

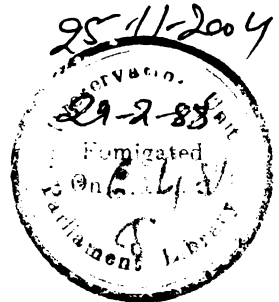
Tuesday, 27th January, 1925

THE
COUNCIL OF STATE DEBATES

Volume V

(20th January to 26th March 1925)

FIFTH SESSION
OF THE
COUNCIL OF STATE, 1925



DELHI
GOVERNMENT OF INDIA PRESS
1925

CONTENTS.

PAGES.

TUESDAY, 20TH JANUARY 1925—

Inauguration of the Fifth Session of the Council of State and the Second Session of the Second Legislative Assembly—H. E. the Viceroy's Speech	1—11
--	------

THURSDAY, 22ND JANUARY 1925—

Members Sworn	13
Announcement by the Honourable Sir Henry Moncrieff Smith of his appointment as President of the Council	13
Congratulatory to the new President	13—17
Welcome to the new Leader of the House	13—17
Congratulatory to Members who have been recipients of honours	17
Message from His Excellency the Governor General—(Panel of Chairmen)	17
Committee on Petitions	17
Questions and Answers	18—30
Governor General's assent to Bills	30
Bill passed by the Legislative Assembly laid on the Table	30
Tributes to the memory of the late Mr. E. S. Montagu	30—36
Resolution re Admission of Indian Students to the University Officers' Training Corps—Adopted	36—40
Resolution re Import of Cinema Films, etc.—Negatived	40—50
Central Advisory Council for Railways—Adopted	50
Statement of Business	50

TUESDAY, 27TH JANUARY 1925—

Member Sworn	51
Questions and Answers	51—56
Bill passed by the Legislative Assembly laid on the Table	56
Election of Members to the Central Advisory Council for Railways	56—57
Provident Funds Bill—Amendment considered and agreed to	57—72

WEDNESDAY, 28TH JANUARY 1925—

Resolution re Scholarships and Prizes for Indian Art Students— Adopted as amended	73—83
Election to the Panel for the Central Advisory Council for Railways	84
Statement of Business	84

TUESDAY, 3RD FEBRUARY 1925—

Questions and Answers	85—86
Bills passed by the Legislative Assembly laid on the Table	86
Indian Merchant Shipping (Amendment) Bill—Passed	86—88
Amendment of Standing Order 70—Referred to Select Committee	88—89
Statement of Business	89—90

THURSDAY, 5TH FEBRUARY 1925—

Messages from the Legislative Assembly	91
Indian Paper Currency (Amendment) Bill—Passed	92—98
Workmen's Breach of Contract (Repealing) Bill—Passed	98—105
Constitution of the Select Committee on the amendment of the Stand- ing Orders	105

COUNCIL OF STATE.

Tuesday, 27th January, 1925.

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

MEMBER SWORN:

The Honourable Sir Leslie Creery Miller, Kt. (Madras: Nominated Non-official).

QUESTIONS AND ANSWERS.

REDUCTION IN POST-CARD, LETTER AND BOOK POSTAGE RATES, ETC.

36. THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY:

(a) Is there any prospect of a reduction in the post-card, letter and book postage rates next year?

(b) Would the Government please place on the table a statement showing reduction or increase in postal revenue on post-cards, letters, book postage receipts for the last three years?

(c) Has the attention of the Government been called to the demand for reduction of time taken by the English mail to arrive at Bombay and would Government please state whether steps are being taken to see that the time be reduced?

THE HONOURABLE MR. A. H. LEY: (a) I would ask the Honourable Member to await the presentation of the Budget.

(b) The information is not available, as no separate statistics are kept of the revenue derived from the different classes of postal articles referred to. The total value of postage stamps, wrappers, envelopes and post-cards—inland private and service and foreign—issued for sale from Treasuries is as follows:—

1921-22—Rs. 683.8 lakhs.

1922-23—Rs. 725.9 lakhs to which should be added Rs. 7.5 lakhs collected through National Cash register machines installed in certain big telegraph offices.

1923-24—Rs. 729.8 lakhs *plus* Rs. 14 lakhs collected through the above machines and Rs. 20 thousand collected through Franking machines.

(c) Government are aware that there has been a demand for regularity in the arrival of the English mail and the matter has been the subject of correspondence with the General Post Office, London. Friday morning

has been fixed as the time of arrival most suitable to the Post Office and the steamers have been arriving on Friday morning during the past few months with one or two exceptions. When the new steamers are placed on this service next year, a regular Friday morning arrival may be relied upon.

THE HONOURABLE MR. PHIROZE C. SETHNA: Are Government aware that there is a growing feeling in the United Kingdom as also an agitation in the press and elsewhere in regard to an early return to the penny postage system?

THE HONOURABLE MR. A. H. LEY: Yes, Sir.

STATUS OF THE HIGH COMMISSIONER FOR INDIA.

37. THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY: (a) Has the attention of the Government been called to the statement of the Secretary of State for the Colonies regarding proposals for raising the status of Dominion High Commissioners?

(b) Would the Government please state whether similar steps are being taken regarding the High Commissioner for India?

THE HONOURABLE MR. D. T. CHADWICK: (a) It is presumed that the Honourable Member refers to a report of a speech made by the Secretary of State for the Colonies at the Canada Club Dinner. According to that report, Colonel Amery stated that High Commissioners did not receive at present so many personal exemptions from British taxation as did Foreign Ministers. He is reported to have added that "future High Commissioners were to be treated in the matter of these personal concessions on the same footing as Foreign Ministers".

(b) The Honourable Member will realise that this is a matter of personal concessions from British taxation which His Majesty's Government is graciously pleased to grant to certain high officials who happen to be resident in England. Judging from past experience the Government of India have no grounds for supposing that any such concessions, if given at all, would not be granted to all High Commissioners alike.

THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY: Are there no other concessions than taxation?

THE HONOURABLE MR. D. T. CHADWICK: I understood from the Honourable Member that he assented to my statement that this was the speech to which he referred. It is the only one which I have seen. The only instance given in that newspaper report as a sample which Colonel Amery gave of exemption from personal taxation, was this, namely, Foreign Ministers are not required to take out licenses for their personal motor cars, but High Commissioners are.

THE HONOURABLE MR. PHIROZE C. SETHNA: Will Government be pleased to state if one of the reasons for the resignation of Sir Dadiba Dalal, the last High Commissioner, was due to the difference between him and the Government of India in regard to his status?

THE HONOURABLE MR. D. T. CHADWICK: Does this question arise, Sir?

THE HONOURABLE THE PRESIDENT: The question on the paper is in regard to the raising of the status. I think the question does arise.

THE HONOURABLE MR. D. T. CHADWICK: The answer to the question that has been asked was given in another place only very recently and Government propose to make no further statement.

PUBLICATION OF THE REPORT OF THE REFORMS INQUIRY COMMITTEE.

38. THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY: Would the Government please state when the Report of the Reforms Inquiry Committee will be published and when action thereon may be expected to be taken?

THE HONOURABLE MR. J. CRERAR: It is hoped to publish the Report within a few weeks. I add for the information of Honourable Members that, before final orders are passed, the Indian Legislature will have an opportunity of discussing the recommendations of the Committee.

