad that the Government have now thought fit to introduce this amending legislation and remove a long-standing blot on our penal laws. I have not been able to follow at all the arguments of my Honourable friend, Saiyid Raza Ali, when he said that on the one hand you remove a clause which compels the forfeiture of his property and on the other hand you subject the offender to a fine. My friend says that this is taking away the leniency which is contemplated in the present legislation. He argues that the offender goes from the frying pan into the fire by this Amendment. My friend as a lawyer ought to have known long before that when a sentence of fine is imposed, the Court does not impose the fine to the maximum extent of the offender's property. The Court generally exercises a discretion in the matter and imposes as a rule a fine which is not at all equal to the extent of the property or possessions of the offender. I cannot therefore understand in what way this Amendment will act as a hardship. On the other hand, this is not a new phase of the law at all. In the Penal Code, as my friend knows, in various sections, in addition to the imposition of rigorous or simple imprisonment, the Courts are given the power of imposing a fine as well. So this is no new departure at all. For these reasons, I am unable to agree with my Honourable friend, Raza Ali, and I welcome this Bill and I hope that this Council will pass it without any opposition.

The HONOURABLE MR. H. MONCRIEFF SMITH: Sir, in reply to the Honourable Mr. Raza Ali, I have very little to add to what my Honourable

[Mr. Moncrieff Smith.]

friend, Sir Maneckji Dadabhoy has said. The Honourable Mr. Raza Ali suggests that it is a piece of brutality on the part of the Government to add a fine in any case where no fine was previously possible. I think the Statement of Objects and Reasons, with the Bill as introduced in the Legislative Assembly, was perfectly frank on the subject. It says: "The Bill also proposes to make offences under sections 121, 121-A. and 122 punishable with fine." A fine was being substituted for forfeiture in certain cases and the Government thought it reasonable to bring all these offences into line and make offences punishable with transportation and imprisonment also liable to fine. I might point out that there is a section in the Indian Penal Code which has escaped the Honourable Member's notice, which lays down that "Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive." After all, we are talking about section 121-A. I do not know if the Honourable Member has read section 121-A. The fact is that the offence for which Government and the Legislative Assembly propose to add the penalty of a fine which shall not be excessive is the offence of conspiring to commit the offence laid down in section 121, and that is waging war against the Sovereign. I do not think the Council will agree that any hardship is being laid on the subject by this small Amendment.

The HONOURABLE KHAN BAHADUR AMIN-UL-ISLAM: Sir, I wish to invite the attention of the Council to the concluding portion of section 62, which runs as follows:

'Whenever any person shall be convicted of any offence for which he shall be transported or sentenced to imprisonment for a term of seven years or upwards, the Court may adjudge that the rents and profits of all his moveable and immoveable estate during the period of his transportation or imprisonment, shall be forfeited to Government.'

Sir it is proposed to repeal this section. In section 121-A. the punishment provided is transportation for life or any shorter term, and imprisonment for ten years. The Court can adjudge a sentence of forfeiture of rents and profits whenever any person is sentenced to transportation or imprisonment under the concluding portion of section 62. So, I do not think the Government has been brutal by adding the punishment of fine in section 121-A.

The HONOURABLE THE PRESIDENT: I have received an Amendment from Sir B. C. Mitter as follows: "I wish to amend the section by substituting the word "may" for the word "shall." This raises a question of importance. As regards Resolutions I do recognise that Honourable Members must move Amendments in accordance with the run of the debate. With Bill, however, the matter is on a different footing. I have been waiting for this opportunity, but I did not really think that I was going to get it during the course of this particular debate. The ordinary notice for an amendment is two days. I will just read to the Council the Standing Order on the subject, which runs thus:

'If notice of a proposed Amendment has not been given two clear days before the day on which the Bill is to be considered, any Member may object to the moving of the Amendment, and such objection shall prevail, unless the President, in the exercise of his power to suspend this Standing Order, allows the Amendment to be moved.'

Now, this Bill has been circulated to Honourable Members for some time. It is obvious that, if a member has discovered what he thought was a flaw in the Bill, he should put down an Amendment. The frank and proper course for him is to put down his Amendment. The object of this Council is to assist

in getting Bills into a perfect form. There may be points which Honourable Members may desire to look up and consider. I quite see that in the case of Resolutions the course of the debate changes and Amendments must come in as they are occasioned by the course of the debate. But here we are not discussing Resolutions. We are legislating, and it is very necessary to give notice to Government. In this case, I must ask the Honourable Member (for Government) if he objects to the Amendment.