RECOMMENDATIONS OF THE LEE COMMISSION.

39. THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY: (a) Would the Government please lay on the table a statement showing the full financial effect of acceptance of the recommendations of the Lee Commission's Report so far as they have been accepted or are proposed to be accepted by the Right Honourable the Secretary of State?

(b) Would the Government please also lay on the table a statement showing what reductions the Inchcape Committee had proposed in respect of posts, appointments and services corresponding to those about which the Lee Commission have recommended increase or expansion?

THE HONOURABLE MR. A. C. McWATTERS: (a) I lay on the table a copy of the reply given by the Honourable Finance Member at the meeting of the Legislative Assembly on the 3rd September 1924.

(b) This part of the question is not clearly understood. The Lee Commission did not deal with questions relating to the strength of establishments, and the Inchcape Committee deliberately excluded the financial conditions of the superior Civil Services from the scope of their inquiry in view of the announcement which had been made of the appointment of the Lee Commission.

Diwan Bahadur M. Ramachandra Rao: Will the Government be pleased to state the estimated cost of the recommendations of the Lee Commission's report distributed among each of the Provinces and the Government of India?

The Honourable Sir Basil Blackett: If the recommendations of the Lee Commission are accepted in the form in which they were made the estimated cost distributed between the Government of India and the Provinces is as follows:—

				Lakhs.
Government of India	...	...	...	26
Madras	...	...	...	9.7
Bombay	...	...	...	9.7
Bengal	...	...	...	9.3
United Provinces	...	...	...	10.8
Punjab	...	...	...	9.1
Burma	...	...	...	10
Bihar and Orissa	...	...	...	4.9
Central Provinces	...	...	...	5.7
Assam	...	...	...	2.9

The calculation has been made on the basis of a 16-pence rupee, and as exchange has been higher, the actual expenditure in the current year would be less; but, on the other hand, it is possible, as the Commission recognised, that the number of officers taking advantage of the passage concession in the first few years will be more than normal. Secondly, the above calculation does not take into account the cost of the recommendations regarding house rent and medical attendance, which it is not possible to estimate accurately. In addition, there will be a sum of approximately 1½ lakhs for the first year increasing by roughly the same figure every year for about 14 or 15 years, representing the cost of the pension concessions, of which it is not possible to show the distribution among the different Governments. The above represents the figures of cost as calculated by the Commission itself. To this may have to be added a sum approximately 18 lakhs per annum if it is decided to extend the Commission's proposal to officers of the Great Indian Peninsula and East Indian Railways which will shortly become State-managed lines and to officers of Company-managed lines.

Against these extra charges must be set expected savings increasing annually due to replacement of European personnel by Indian. I can give no estimate of their amount or of their distribution among the various Local Governments.

EFFECT OF THE STEEL PROTECTIVE DUTIES.

40. THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY: Would the Government please lay on the table a statement showing the effect of the preferential Steel Tariff—

- (a) on the revenue up to the 31st December; and
- (b) on market prices of the articles concerned, from the introduction of the higher rate of tariff up to the 31st December?

THE HONOURABLE MR. D. T. CHADWICK: (a) The increase in the revenue up to the end of December 1924, due to the increase in duties imposed in June last on articles of steel, is estimated at 71 lakhs.

(b) The duties imposed last June had little effect on prices, internal prices, as the increases due to the duties were largely nullified by the fall in landed cost.

PROTECTION OF THE STEEL INDUSTRY.

41. THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY: Would the Government please state what further steps have been taken for the protection of the steel industry in India since the passing of the Steel Industry Protection Act of 1924, the reason therefor and the financial effect thereof on (a) the industry, (b) the revenue, and (c) the market prices?

THE HONOURABLE MR. D. T. CHADWICK: A Government Resolution was accepted yesterday in another place by which bounties limited to 50 lakhs will be given on certain conditions on steel manufactured in India between October 1st, 1924 and September 30th, 1925. A copy of that Resolution is placed on the table. Also yesterday in another place a vote was passed authorising expenditure up to 25 lakhs for this purpose in the current financial year.

- (a) It is hoped that these measures will be helpful to the industry.
- (b) They would cost the revenues 50 lakhs.
- (c) Giving a bounty does not affect market prices.

Resolution.

"This Assembly recommends to the Governor General in Council that a bounty should be paid on steel manufactured in India between the 1st October 1924 and the 30th September 1925, subject to the following conditions :—

- (1) The bounty should be paid only to firms or companies manufacturing, mainly from pig-iron made in India from Indian ores, steel ingots suitable for rolling or forging into any of the kinds of steel articles specified in Part VII of Schedule II to the Indian Tariff Act, 1894.
- (2) The bounty should be paid on steel ingots manufactured by such firms or companies, and the bounty should be paid at the rate of Rs. 20 a ton on 70 per cent. of the total weight of the ingots manufactured in each month.
- (3) The total amount of the bounty payable under this resolution in the 12 months ending 30th September 1925 should not exceed Rs. 50 lakhs."

THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY: May I ask, Sir, whether any opportunity will be given to this House to consider the Resolution that was passed by the other House?

THE HONOURABLE MR. D. T. CHADWICK: I do not think that is the intention, Sir; nor am I aware that there is a big demand for it.

COST OF THE ANNUAL CONFERENCE OF THE PRESIDENTS OF THE CENTRAL AND PROVINCIAL LEGISLATURES.

42. THE HONOURABLE MR. PHIROZE C. SETHNA: Will Government be pleased to state—

- (a) if the cost of the annual Conference of the Presidents of the Council of State, the Legislative Assembly and the Provincial Councils are paid by them or partly by them and partly by the Provincial Governments, and
- (b) the actual amounts spent each year by the Government of India?

THE HONOURABLE SIR NARASIMHA SARMA: The answer is that there is no cost other than the travelling expenses of the Provincial Presidents which are not paid by the Government of India.

DELAY IN THE TRANSMISSION OF CABLES TO GERMANY.

43. THE HONOURABLE MR. PHIROZE C. SETHNA: Will Government be pleased to state—

- (a) if their attention has been drawn to the allegations attributed in a leading article in the issue of the *Industrial and Trade Review for India*, dated 1st January 1925, to Indians in high official position to the effect that cables to Germany are not only carefully studied for the commercial benefit of English competitors, but that they are actually delayed in transmission; and
- (b) if there is any truth in the allegations made?

THE HONOURABLE MR. A. H. LEY: (a) No.

(b) There is no truth in the allegations made.

RESOLUTION RE RECRUITMENT AND TRAINING OF PROBATIONERS FOR THE FOREST SERVICE.

44. THE HONOURABLE MR. PHIROZE C. SETHNA: Will Government please state what effect has been given by them till now to the Resolution

passed in this Council on 19th September 1922, in regard to probationers for the Forest Service being recruited and trained in India?

THE HONOURABLE SIR MUHAMMAD HABIBULLAH: Proposals of the Government of India on the subject were submitted for sanction in February, 1924, to the Secretary of State for India, who has asked for certain preliminary information which the Government of India will not be in a position to furnish until certain outstanding questions, some of which have arisen from the recommendations of the Lee Commission, have been settled.