The HONOURABLE MR. H. D. CRAIK: May I know what the Amendment is?

The HONOURABLE THE PRESIDENT: The Amendment is:

"I wish to amend the section by substituting the word 'may' for the word 'shall'" I think it is quite clear that the Honourable Member is referring to section 121-A. I think his intention is to amend it to "and may also be liable to fine."

The HONOURABLE MR. H. MONCRIEFF SMITH: I think, Sir, that we need not worry ourselves about this Amendment as there is practically no difference between "shall also be liable to fine" and "may also be liable to fine."

The HONOURABLE THE PRESIDENT: I should like to hear the Honourable Sir B. C. Mitter.

The HONOURABLE SIR B. C. MITTER: Sir, the word "shall" is not always equivalent to the word "may." It may be that some Courts will accept this construction, and others may not.

The HONOURABLE MR. H. MONCRIEFF SMITH: Sir, if this Amendment is made, it is probable we may have to amend almost every section of the Penal Code.

The HONOURABLE THE PRESIDENT: The point I ask of the Honourable Member is whether he proposes to exercise his right under the Standing Order.

The HONOURABLE MR. H. D. CRAIK: I do object to this Amendment, Sir. I have not had any notice.

The HONOURABLE THE PRESIDENT: Then I must adjourn this discussion. The Amendment may be put down on the paper, and discussion resumed on the next day of official business.

The HONOURABLE MR. H. D. CRAIK: May I respectfully suggest that the Honourable Member should withdraw his Amendment? I do not know if I am in order in speaking, but I am very anxious to get the Bill passed. If the Honourable Member will refer to any section of the Code in which the punishment of fine is provided—take for instance section 380, which deals with theft,—he will find that the words used are "and shall also be liable to fine."

The HONOURABLE SIR B. C. MITTER: Sir, I appreciate the point of the Honourable Member. It struck me in the course of the discussion that the real objection was that an additional punishment is introduced, so I tried to meet that by the Amendment.

[Mr. H. D. Craik.]

The HONOURABLE MR. H. D. CRAIK : It is a question of the interpretation of the words. The substitution of 'may' for 'shall' could make no practical difference.

The HONOURABLE SIR. B. C. MITTER : Having regard to what the Honourable Member said, namely, that he wishes to have this matter through, I am quite prepared to withdraw the Amendment as probably there is not much difference in the Penal Code between the words 'shall be liable' and 'may be liable.'

The Amendment was by leave of the Council withdrawn.

The Motion that the Bill be taken into consideration was adopted.

The HONOURABLE MR. H. D. CRAIK : Sir, I move that the Bill be passed.

The HONOURABLE SAIYID RAZA ALI : Sir, on this Motion I suggest that you may be pleased to put not the whole Bill to the vote of this Council but clause by clause. In fact I am concerned mainly with Clause 3. Clause 3 of the Bill should be put to the vote of this Council separately. It is in your discretion, Sir, to put the whole Bill or to take it in parts. Now I do not propose to take up much time of the Council, but I will very briefly state my reasons why Clause 3 of the Bill should not be passed. Sir, so far as the question of amendment is concerned, you were pleased to refer to me and to point out that it was open to me to give notice of an Amendment. That is quite so. It was open to me to give notice, but I submit, Sir, that I am not proposing an Amendment. I simply say that Clause 3 should not be passed. I am opposing it.

The HONOURABLE THE PRESIDENT : You should have moved that the clause be omitted.

The HONOURABLE SAIYID RAZA ALI : So far as I understand this subject, and I speak subject to your ruling, when a member is opposed to anything and he says .....

The HONOURABLE THE PRESIDENT : The Honourable Member must understand that normally speaking I should at this stage put the Bill as a whole and then there would be no opportunity to object to any particular clause. Where an Honourable Member desires to object to any particular clause, it is for him to put down a notice on the paper that that clause be omitted and then the point comes up after the motion for consideration has been passed. Otherwise the President not unreasonably may refuse to exercise his discretion as to whether the whole Bill should be put as a whole or it should be put clause by clause at the final stage.

The HONOURABLE SAIYID RAZA ALI : We need not discuss that point further. Now coming to the clause itself, it has been pointed out, if I understand him correctly, by the Honourable Mr. Moncrieff Smith who replied to the objection I have taken, that it is desirable to introduce something like uniformity in all those sections which relate to offences against the State and because that punishment is there under sections 121 and 122, namely, the punishment of fine, therefore no great harm will be done if that is added to section 121-A also. Now, Sir, acting as legislators and making laws for future generations yet unborn and making penal laws for those generations as we are doing, I fail to appreciate the force of the argument of Mr. Moncrieff Smith. If that is so, is he prepared to add an additional sentence of fine to every

section of the Indian Penal Code where that punishment has not been provided for? That is really a very novel argument for which we ought to give due credit to the Honourable the Legislative Secretary. Sir, the point is this. We have got a law. That law is complete. For certain reasons into which I need not go and do not propose to go, the Government think that that law should to a certain extent be amended. Now the amendments are all on the side of leniency as I took care to point out. Now my simple point is this. This punishment of fine does not find place in section 121-A.....

The HONOURABLE THE PRESIDENT: I must ask the Honourable Member not to repeat his arguments. I have already given him considerable latitude and I must ask him to shorten his speech.

The HONOURABLE SAIYID RAZA ALI: Shortly, Sir, that is my argument. The punishment is not there and we have no right to put it in. Now I come to the next point, which is the only other point raised, namely, that under section 62 some punishment has been provided for, which may be imposed by a Court acting under section 121-A of the Indian Penal Code. My reply is that it is optional, not obligatory. It is not a forfeiture of property as was supposed by the Honourable Member. It is one of attachment. The profits of property can only be attached. Therefore I submit that in fact we will be committing a very serious blunder in passing clause 3 which appears in the Bill, and in the name of being merciful to those men who may be prosecuted, we will be showing them greater severity than the law, as it stands to-day, permits. Therefore I oppose clause 3 and I submit that you will be pleased to put this Bill to vote clause by clause or the rest of the Bill at once and clause 3 separately.

The HONOURABLE MR. H. D. CRAIK: Sir, I think the Honourable Member is wrong in his deductions. Section 121-A. deals with the offence of conspiring to wage war against the King or to deprive the King of the sovereignty of British India or to overawe by criminal force the Government of India or any Local Government. That is a very serious offence and it is punishable with transportation for life or imprisonment of either description which may extend to ten years, and in addition to that it is punishable, under the laws as they stand at present, with forfeiture.

The HONOURABLE SAIYID RAZA ALI: Not with forfeiture.

The HONOURABLE MR. H. D. CRAIK: Yes, with forfeiture.

The HONOURABLE SAIYID RAZA ALI: It is not so.

The HONOURABLE MR. H. D. CRAIK: If the Honourable Member will read section 62, he will find this: "Whenever any person is convicted of an offence punishable with transportation or imprisonment for a term of seven years or more, the Court may adjudge that the rents and profits of all his moveable and immoveable estate shall be forfeited to Government during the period of his transportation or imprisonment." Those are the words and they are as clear as English can make them. We are proposing to substitute for that punishment a fine.

The HONOURABLE SAIYID RAZA ALI: May I rise to a point of personal explanation? It is only rents and profits that will be forfeited under section 62, not the property.

The HONOURABLE THE PRESIDENT : That is not a point of personal explanation. I will say that in future I do not propose to exercise the powers I possess to put a Bill clause by clause at the final stage if an Honourable Member who wants a clause to be omitted has not given notice of an Amendment to that effect. I will do so in the present case as I desire to ascertain the real opinions of the Council on the point raised.

The Bill was put clause by clause and passed.

RESOLUTION *re* LIMITATION OF HOURS OF WORK IN FISHING INDUSTRIES.

The HONOURABLE MR. H. A. F. LINDSAY : Owing to the recent re-adjustment of the work of the Department and also to pressing work in the Legislative Assembly, the Honourable Mr. Shafi is unable to be present here to-day and he has asked me to deal with these Resolutions.

The first Resolution I have to move runs as follows :

'This Council recommends to the Governor General in Council that no action be taken on the recommendation concerning the limitation of hours of work in the fishing industry adopted by the General Conference of the International Labour Organisation of the League of Nations convened at Genoa on the 15th day of June, 1920.'

This is the first of seven Resolutions based on the Conventions and Recommendations of the Conference which was held under the auspices of the League of Nations. Under Article 405 of the Treaty of Versailles, we are allowed at the most 18 months for consideration of these Draft Conventions and Recommendations, and since the Genoa Conference finally came to an end on the 10th July, 1920, we must take the opportunity afforded by this Session of submitting the questions to the House.

This Recommendation suggests that each member of the International Labour Organisation should enact legislation limiting, in the direction of 8 hour day or a 48 hour week, the hours of work of all workers employed in the fishing industry with such provisions as may be necessary to meet the conditions peculiar to the fishing industry in each country.