THE HONOURABLE MR. PHIROZE C. SETHNA: I understood the Honourable Member to say that proposals were sent to the Secretary of State as late as February 1924, which means about 17 months after the Resolution was passed. Is there any reason for such an extraordinary delay?

THE HONOURABLE SIR MUHAMMAD HABIBULLAH: Delay was inevitable on account of references which had to be made to the various Local Governments on the matter.

BILL PASSED BY THE LEGISLATIVE ASSEMBLY LAID ON THE TABLE.

THE SECRETARY OF THE COUNCIL: Sir, in accordance with Rule 25 of the Indian Legislative Rules, I lay on the table a copy of the Bill to amend the Indian Merchant Shipping Act, 1923, for a certain purpose, which was passed by the Legislative Assembly at its meeting held on the 26th January, 1925.

ELECTION OF MEMBERS TO THE CENTRAL ADVISORY COUNCIL FOR RAILWAYS.

THE HONOURABLE THE PRESIDENT: The following Honourable Members have been nominated as candidates for the Central Advisory Council for Railways or rather for the panel from which the quota of the Council of State will be selected:

The Honourable Lala Sukhbir Sinha,
 The Honourable Haji Chowdhuri Muhammad Ismail Khan,
 The Honourable Rai Bahadur Lala Ram Saran Das,
 The Honourable Dr. Sir Deva Prasad Sarvadhikary,
 The Honourable Mr. Haroon Jaffer,
 The Honourable Mr. J. W. A. Bill,
 The Honourable Mr. Phiroze C. Sethna,
 The Honourable Sir Arthur Froom,
 The Honourable Mr. W. A. W. Dawn,
 The Honourable Sir Maneckji Dadabhoy,
 The Honourable Mr. Lalubhai Samaldas,
 The Honourable Sardar Jogendra Singh,
 The Honourable Sir Leslie Miller,
 The Honourable Sir Dinshaw Wacha,
 The Honourable Nawab Sir Mohamed Muzammil-ullah Khan, and
 The Honourable Sahibzada Aftab Ahmed Khan.

The number of candidates largely exceeds the number of vacancies. The House, therefore, will proceed with the election which, as usual, will take place in accordance with the principle of proportionate representation by means of the single transferable vote. Honourable Members are, I think, aware of the procedure. In any case, they will find instructions on the ballot papers, which the Secretary will now make over to them.

(The ballot was then taken.)

PROVIDENT FUNDS BILL.

THE HONOURABLE MR. J. CRERAR (Home Secretary): Sir, I move: •

“That the amendments made by the Legislative Assembly in the Bill to amend and consolidate the law relating to Government and other Provident Funds be taken into consideration.”

I do not intend to detain the House any further at this stage, as the matters requiring attention will be explained by my Honourable colleague in moving the amendment which stands in his name.

The motion was adopted.

THE HONOURABLE THE PRESIDENT: The following amendment was made in the Bill by the Legislative Assembly. In clause 6 of the Bill, sub-clause (b) was deleted, and in sub-clause (a) the letter “a” within brackets and the word “or” at the end of the sub-clause were deleted. The question is:

“That this Council do concur in that amendment.”

THE HONOURABLE MR. L. T. CHADWICK (Commerce Secretary): Sir, with your permission I would like to make a small variation in the motion which stands in my name that will not affect it materially. It is only a drafting correction. I therefore beg to move, as an amendment to sub-clause (a) of clause 6 of the Bill the letter “a” within brackets and the word “or” at the end of the sub-clause be re-inserted, and that sub-clause (b) be re-inserted with the following amendment, namely: After the word “authority” the words “for any reasons specified in this behalf in the rules of the Fund” shall be inserted.

The amendment which I have just read out is rather involved, but the material portion of it is the latter part, namely, to re-insert with a slight alteration, sub-clause (b) which, when this Bill was before the Council of State, formed a portion of the Bill. This Bill has two main objects, namely, to allow dependants of a deceased contributor to a provident fund to be placed in the same secure position as are at present the widow and children of a deceased employé who is a subscriber to the Fund. The other object of the Bill was to facilitate the rapid payment of these provident fund contributions to employés as and when they fell due. The Bill, however, deals with two classes of provident funds, corresponding to the two main classes in existence. One of these is most usual in those services to which a pension is attached. In this first class of provident funds the fund consists solely of subscriptions made by the employé. No contribution is made thereto by the employer or by Government. The provident fund consisting solely of subscriptions of employés is the property of the employés, and when any such employé is dismissed or leaves

[Mr. D. T. Chadwick.]

service for any reason, his money in the fund is not touched. That is amply protected by the Bill. My amendment has nothing whatever to do with that class of provident fund.

There is however a second class of provident fund which is described in the Bill as a *contributory* fund. This is a fund of a composite character; it consists of two portions, namely, subscriptions from employes and a contribution or addition made by the Government or the employer, or the authority which has founded the fund. As far as the Bill is concerned, that portion of this composite fund which relates to the subscriptions of the employes is not touched. Those are the property of the men who have subscribed them to the Fund. It does not matter whether the man dies after long and faithful service, this goes to his widow and orphans, or whether he has been dismissed with contumely for a most serious offence he gets this part. That portion which represents his own subscriptions is his own property, his own estate, and passes to his dependants or to him. My amendment deals solely with the second portion of this composite fund, namely, those contributions which have been made to the fund by the employer or the authority which has founded the fund. It also deals with that portion in only one particular case, and that is when a man has been dismissed from service, or has resigned within the first five years. Therefore it deals with the case in which a man is still alive. There is no question of widows and orphans, or other dependants in this matter. The man has been dismissed; he is alive.

It may be asked why I am moving this amendment to a Bill which really belongs to my Honourable friend. The reason is this, at the present moment the chief contributory provident funds are those under the railway administrations, but there is nothing in the Bill, there is nothing in any of the rules of Government to make contributory funds purely a matter of railways. They can be started by other authorities. So the question with which I deal is really a general one. It only happens to fall to my lot to move this amendment because for the moment most of these contributory provident funds have been started by the railway administrations. When this Bill was before the Council last September, it contained this clause which, with the permission of the Council, I would like to read:

“When the sum standing to the credit of any subscriber or depositor in any Government or Railway Provident Fund which is a contributory provident fund becomes payable, there may, if the authority by which the Fund has been started so directs, be deducted therefrom and paid to that authority where the subscriber or depositor has been dismissed from the employment of that authority, or where he has resigned such employment within five years of the commencement thereof, the whole or any part of the amount of any such contributions, interest or income.”

The word I there want to emphasise is the word “contributions,” which under the Bill is the contribution made by the employing authority. The subscriptions of the man, which are his own property, are not touched, whatever happens to him. Sir, in another place that clause was deleted. I should like to show the effect of this deletion by comparison with some other services of Government, especially those which are pensionable. Where under the terms of service Government agree to pay a pension, there is little or no reason why also they should start a contributory provident fund. These contributions very largely take the place of pensions. With this clause deleted the employe would have a statutory right to the total amount in his name in the fund, whether it consists of

subscriptions or contributions. Yet nobody in a pensionable service has a statutory right to his pension; the pension is only payable for continuous good service. There has been a rule in the Civil Service Regulations, No. 353, which has been there, I suppose, from the date when the Civil Service Regulations were first drafted, which reads:

"No pension may be granted to an officer removed for misconduct, insolvency or inefficiency."

It is only right that any employer should keep such a rule or condition. The first question that arises is, is there any reason whatever to place those who may happen to contribute to the contributory provident fund in a safer or better position than all those persons in the other services are in regard to their pensions? They are not protected. They have not the statutory right to protection. If they are dismissed for theft, insolvency or inefficiency, a deduction in whole or in part may be made from their pensions. At best they can be given a compassionate allowance; that is equivalent to a deduction "in part". Next, Sir, compare the position of the men in the provident fund amongst themselves. A man who has worked well and who has fallen sick and has to give up service perfectly honourably performed in a perfectly worthy manner will get his full provident fund, his subscription plus the addition that may be made to it by his employer. There is also the man who after conviction is dismissed for theft. Is that man also to be in the same position and have also both the addition and his own subscription? He is entitled to his own subscription and he gets it, but there is no reason why he should also have the addition made by the employer, namely, the bonus. The possible risk of losing or jeopardising one's pension or what is similar the addition to the provident fund has a very salutary effect; it makes a man careful and makes him cautious, and authorities would be very loathe to create more funds of this nature, that is contributory funds, if in future they lost the safeguard that this provision gives. Many employes and officers now prefer a contributory provident fund to a system of pensions. After all, both schemes have their advantages. As regards the contributory provident fund, when a man retires or leaves his service at any rate he gets a large sum down and that remains with him and for the use of his family. A pension may be merely of transitory benefit to the family if life after retirement prove short. The authorities will be very loathe to create more of these contributory provident funds if it becomes a statutory right that everybody who subscribes to such a fund is to have an indefeasible right both to his subscription plus the bonus or addition. As I have stated above, this question is not merely a railway question; it is one, therefore, of general application. In commercial firms, many commercial firms have started provident funds, and I have not heard of any firm which has bound itself down whatever happened in every circumstance to give the full bonus to everybody equal to that of a man who has served it well and faithfully. You may ask how it happened that this clause, which I submit is a thoroughly reasonable one, happened to be deleted during the discussion in another place. On reading those debates, the issues seem to have been obscured and the real point was not kept clear. It was freely stated that in the railways men of long service were freely dismissed with forfeiture of their bonuses. Sympathy ran with them. But that is not the real issue. That was a matter of administration. To-day I wish to keep the issue clear. The issue to-day is not a question of administration or the details of administration. We are engaged in formulating a Bill, in preparing a law; therefore we are engaged with principles and not the occasional application of them. If an administration is culpably slack or

[Mr. D. T. Chadwick.]

culpably severe, there are means of dealing with it and there are means of rectifying such conduct ; but that is no justification for changing a good Bill into a bad Law, and this would be the effect if this clause is not re-inserted. It is for this reason, Sir, that I want to keep the issue perfectly clear, and that I do not intend to-day to divert into the details of railway administration. Those can be debated on their merits at any time. I will only turn aside from the consideration of principles upon which I have been speaking for a moment in order, if necessary, to allay any fears that may exist in this Council on this matter, namely, that men in the railways of long service are dismissed arbitrarily, are dismissed in large numbers and their bonuses are wantonly withheld. Last year, 1923-24, 8 Railways disbursed 82½ lakhs as bonus to their employes, that is, the additions to the provident funds made by the railway administrations. That sum does not contain one anna of the subscriptions paid by the employes themselves. Last year 82½ lakhs of bonuses were disbursed. One-fourth of a lakh was withheld on account of men dismissed of over 5 years' service. In 6 railways 28 men last year were dismissed of over 5 years' service with forfeiture of bonus. Seventeen of them were dismissed on account of theft and 4 of those after conviction, 2 for interfering with women passengers, another was a guard drunk whilst in charge of a train, and two for taking bribes, the rest for abusing free passes, and things like that. I have given the figures just to show how large these bonuses are and how they are valued by the staff; and I submit it is right, where you have to dismiss a man for theft or for interfering with women passengers or for any of these things that I have stated, that he should only get his own subscription back. I want to make it quite clear that he gets his subscription. There is no question about that. It is only a question of the bonus. Even, Sir, these figures are not my case. It does not matter one rap to me if it is proved and proved up to the hilt that in one case or several cases bonuses have been unwisely withheld. We are not now dealing, as I said, with the details of administration. It would be perfectly right for anybody to criticise the details and raise that issue. Here we are making a law and are dealing with the broad principles which underlie the legislation. If in one administration or one section of the administration, the bonus has been unwisely withheld, that is no reason for giving statutory protection for their bonuses to all unfaithful servants. These funds, Sir, are extremely valuable. They are very important and valued very highly by all employes. The vast bulk of our railway servants—in spite of the many criticisms heaped upon railway servants by those who travel by train whether in India or in any other country—the vast bulk of our railway servants serve us loyally and they serve us well. Those men value these provident funds and they appreciate very highly the large additions which are made to them by contributions from the railway administrations. The figures that I have just given for last year show the dimensions of these additions. Our object should be to encourage the formation of these funds, to encourage our employes to earn their full bonus by long and continued good service, and also to encourage the authorities to establish more and more such funds. If we withdraw from the authorities who found these funds any right or claim to withhold a portion of the bonuses whatever be the behaviour of any of their subordinates, then, Sir, I submit that we shall not be encouraging the foundation of these funds, we will instead be checking them. In other words, we shall be running right against the principles for which this Bill stands, namely, to encourage thrift. It is a poor

comfort to any employé who falls ill to know that the dishonest man will get the same privilege as he himself and he can get nothing better. It is, Sir, for this reason that I ask this Council to restore this clause. I have made only one small alteration, and that is to add after the word "authority" the words "for any reasons specified in this behalf in the rules of the Fund." When attention was directed to this clause it became clear, Sir, that it is only fair to add some words of that nature. As it was, the discretion is left absolutely vague. It is right that some description should be given of the offences for which, if a man be dismissed, the bonus may be withheld. That can only be done generally. But it is also right to include such description in the rules of the Fund, so that when a man joins service he knows the terms on which he joins. And here, Sir, we have got an excellent precedent in our Civil Service Regulations which have for many years worked fairly in relation to all our various pensionary services. My suggestion is that we should endeavour to keep these contributory provident funds marching side by side with the conditions of the pensionary services. Therefore, it is better to follow the Civil Service Regulations and insert in the rules of the contributory provident funds the same set of words from Article 353 that I have already quoted. If at any time greater precision or more elaborate definition is attempted in the Civil Service Regulations, then the same alterations can be carried out in the rules of these contributory provident funds. By this means we keep the two services similar. For these reasons I commend that portion, which is really the main portion of my amendment, to the consideration of the Council. I only want it to be realised thoroughly that however, an employé may behave his own subscriptions are not touched.

The second portion of the clause which fell in the other place with the first half of the clause without any discussion whatever need not detain us for a moment. It is strictly analogous with all the other services of the Government, namely, that the contribution can also be withheld where a man resigns his employment within five years of the commencement thereof. In none of our services do we give a pension to a man who joins duty and then resigns his appointment within 5 years. It is not worth it. The most he can get is a gratuity at the end of 5 years. I trust, therefore, that this Council will accept this amendment with the small addition that I have made, otherwise we will be running the risk, as I said before, of converting what was really a good Bill into a thoroughly bad law.