At this stage the Honourable Sir Zulfikar Ali Khan took the Chair.

It is further suggested that in framing such legislation each Government should consult the organisation of employers and the organisation of workers concerned.

I do not think that we need spend much time over this Resolution. It is doubtful whether it will be applied to any country in the world. It is certain that we could not apply it to India. There are no organisations of employers or of fishermen in India. There is practically no deep sea fishing. Such fishing as does go on round the Indian coast is almost entirely inshore fishing. The fishing boats and tackle are of a primitive description and the fishermen, though they may be financed by merchants, frequently own the boats and tackle and remunerate their employés, if any, by a share of the catch. All Local Governments agree that it would be entirely premature to take any action on this Recommendation, and those of us in the House who know the conditions in which sea fishing is carried on in India must realise that no other conclusion is possible.

Sir, I move that the Resolution be adopted.

The Resolution was adopted.

RESOLUTION *RE* ESTABLISHMENT OF NATIONAL SEAMEN'S CODES.

The Honourable Mr. H. A. F. LINDSAY : I next move, Sir, that :

'This Council recommends to the Governor General in Council that no action be taken on the Recommendation concerning the establishment of National Seamen's Codes adopted by the General Conference of the International Labour Organisation of the League of Nations convened at Genoa on the 15th day of June, 1920.'

Here again, Sir, I do not think I need take up the time of the House very long. We take the view that the codification of our numerous Mercantile Shipping Acts must precede the framing of a National Seamen's Code. This question is already under consideration and some progress has been made. When the Code is complete, it will serve very largely the purpose of a National Seamen's Code, and we think that no action need be taken for the present, at any rate, on this Recommendation of the Conference.

I move that this Resolution be adopted.

The Resolution was adopted.

RESOLUTION *RE* UNEMPLOYMENT INSURANCE FOR SEAMEN.

The Honourable Mr. H. A. F. LINDSAY : I move, Sir, that :

'This Council recommends to the Governor General in Council that no action be taken on the Recommendations concerning unemployment Insurance for Seamen adopted by the General Conference of the International Labour Organisation of the League of Nations convened at Genoa on the 15th day of June, 1920.'

This is another Resolution in regard to which I need not trouble the Council with any long speech. The general question of unemployment Insurance in India was considered last year in connection with the Recommendation of the Washington Conference that steps should be taken to establish an effective system of unemployment Insurance in India. In the course of the debate of the 19th February last, the House was informed that the Government of India and Local Governments had arrived unanimously at the opinion that no system of unemployment insurance was practicable in India at present, and this decision also applies, in our opinion, to seamen in India. Indian seamen usually combine, to some extent, agriculture with their main profession and, moreover, we have no machinery at present by which we could make a system of unemployment insurance effective.

I beg to move that the Resoltion be adopted.

The Resolution was adopted.

RESOLUTION *RE* MINIMUM AGE OF CHILDREN FOR EMPLOYMENT AT SEA.

The Honourable Mr. H. A. F. LINDSAY : I move, Sir, that :

'This Council recommends to the Governor General in Council that he should ratify the Draft Convention fixing the minimum age for admission of children to employment at sea adopted by the General Conference of the International Labour Organisation of the League of Nations convened at Genoa on the 15th day of June, 1920, subject to the following reservations :

(*a*) that it shall apply only to foreign going ships and to home-trade ships of a burden exceeding 800 tons ; and

[Mr. H. A. F. Lindsay.]

(b) that nothing in the Draft Convention shall be deemed to interfere with the Indian custom of sending young boys to sea on nominal wages in the charge of their fathers or relatives.'

The main feature of this Draft Convention is that it forbids the employment of children under the age of 14 years on board ship, and I think that the House will cordially agree with the Government of India that the Draft Convention should be ratified. We suggest, however, that two reservations should be made. In the first place, we suggest that the Draft Convention, if ratified, should be applied only to foreign-going ships and to home-trade ships of a burden exceeding 300 tons. The explanation of this stipulation is contained in section 26 of the Indian Merchant Shipping Act of 1883. Agreements with seamen are obligatory at present only in respect of seamen engaging to serve on foreign-going ships and home-trade ships exceeding 300 tons burden, and it is only when agreements are required that we can undertake to enforce a Convention of this kind. We can enforce it because the agreements must be signed in the presence of the Shipping Master. When agreements are not necessary, as in the case of small ships, mostly sailing ships engaged in the home trade, we could not enforce the Convention, and that is why we think the suggested reservation is necessary. On principle we should not ratify a Convention in a form in which we could not properly enforce it. The other reservation which we propose is intended to safeguard the present practice under which serangs, sea-cunnies, tindals and other Indian seamen are sometimes allowed to take with them to sea their sons or nephews. These boys serve as deck-hands on nominal wages and are looked after by their relatives. It is a form of apprenticeship. The privilege, we are informed on all sides, is highly valued by Indian seamen, and for the present it is thought unnecessary to interfere with it.