THE HONOURABLE THE PRESIDENT: Amendment moved:

"That in sub-clause (a) of clause 6 of the Bill, the letter 'a' within brackets and the word 'or' at the end of the sub-clause be retained, and that sub-clause (b) be retained with the following amendment, namely:—After the word 'authority' the words '*for any reasons specified in this behalf in the rules of the Fund*' shall be inserted."

THE HONOURABLE MR. PHIROZE C. SETHNA (Bombay: Non-Muham-madan): Sir, when this Bill was sent to the other place, I do not think it was expected that it would be returned in the shape in which we find it now. And it is necessary, therefore, for us to try and find out the reasons particularly for the deletion of clause 6 (b). It may be, Sir, that there are in the other place Members who deem it their duty—and very rightly so—to look after the interests of the working classes. And, consequently, they view with suspicion any measures that are brought forward in the shape of Government or private Bills which affect the interests of capital

[Mr. Phiroze C. Sethna.]

and labour. They are naturally anxious to see that there is nothing in these Bills which would benefit capital at the expense of labour.

• The opposition began in the other place, I believe, to the word "contributions" in sub-clause (a), namely, deductions to be made from the total amount of any contributions credited to the account of a subscriber. Now, reading this clause by itself, one would naturally infer that "contribution" meant what was paid by the employer and also what was paid by the employé. But a reference to the definition clause explains that "contribution" only refers to what is given by the employer. However, Sir, with due deference to the draftsman, I, as a layman, think that much of the opposition and suspicion would have been removed if, instead of defining the word 'contribution' in the definition clause, the words "of the employer" were added after the word "contribution". The Honourable Mr. Chadwick in explaining the word "contribution" to-day has referred to the employer's share as contribution and what was given by the employé as "subscription".

The next objection in the other place was in regard to the legal liability for any amount which the employé was bound to repay. Objection was taken that, if any amount was to be so repaid by the employé, the employer had no right to deduct it but that he should proceed to a Court of law to recover it. That was, an absurd proposition, and it is very fortunate that that objection did not prevail in the other place.

They have absolutely deleted clause 6 (b). The majority who passed the amendment contend that the employer's contribution is no favour and they look upon it as a matter of right. They, therefore, look upon the provident fund money as deferred pay and nothing else. It was pointed out that Government and other bodies which give pensions do not give such pensions in cases where a man is dismissed for offences of different kinds such as were enumerated by the Honourable Mr. Chadwick. It was also pointed out that, similarly, contributions of the employers to provident funds in such cases should also be withheld. This was not acceptable to the majority in the other place because, as I said, they contended that they look upon the Provident Fund purely and simply as deferred pay. Another point that was advanced was that, whilst pension is absolutely provided for by the employer, provident fund is provided for both by the employer and by the employé. Now if the employer provides 50 per cent. of the total contribution, surely he has a right to impose conditions the same as are imposed in the case of a pension?

Denying the right of the employer to withhold such payments in the case of misconduct is like looking a gift horse in the mouth. His contribution is certainly a gift from the employer, and the employer has the right to impose whatever conditions he thinks are reasonable, and the conditions as explained by the Honourable Mr. Chadwick are no severer than what is the case with pensions either in Government service or elsewhere. What are the conditions? The first is that if a man resigns within five years, he is not entitled to get any portion of the employer's contribution. These contributions are given for the purpose of ensuring long service, and of getting faithful service from the employé. If the man chooses to leave the service within five years, I think it is perfectly right for the employer not to pay him any contribution. As regards dismissal, it is only in cases of

misconduct that the employer proposes not to pay his contribution. Could anything be fairer? In cases of misconduct, and grave misconduct such as were referred to by Mr. Chadwick, is it at all right to expect him to get the employer's contribution? If so, what is the advantage of a provident fund? It is no incentive to a good man to do better work than the others, when he finds that all are treated alike, be they honest or dishonest.

But, Sir, it seems to me the opposition to clause 6(b) arose from the idea that dismissals were effected by railway administrations under very flimsy excuses. I think it was urged by one Honourable Member that some people were dismissed because they could not manage to get a doctor's certificate to account for their absence. Others contended that some people were dismissed because of their having joined trade unions and things of that kind. But the figures which the Honourable Mr. Chadwick gave us a few minutes back show that the number of dismissals, whether for good reasons or bad, is proportionately very very small, and we must assume that the employers are certainly not hard-hearted men, and there must certainly have been good reasons for such dismissals. However, if there was any doubt on the subject, it will be now removed by the amendment which Mr. Chadwick has proposed. His amendment is to the effect that, after the word "authority", he added the words "for any reasons specified in this behalf in the rules of the Fund". Now, I presume these rules will be framed by representatives of the employers as also of the employés. Am I right?

THE HONOURABLE MR. D. T. CHADWICK: I am not certain about that, but I can say this, that they are of course printed. A copy is given to every man when he joins the Fund, so he is fully aware of them, and any deputation can go and discuss them. They are not infrequently the subjects of discussion between the railway administrations and the employés.

THE HONOURABLE MR. PHIROZE C. SETHNA: I thank you for the explanation. But even if the employé had no representation on a board which framed the rules, he would be handed a copy of the rules before he joined the service, so that he would join the service with his eyes open, and know beforehand the consequences in the event of his dismissal. Therefore, it is perfectly right not to give the employer's contribution to a man who is dismissed for misconduct or for any offence that will be laid down in the rules.

I personally, Sir, would go a step further, and I am glad to say I am not alone in holding that view. I say that even the employé's subscription might in such cases not be paid to him. I know that some would call this confiscation. I may be allowed to refer to a particular body on which my Honourable Friend Sir Arthur Froom and myself are serving, a large quasi-Government public body, the Bombay Port Trust. I admit there was difference of opinion amongst the Trustees of that Board, but the majority held the view and it is now the rule that if an employé is convicted of theft or other serious offence, the return of the whole or part of the employé's own contribution was left to the absolute discretion of the Trustees themselves. That condition is laid down in the rules of the Bombay Port Trust Provident Fund. If a person enters the service of the Bombay Port Trust, he knows that for misconduct, if he is convicted, and if the Trustees so decide, they may not return to him the whole, or even part, of his own contribution. I contend that the employer is perfectly

[Mr. Phiroze C. Sethna.]

justified in doing so, if before the man is employed he tells him that this is one of the rules of the provident fund to which he will be asked to subscribe. That being so, Sir, if this clause 6(b) is not restored, I for one hold that the very object for which a provident fund is started will be frustrated, and I do hope that, not only this Council will see the wisdom of restoring it, but that, when this Council carries the amendment and, when this Bill goes back to the other place, they will on maturer consideration also agree to restore this clause as it deserves to be.

THE HONOURABLE MR. R. P. KARANDIKAR (Bombay: Non-Muhammadan): Sir, I feel I must oppose this amendment. I may state my reasons as shortly as possible. In the first place, referring to the definition of "provident fund", it seems that as soon as the subscriptions and the contributions blend together, the whole of it is provident fund, and it does not rest with anybody thereafter, when these two things blend together, to divide them again for the benefit of a certain contingency, the contingency which has been referred to in clause 6(b), which may happen either within the first five years of service or may be due to dismissal. I claim therefore that it is improper to enable the employers to have an eye as regards the money they will put in; that must not be allowed to be divided later on. The whole of it must become provident fund, belonging to the employé. It seems to me further that there is some misapprehension about the position of an employé. When he gives in a subscription, he does it on the contribution that he expects from his employer, and when he does it, he does it on the authority of the employer, and the money belongs wholly to him. Then to arm the employer with power to dictate terms to the employé is an element in the service which must be discouraged. I think there are needy employés, and they have to submit to any conditions the employers may impose upon them. It is for the very reason that the employers' hands must not be strengthened, that they must not be encouraged to impose any conditions other than those legitimately belonging to the kind of service the employés are called upon to do. In pecuniary matters when the employer needs service I suppose and I believe it is not quite consistent to give the employer a better position than the employé. In the matter of dismissals while there may be very rare cases which are brought to the notice of the Government or perhaps taken to higher quarters with the object of redress, I have seen numerous cases in which the dismissals are not justified. Servants are removed from service without proper reasons. Very rarely do such cases come to the notice of Government or to higher quarters, and I do really think that, in the matter of dismissals, greater regard must be had to the conditions under which dismissals should affect the grant of the money that is due to the employés. Now a saving clause is attempted to be added here by the addition of the words "for any reasons specified in this behalf in the rules of the Fund". Now, in the first place, I tried to look into the whole Bill which contemplates not only a revision of previous enactments but also an amendment of the existing law, and I do not find any clause enabling the funds to lay down their own rules. It seems to have been taken for granted that those that are to bring certain funds into existence can frame their rules. I accept it. But then the rules would vary according to the authority that brings the funds into existence. The Legislature is in a manner inducing those that have the authority to bring funds into existence to frame rules in which the employés hardly have a

voice. To give them the authority of law without knowing what those rules are going to be—those rules would never be submitted to the Legislature, they are the private property of the employers—is not justifiable. The authorities may make the rules in any way they like. But if that is the idea that the rules are the property of those who bring certain funds into existence and they can frame rules as they like, it will be a very hard thing, because we are incorporating new rules about which we know nothing practically. It may be, as was very rightly pointed out by the Honourable Mr. Sethna, that an employé enters into service with his eyes open. He gets into service knowing full well the rules and why should he complain? Quite so. But we sympathise with the employés in their needy conditions. It is not that they are all dishonest. It is perfectly clear that the Legislature must have control over the rules of the funds which enable dismissals. The present amendment indicates that in the case of dismissals generally—and on every occasion provided those dismissals are justified under the rules of the fund—the money is to be forfeited.

THE HONOURABLE MR. D. T. CHADWICK: No.

THE HONOURABLE MR. R. P. KARANDIKAR: Excuse me; I did not catch the expression. However, I will proceed. In the case of dismissals the condition is:

“Where the subscriber or depositor has been dismissed from the employment of that authority for any reasons specified in this behalf in the rules of the Fund.”

I contend that if a man is dismissed for reasons specified in this behalf in the rules, we give a certain sort of legislative sanction to the rules of the fund, of which at least the employé is supposed to be cognisant and then he has no reason to complain as the Honourable Mr. Sethna put it, The second part is where he resigns such employment within five years, in that case the contributions have to go back to the employers. I really think that all that money which is made up of the contributions and the subscriptions of both the employed and the employer belongs to the servant, the employé. I quite appreciate the force of the argument that when the employer has got the money in his hand and when there is defalcation, he should be entitled to deduct as much money as is involved in the defalcation. But the language of the clause does not indicate the extent to which the deduction may be made. The clause says the deduction may be the whole or part of it. It all depends upon the discretion of the employer. There is nothing to indicate to what extent the employer may deduct. There is the special concession to the employer that when he has the money he can deduct. It is only natural that he should have the right to deduct. Now, if he wants to deduct the whole of it, he can do so. If he finds he must impose a sort of penalty on the employé, he could dismiss. We must differentiate between cases and cases. In the case of an employer who has been defrauded to the extent of a certain sum of money and who has got the money, and there is clear ground to prove it, the money can be deducted. Suppose he does not like that servant to continue for good or bad reasons, he may impose a sort of penalty and take back all his contributions. There is no guarantee in the clause. It does not indicate to what extent the employé's money can be deducted. I really think that such a large power should never be given to an employer. In the case of cross claims and set-offs, unless there is a specific clause, they will withhold the payment. Where the employés have no voice, they

[Mr. R. P. Karandikar.]

could hardly plead before their employers and they may or may not be successful. It all rests on the discretion of the employer. Then you have got the safeguard, there could be no suit lodged in Civil Courts, provided the employers show that they have been acting *bona fide*, and in that case no Civil Court can take cognisance of any such deduction. Possibly I may be wrong in the construction of the law that I am placing upon these clauses. But I do not wish to leave any loophole whatever for anybody to say that the Legislature has approved of the provisions. The employes' money rests entirely with the discretion of the employers. There is no guarantee that the employers would be called to account for what they do. It seems to me that the Legislature should withhold its sanction for the purpose of enabling the employers to so use their powers that if they have a good claim they should invoke the assistance of the law by filing a suit, as perhaps the employes would be asked to go to the law Courts if there are any extra deductions made, assuming for a moment that they could do so. Similarly, opportunity will be given to the employers. In this discussion they have omitted from consideration the reasons that prompt provident funds to be brought into existence. They are not so much for the benefit of the employers. They are for the benefit of the employes and, consequently, it is their interests which are to be safeguarded more than the interests of the employers. The Bill was passed here, but in the other House this portion was deleted for reasons which it is not necessary for us to repeat here, except that exception was taken to our own view. I do claim, therefore, that we should abstain from introducing any such element in clause 6 as would arm the employers unnecessarily, and I oppose this amendment.

THE HONOURABLE SIR ARTHUR FROMM (Bombay Chamber of Commerce): Sir, this Provident Fund Bill, like many other measures which have been before this Council, is one which I would describe as entirely for the benefit of labour, working in big concerns. It was on that account that I welcomed it when it was introduced in this House. I will not detain the Council very long because the Honourable Mr. Chadwick clearly explained his reasons for objecting to the way in which clause 6 of the Bill had been altered in another place. He was followed by my Honourable friend Mr. Sethna who still further cleared up the points. I was rather astonished, after listening to these two speeches, to hear another one made objecting to Mr. Chadwick's amendment. I cannot think that my Honourable friend Mr. Karandikar has a true conception of the position. I think that, if he were an employer of labour, he would have a clearer conception. I have had a good deal to do with the provident funds. My Honourable friend Mr. Sethna referred to the Bombay Port Trust Provident Fund. My recollection of that Provident Fund goes back a little further than his. The Port Trust Provident Fund was very strict at one time because, in the event of the conviction of any employé of the Bombay Port Trust, the Trustees were obliged to withhold the employé's subscription as well as the Trustees' contribution. We altered that. We thought that that rule was rather hard because it bore harshly on the family of the man who had misconducted himself. We altered the rules of the Fund because legally the Trustees were obliged to withhold both the subscription and the contribution. This Bill, Sir, does not go to any such length. I contend that sub-clause (b) of clause 6 is an entirely fair one. I think I can understand to a certain extent some of the objections taken to it