I beg to move that this Resolution be adopted.

The Resolution was adopted.

RESOLUTION *RE* INDEMNITY IN CASE OF LOSS OR FOUNDERING OF SHIPS.

The HONOURABLE MR. H. A. F. LINDSAY: I move, Sir, that:

'This Council recommends to the Governor General in Council that the Draft Convention concerning unemployment indemnity in case of loss or foundering of a ship adopted by the International Labour Organisation of the League of Nations convened at Genoa on the 15th day of June, 1920, should not be ratified, but that inquiries should be undertaken whether the law should not be amended so as to provide:

(1) that any Indian seaman whose service is terminated before the period contemplated in his agreement by reason of the wreck or loss of his ship should be entitled to his wages until he is repatriated to the port of his departure from India, and

(2) that he should be paid compensation for loss of his personal effects up to the limit of one month's wages.'

This Resolution raises a rather more difficult point than has arisen in connection with the previous Resolutions, and I will first attempt briefly to explain the law on the subject. Section 26 of the Merchant Shipping Act, 1883, prescribes that the Master of every ship, except ships of a burden not exceeding

300 tons engaged in the home trade, shall enter into an agreement with every seaman he engages. Section 29 prescribes that when a lascar is engaged for a voyage which ends at a port not in British India, his agreement shall contain a stipulation that either fit employment shall be found for him on board some other ship bound for the port at which he was shipped, or that he should be provided free of charge, on such terms as may be agreed upon, with a passage to some port in British India. If a ship is wrecked, section 51 of the Merchant Shipping Act, 1859, states that the wages of seamen on board that ship cease from the date of the wreck. Chapter III of the Indian Merchant Shipping Act of 1880, however, makes provision for the subsistence and conveyance home of Indian seamen shipwrecked on the Indian coast, and there are similar provisions in the English Merchant Shipping Act of 1894.

[At this stage the Honourable the President resumed the Chair, which was vacated by the Honourable Sir Zulfiqar Ali Khan.]

Now, the most important part of the draft Convention which we are now considering is Article 2. This article states that in every case of loss or foundering of any vessel, the owner or person with whom the seaman has contracted for service on board the vessel shall pay to each seaman employed therein an indemnity against unemployment resulting from such loss or foundering. The indemnity shall be paid for the days during which the seaman remains in fact unemployed at the same rate as the wages payable under the contract, but the total indemnity payable under this Convention to any one seaman may be limited to two months' wages. There is some difference of opinion among maritime Local Governments whether we should ratify this Convention or not, and the solution which the Government propose for the consideration of this House is in the nature of a compromise. We suggest that we should not commit ourselves at present to the principle of unemployment indemnity. All questions of this kind, particularly in their relation to seamen's labour, are novel in India, and it is thought unadvisable that we should allow ourselves to be forced to any hasty, ill considered decision which gives away an important principle. In lieu of ratifying the Convention, we think that an examination should be undertaken of the law on the subject, in order that we may see whether that law should not be amended so as to provide that any Indian seaman whose service is terminated by reason of the wreck or loss of his ship should be entitled to his wages until he is repatriated to the port of departure from India, and that he should be paid compensation for the loss of his personal effects, if any, up to the limit of one month's wages. The above proposal seems to us the most reasonable solution of a difficult question. If the solution proves practicable, it has certain obvious advantages over the proposal of the Genoa Conference that an indemnity against unemployment should be paid to wrecked seamen. The objection to an indemnity against unemployment is, that it would be extremely difficult to work the system in the present circumstances of India. We have at present no Labour Exchanges for seamen and, as I will show in dealing with the next Resolution, it is doubtful whether at present we can usefully establish such Exchanges. This being so, we have no ready means by which ship-wrecked seamen on their repatriation to India can be registered for employment. If, therefore, we ratify the draft Convention and introduce the system of unemployment indemnity, the system would lead to constant disputes between the seamen and owners. It would be necessary

[Mr. H. A. F. Lindsay.]