in the other place. It was perhaps feared that some officer, say of a railway, might dislike or take a dislike to one of the employes and find some pretext for dismissing him and also withhold the railway contribution. That, Sir, has been met by my Honourable friend Mr. Chadwick by providing that rules should be made, and I do not entertain any fear, such as my Honourable friend Mr. Karandikar appears to have, about these rules. These rules will be published. If there is anything objectionable in them, we shall soon hear about it from Mr. Karandikar. There is just one point where I should like the Honourable Members of this Council to realise how this sub-clause (b) of clause 6 is entirely in the interests of the employé, and is not only in the interests of the employer. It is this. We can easily visualize an employé yielding to sudden temptation and committing some offence. Without this sub-clause (b) the man when dismissed receives the employer's contribution as well as his own subscription. In fact, the employer has to pat him on the back and say that he had been a good boy to commit such an offence. That is wrong. The employer might be ready to condone a first offence committed in sudden temptation, but he would feel entirely justified in withholding his contribution. If he cannot withhold the contribution, what happens? The employer feels, and justly feels, that it is not right that this man should get off scot-free, and he probably prosecutes him. Therefore, the effect would be that the employer might be ready to deal lightly with a first offence, but he cannot let him benefit in the same way as an employé who has done good and faithful service. Therefore, he feels obliged to prosecute the offender with the result that the man would incur the stigma of jail which the employer, with this sub-clause, (b), very probably would not wish to bring about. That, I contend, Sir, is the reason why this sub-clause (b) is in favour of an employé. I do not wish to detain the Council any longer. I think the Honourable Mr. Chadwick and the Honourable Mr. Sethna have made the position quite clear, and I hope my illustration has made it clearer still. I therefore strongly support Mr. Chadwick's amendment.

THE HONOURABLE MR. G. S. KHAPARDE (Berar: Nominated Non-official): Sir, I wish to oppose this amendment and for a reason which up to this time has not been urged. It is this. The Honourable Mr. Chadwick in moving his amendment mentioned that this provident fund consists of what labour pays towards it and what the capitalist or the employer pays towards it. It then becomes a fund. Then, my Honourable friend Mr. Sethna thinks that whatever money is paid in by the employer is looked upon as merely deferred payment. He thinks that is the wrong way of looking at things. He thinks what the employer pays is really a certain kind of benevolence, a certain kind of kindness. Out of this you say you will give Rs. 5 to your employé as a charity. But when the man leaves, the employer says: "I wanted to give you this charity but you have behaved so badly that I withdraw it". That is the point of view that appears to have been urged. My point of view is that the Rs. 5 saved by the labourer is what he has saved by his labour and he pays it into the fund and the employer also pays Rs. 5 into that fund in accordance with the terms of employment. So, both these amounts put together form a fund. He demands his fund. That fund is not the property of the employer; it is not the property of the employé himself. It is a third thing, put by to provide for certain contingencies. And that contingency is to be judged by a third party and not by the person who has put his money into it. So

[Mr. G. S. Khaparde.]

the objection I have to this amendment is that it gives what we call a dominant partnership to the employer. The fund is a joint fund, partly paid for by the employer and partly by the employé. It happens to be kept by the employer, but it might as well have been put into the savings bank or any other bank. Once the money has been paid into it both parties lose their ownership or control over it. The control is with the person with whom it is kept. In this case it may be kept with the employer, but he is to be looked on as the third party; and whoever wishes to take anything out of it, has to justify it before a third party. And if that third person does not intervene, then the dominant partner, the employer, gets an advantage, which Mr. Sethna thinks a fair advantage, but which I think is not a fair advantage. The argument has been urged that it may be the employer has got an advantage; it may be the employer has fined the man for nothing, but still the Honourable Mr. Chadwick thinks that is a different matter, to be judged separately and in another place. I humbly submit it is not; it is a joint fund, nominally in the hands of the employer, but it ought to be in the hands of a third person, and when this man goes and says "give me my money" the employer may say "no, give him less because he has done so and so," and then justice will be done. Whereas if he is given less and has to go to Court, the pleader charges so much in fees and the Governments want so much in stamps and the man is too poor to afford it. It is purely a matter of principle. When the fund is constituted by the payments made by two persons, one of them should not be in a position to withhold any payments at all. It should go to a third person, and if such a clause was there, that it should be referred to a third person, I would take a different view, but there is no third person and the employer retains the power of taking away what he has paid. That is wrong in principle. I therefore oppose this amendment.

THE HONOURABLE MR. J. CRÉRAR (Home Secretary): Sir, when I first had notice of the amendments passed on this Bill in the other place, and when I read the deliberations in that place, I realised very speedily that that change had been made in the Bill in consequence for the most part of a series of misapprehensions. After the extremely lucid and forcible speech of the Honourable Mr. Chadwick and the equally lucid and forcible speech of Mr. Phiroze Sethna, I hoped in this place at least, which originally affirmed this legislation without a single dissentient voice, we should not at this stage have misapprehensions of this character reappearing once more. In that respect, although both the principle of the Bill, and the expedients which it devises have been so fully explained, not only from the Government benches but from the non-official benches, it is with some sense of disappointment that I find misconceptions of the character which we have heard falling from my two Honourable and learned friends opposite. Take first the contention raised by the Honourable Mr. Karandikar. His contention was that, between the two elements in a contributory provident fund, the subscription and the contribution, it is impossible to draw any line of separation. Now, Sir, I venture to controvert my Honourable and learned friend on that as a mere statement of fact. Not only are these two elements in that fund different in their origin, but they are accounted for separately. There is no reason either in principle or in practice why they should be treated as inseparable. As a matter of illustration I might point out to my Honourable friend that in the case of the pensions of officers who are serving what is commonly known as a foreign employer, the employer makes a specific pension contribution, and that is perfectly distinct both in its