for the seamen to prove for precisely how long they had in fact been unemployed and that they had attempted to find employment. We think that a procedure of this kind would lead to disputes and delays, and we have arrived at the conclusion that, in the interests of the seamen themselves, it would be better to arrange, if possible, that in the event of wreck or loss of their ship, they should be paid wages till the date of their repatriation to India, and, in addition, a sum of money as compensation for loss of personal effects. The effect of this proposal, if it proves practicable, will be that these seamen on their return to India will be entitled to a definite lump sum down, and they will be put to no trouble in proving that they had tried to obtain employment on another ship and had not succeeded in doing so. A further difficulty in the way of the proposed system of unemployment indemnity is that many seamen, as I have already pointed out, combine agriculture and cultivation with their main profession. We fear, therefore, that an unemployment indemnity would tempt to make them idle away their time in their villages without seeking fresh employment on board ship. The system would scarcely be fair to ship-owners and would tend to put a premium on idleness. It is quite possible that the principle of unemployment indemnity will sooner or later be accepted and enforced in India. As things are at present, however, we think that it will be premature to endeavour to introduce the system in the absence of machinery properly to work it, and that it is better to ensure seamen a lump sum in the shape of wages from the date of the wreck to the date of repatriation, *plus* a compensation for the loss of personal effects.

I beg to move that the Resolution be adopted.

The HONOURABLE MR. A. H. FROOM: Sir, I wish to say a few words in support of the Resolution moved by the Honourable Mr. Lindsay, and to state that I entirely agree with the views of Government that an unemployment indemnity in connection with lascars who have lost their ships would be a most difficult matter to deal with.

It would lend itself to endless disputes and it would be very difficult to determine whether the lascar, who lost his ship, really made a proper effort to find another vessel on which he could be employed.

I agree, though, that we might improve this situation in some way by a modification of the Indian Merchant Shipping Act. That Act, as the Honourable Mr. Lindsay explained, provides that when a ship is lost the wages of the seamen on that ship automatically cease. On the face of it,—perhaps to people not intimately acquainted with shipping,—this may seem rather hard, but it is an old law of shipping which has been in force for many many years. In practice, however, the Shipping Companies with which I am connected pay the men up to the time they get back to their original port, and I think the most important Shipping Companies do the same, and I should be quite agreeable to the Shipping Act being amended so as to make that practice regular and compulsory.

I also have no objection to the compensation of one month's wages to the men for loss of personal effects, though I am not quite sure whether it is a good clause to put into this Resolution.

I have very little more to say, Sir, but I think the Council would like to know that the big Shipping Companies treat their lascars well and go beyond the terms of the Indian Merchant Shipping Act.

The HONOURABLE SIR MANECKJI DADABHOY: Sir, I rise to a point of order. May I ask for your ruling in connection with Resolutions of this description? Does the passing of these Resolutions by this Council prevent any Honourable Member of this Council from moving Amendments which may be contrary to the spirit and letter of the Resolution when subsequent legislation, if any, is introduced? I ask for this ruling as Honourable Members will remember that during the last Session in Delhi certain Resolutions in connection with factory labour were introduced, and when the Factory Bill was subsequently brought before this Council, and a Select Committee appointed, I raised certain objections and was told that I was not competent to raise those objections because the Council had committed itself to the principle of the said Resolutions.

The HONOURABLE THE PRESIDENT: If I have understood the Honourable Member's question correctly, it is this; 'If a Resolution of a general character is brought before this Council and the Council gives its assent to that Resolution, and subsequently a Bill is introduced giving effect to that Resolution, whether any Honourable Member is debarred from his normal rights.' Is that the question?

The HONOURABLE SIR MANECKJI DADABHOY: Yes, Sir, whether he could introduce any Amendment affecting the principle of the Resolution.

The HONOURABLE THE PRESIDENT: I would say that a Resolution of this character, if passed by the Council, is an expression of opinion of the Council, and it is also an encouragement to Government to proceed with legislation. But when the Bill giving effect to the principle is brought before the Council, I take it that every Honourable Member retains the right he retains in regard to all other Bills that are introduced. It would be intolerable otherwise.

The HONOURABLE SIR MANECKJI DADABHOY: I am very thankful for that ruling, Sir, because it has solved the problem. I raised this objection in the Select Committee and was overruled.

The HONOURABLE MR. LALUBHAI SAMALDAS: Sir, I should like to ask this question, if the Honourable Member did not oppose the Resolution and if it was accepted by the Council, without any dissentient voice being heard, the principles should be taken as accepted by all and would be a matter for comment when subsequent legislation, if any, was introduced.

The HONOURABLE THE PRESIDENT: Undoubtedly it would be a matter for comment—very severe comment—on the part of those who oppose it.

The Resolution was adopted.

RESOLUTION *RE* FACILITIES FOR FINDING EMPLOYMENT FOR SEAMEN.

The HONOURABLE MR. H. A. F. LINDSAY: I move, Sir, that—

'This Council recommends to the Governor General in Council that the Draft Convention for establishing facilities for finding employment for seamen adopted by the General Conference of the International Labour Organisation of the League of Nations convened at Genoa on the 15th day of June, 1920, should not be ratified, but that an examination should be undertaken without delay of the methods of recruitment of seamen at the different ports in India in order that it may be definitely ascertained whether abuses exist, and whether those abuses are susceptible of remedy.'

The Draft Convention to which reference is made in the Resolution prescribes that the business of finding employment for seamen may not be

[Mr. H. A. F. Lindsay.]

carried on by any person, company or other agency as a commercial enterprise and that fees shall not be charged by any one, directly or indirectly, for finding employment for seamen on any ship. Article 3, however, allows any person, company or agency at present carrying on the work of finding employment for seamen as a commercial enterprise for gain to continue temporarily under Government license and supervision provided that all practicable steps are taken to abolish the practice of finding employment for seamen as a commercial enterprise as soon as possible. Article 5 prescribes the organisation and maintenance of an efficient and adequate system of public employment agencies either under the joint control of representatives of associations of shipowners and seamen or in the absence of such control by the State itself.

The above are the most important provisions of the Draft Convention. Broadly speaking, the Draft Convention is directed against crimping in any shape or form and this is an object with which we must all sympathise. Our law on the subject is contained in the Merchant Shipping Act of 1859. Section 18 of that Act authorises the Local Government or any board or officer empowered in this behalf by the Local Government to grant licenses to fit persons to engage or supply seamen on such terms as may be thought proper. Section 19 constitutes it an offence either to supply seamen without a license or to employ unlicensed persons for the purpose of obtaining seamen or to see seamen illegally supplied. Section 20 makes it an offence to demand or receive money, either directly or indirectly, from seamen in return for finding them employment.

The most important point which this House has to decide, is whether we should abolish our system of licensed shipping brokers in favour of a system of public employment offices, and the conclusion which the Government of India have arrived at, after consulting the four maritime Local Governments, is that we require further information before we can make any confident proposals for the consideration of the House. We are prepared to admit that the licensed broker system is theoretically wrong. It is true that the shipping brokers are paid not by the seamen whom they engage, but by shipowners for whom they act. But the system is not in accordance with the principle laid down by the Conference that no fees shall be charged, either directly or indirectly, by any person, company or agency for finding employment for seamen. The real question, however, is whether under present conditions we can usefully abolish the licensed brokers system in favour of employment agencies, or whether the establishment of employment agencies will remedy such abuses as are now suspected.

The Governments of Bengal and Bombay, which are mainly concerned, since it is only in Calcutta and Bombay that seamen are engaged in any numbers, both answer this question in the negative. But on a separate reference from the Government of India, they both agree that there is a case for an inquiry into the methods of recruitment of seamen now in vogue in India. We suggest that this inquiry should be undertaken before the House comes to any final decision on the points raised by this Draft Convention.

I am not prepared to commit myself too far. As far as I know, the licensed shipping brokers are all respectable men. Complaints have been made in the past that they were in the habit of taking illegal fees from seamen, and elaborate and careful inquiries have been made into these complaints, but the inquiries have never led to anything either owing to the vague and general

nature of the complaints or because the signatories to the complaints refuse to come out in the open and give evidence. Personally, I doubt whether there is any reason to suppose that the licensed brokers themselves take money illegally from the seamen. In Calcutta, I believe, there are only four such licensed brokers and two of them have been in the business for several generations. If money is taken at all, it is probably taken by the *serangs*.

Perhaps I may explain briefly the practice observed, at any rate in Calcutta, in engaging crews for steamers. When a ship is in need of a crew, the Chief Officer, the Chief Engineer and the Chief Steward select, respectively, the deck *serang*, the engine room *serang* and the Butler. Ordinarily they select *serangs* whom they know and with whom they have sailed before, and it frequently happens that a *serang* serves for years together on the same ship or under the same Chief. Each *serang* produces his own crew, and it is a noteworthy fact that, according to our information, the crew so produced will serve only under the *serang* who produces it. The crew, if accepted by the Chief Officer, the Chief Engineer or the Chief Steward, sign on in the presence of the Shipping Master and, when they sign on, it is the practice to give each member of the crew an advance of one month's wages. It is here that the shipping broker licensed under section 18 of the Merchant Shipping Act of 1859 comes in. As I understand it, he has nothing to do with the actual recruitment of the seamen. Indeed, he could not recruit the seamen except with the assistance of the *serangs*. His main function appears to be to disburse out of his own pocket the advance of one month's wages to the crew and he stands to lose if all or any of the crew fail to turn up on board the ship. He makes this advance in return for a commission paid by the owners at 7½ per cent on the amount disbursed, and this appears to be his main concern with recruitment. The advance is paid in the presence of the Shipping Master directly into the hands of the seamen, and it is probable that each seaman pays the usual *dastur* to the *serang*. But no one can stop him from doing so. All that we can do is to see that the money is paid into his own hands. The system is of course a peculiar one. In principle it may be wrong, but it is a natural growth, and has the further advantage that it does not require the presence in Calcutta of seamen waiting for engagement. These seamen can stay on if they like in their own villages keeping in touch with the *serang* under whom they are accustomed to serve. A further advantage of the *serang* system is that it ensures team work on boardship. If this description of the system is correct, it will be seen that, if money is paid at all by the seamen on obtaining employment on board a ship, it is paid to the *serang* and it is very doubtful whether the establishment of public employment agencies would get rid of the *serang* or prevent seamen from paying a portion of their advance to the *serang*. As I have said, however, the Government have an open mind on the subject. They are of opinion that the present system is suited to the custom of the country, but they are quite prepared to admit that there may be abuses connected with the system. They think that the best plan therefore is to have the whole system examined by a small committee in order that the question may be considered in the light of full and accurate information. In accordance with the pledge given at the last Session of the Legislative Assembly, no action will be taken on the Committee's report until this House has had a further opportunity of examining the subject.

The HONOURABLE MR. A. H. FROOM: Sir, I should like to congratulate the Honourable Mr. Lindsay for the very lucid manner in which he

[Mr. A. H. Froom.]

has explained to this Council the custom in connection with the employment of Indian seamen and their life generally at sea. I have been connected with shipping in India for many years, and I do not think that I should be considered conceited if I were to say that I could not have explained the position better myself.

I quite agree that the system of shipping brokers and their agencies at ports of shipment is entirely suited to Indian seamen. They are a peculiar class. They go away on voyages for nine months or a year. Within a year they have to be repatriated; those are the terms of the articles. When they come back they draw their pay, which frequently amounts to a large sum of money. After their first month's advance, they usually refrain from drawing to any great extent at other ports. When they have spent their money in their homes upcountry they want another ship. The licensed shipping broker keeps in touch with the men. Sometimes the supply far exceeds the demand, and then the men come down to Bombay without any money, and get into the hands of boarding house owners, usually *ghat serangs* and it is here the trouble begins, a trouble which we have often tried to solve, but, I must say, with little or no success.

The licensed shipping broker, I am quite convinced, does not squeeze the men. I do not think he takes any money from them. But the men who have come down to the seaport seeking employment are boarded and fed by certain Boarding Housekeepers and when they get a ship, the latter steps in, and takes their month's advance of wages to recompense himself for the cost of boarding and feeding; and I have no doubt that he adds a hundred per cent. That is where these men get squeezed. We have been trying to stop this, but it is very difficult. We have had conferences with the Shipping Master in Bombay.

I thoroughly believe that the system of licensed brokers is the best. I do not believe that a labour bureau would do half for the seamen that these licensed brokers do. It is to the advantage of the licensed broker to get men employed since he gets a commission from the Shipping Company. The men do not have to pay any commission at all.

I approve of this Resolution which suggests that an examination should be undertaken without delay of the methods of recruitment of seamen, and I think that is the best way of dealing with this Convention which, I quite agree, this Council should not recommend to the Governor General in Council for ratification.

The HONOURABLE THE PRESIDENT: The question is that the following Resolution be adopted:

'This Council recommends to the Governor General in Council that the draft Convention for establishing facilities for finding employment for seamen adopted by the General Conference of the International Labour Organization of the League of Nations convened at Genoa on the 15th day of June, 1920, should not be ratified, but that an examination should be undertaken without delay of the methods of recruitment of seamen at the different ports in India in order that it may be definitely ascertained whether abuses exist and whether those abuses are susceptible of remedy.'

The Resolution was adopted.

The Council then adjourned till Thursday, the 29th September, at 11 A.M.