character and in the manner in which it is accounted for from other elements in the moneys which ultimately are paid when the officer becomes a beneficiary under that pension system. The Honourable Mr. Chadwick has pointed out the very close analogy that exists between the provident fund system and the pension system. On this particular point my Honourable friend's difficulty is, I venture to suggest, an entirely illusory difficulty. He went on to say that by recognising this distinction between contributions and subscriptions you are really guilty of a fraud upon the subscriber. The subscriber, he says, only makes his contributions to the fund on a firm promise from his employer that he will on his part make a contribution. He implied that, unless there was a promise of a contribution from the employer, the employé would make no subscription. Let me remind my Honourable friend that there are two classes of provident funds. One is the contributory provident fund, and the other is the non-contributory provident fund. In the case of the non-contributory provident fund subscriptions from the persons who are members of that fund are the only source of the fund and interest paid on them. If my Honourable friend's contention was correct, that no one subscribes to a provident fund unless he is promised a contribution from his employer, then it would be impossible for non-contributory provident funds to exist; but I assure my Honourable friend that they do exist. On that point I think I had better deal with the observations which fell from the Honourable Mr. Khaparde. I think he foresaw perhaps some of the objections that might be urged to the difficulties raised by the Honourable Mr. Karandikar and he put his own proposition in a subtler form. He said that after the contribution had been joined in indissoluble matrimony with the subscription that was a bond which the laws neither of God nor man should be permitted to put asunder. Well, Sir, we are not dealing with matters of quite so superhuman a character as this; we are dealing with human relations of a purely contractual character, and I think the Honourable Member is ill-advised in invoking metaphysical considerations of this kind. Now, Sir, let us go to what is really the burden of the objection of my Honourable friend opposite, the Honourable Mr. Karandikar. It really was this. He proceeded on the argument that forfeitures or reductions in the payment of contributions might generally and frequently be expected to be made by an arbitrary and unjust and extremely stupid administration. It is only on the acceptance of a proposition of that kind that the House can be expected to follow the Honourable Member. As a matter of fact I can give the House an assurance, because I have had some experience in the administration of these funds myself, and I have naturally discussed the case with officers who have had much greater experience than I have, as to what the actual conditions of these funds are. The case of the railways has been specified. Is the Honourable Member aware that in any case where it is proposed to forfeit any portion of the contribution, that is the amount contributed by the railway companies, however small and insignificant may be the amount or the status of the employé, no order of that kind can be made without the special sanction of the Agent of the railway himself; and I am further informed and I believe that the point of view which the higher officers of railway administrations take and the point of view which the Railway Board when appeals occasionally go to them take is not that a case must be made out for paying the contribution in the case of a delinquent employé but the point of view invariably taken is that a case and a very positive case for withholding any portion of the contribution must be made out. That, Sir, is the spirit in which these questions in the ordinary course of administration

[Mr. J. Crerar.]

are dealt with. What my Honourable friend Mr. Karandikar is really inviting the House to do is this. He is inviting us to infringe that very sensible principle of legislation—hard cases make bad law. Hard cases will arise under any form of legislation or administration which is conceived by human brains and which is worked by human brains. But there are other remedies to apply to hard cases of that kind. The principle to which the Honourable Member is asking the House to commit itself is really this: if in any single case it can be shown that an innocent man has been found guilty, your procedure is not to apply to the case of that innocent man the ordinary remedies but you are to repeal the law which protects society against crimes of which this man has wrongly been judged guilty. It is a wrong remedy. The Honourable Mr. Chadwick emphasised that point and I am sorry it has been necessary for me to emphasise it again. We are concerned here and now in laying down general principles for the guidance of the various authorities who now and hereafter have to administer provident funds. We ought therefore to restrict ourselves very carefully to general principles. We ought above all things to see that the general principles which we are affirming are sound general principles. Now, I maintain that the principle which the Honourable Member is asking the House to affirm is essentially an unsound one. If hard cases have occurred—I will not deny the fact that hard cases may occur—I say that the remedy which the Honourable gentleman has in mind is the wrong remedy. Then the Honourable Member passed on to the question of framing rules. He said this Bill gives certain legislative sanction to the framing of rules and that it is quite impossible for any Legislature to commit itself even in regard to general principles unless it itself is prepared to examine and, as far as I can understand him, draw up these rules. That is not a practical method of procedure. Even in the cases of laws, which specifically provide a rule-making power, the Legislature is very rarely asked to draw up those rules itself. It lays down the principles by which those rules must be guided. It lays down certain principles which those rules are not permitted to infringe. That is as far as it goes. That is precisely what we propose to do in this matter. I would ask my Honourable friend to remember simply this, that as the Honourable Mr. Chadwick has very clearly pointed out in order to remove the last vestige of misapprehension in the matter, we propose to conform to the principles hitherto recognised in regard to pensions; the same principles are to be applied *mutatis mutandis* to the very analogous case of provident funds. Finally, Sir, I will ask the House to apply to the arguments of my two Honourable and learned friends the following test. If you give validity to them, are they calculated to promote the admittedly beneficial objects of the Bill? I say most emphatically they are not. In the first place, my Honourable friend has asked why should the railway administration, why should the Local Governments who have to administer funds of this kind, having a grievance or having grounds of complaint against one of its employés, not go into a Court of law? May I ask my Honourable friend to read the Statement of Objects and Reasons for the Bill? One of the most important of these is that there should be expedition in payment. If my Honourable friend is going to tie the hands of the persons responsible for administering these funds by litigation of that kind, you put them to some inconvenience no doubt, you may perhaps provide a few opportunities for his own very distinguished profession, but the employé, the beneficiary under the provident fund, suffers very severely

indeed. Moreover, taking the general body of employées who are beneficiaries under these funds, provident funds of all description, are you really promoting their interests, the interests of the honest, hard-working, sober, laborious man, by giving these extraordinary privileges to the dishonest, to the undeserving and the idle? I do not think, Sir, that you will be promoting the conditions of the general body of the persons who attach the greatest value to funds of this kind. Moreover, I will emphasise in concluding a point which the Honourable Mr. Chadwick made and which, I am afraid, the two Honourable gentlemen either did not note or forgot. The benefit of these funds is greatly valued by the employées. Even in the other place, even by the harshest critics of this Bill, it was generally admitted that it really was a beneficent Bill and some surprise was expressed that it should emanate from the Home Department. If obstacles of the character contemplated by my two Honourable friends, if impediments of the character which inevitably flow from their propositions, are to be imposed upon the administration of these funds, it will be increasingly difficult to extend, as is the desire, so admirable a means of ensuring and rewarding honest, sober and continuous service. The interests of the employées would ultimately suffer to an extent much more serious than can be inferred from the number of instances which could possibly be adduced of injustice in individual cases. Not only that, it will not only injure the prospects and interests of the great mass of employées, whose patrons you profess to be, but you will be a party to a fraud upon the public revenue. You will not only be injuring the interests of the employées under these various administrations, but you will be causing public funds to be diverted into the pockets of undeserving persons, to the detriment both of their fellow workers and the tax-payer.

THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY (West Bengal: Non-Muhammadan): Sir, if my Honourable friends behind were to remain in the profession much longer, I do not think the loaves and fishes about which the Honourable the Home Secretary has spoken are likely to come to them because clause 7 has already taken away the remotest prospect of any visions of that kind. Clause 7 says:

"No suit or other legal proceeding shall lie against any person in respect of anything which is in good faith done or intended to be done under this Act."

Unless, therefore, absence of good faith could be pleaded and established, I do not think my friends would have any chance. Sir, this House submitted to that and the other House has also submitted to that. Recently the tendency of taking away the jurisdiction of our law Courts by provisions like this has been more common than formerly, and I regret it not for the sake of my profession but for the sake of the community at large. However, having regard to the fact that the other House has submitted considerable erosions on these wholly financial and matrimonial ties, I do not think we can very well carry the matter further. The Assembly has assented that, where there is a liability incurred by the subscriber, the authorities in charge of the funds shall have the right of dealing with it. That was first opposed in the other House, but ultimately the Assembly did accept that this class of cases, at all events, shall be dealt with by the authorities. There are three classes of cases to which objection has been taken. One is in the case of liability, which has already been conceded by the Assembly. The other two are cases of dismissal and of short employment. Sir, if this House had been shown to be wrong, I should have been the first to advocate that we should go back on what we have

[Dr. Sir Deva Prasad Sarvadhikary.]

done. But from what we have heard to-day and the careful perusal of the view taken in the other House, there is absolutely no reason why we should go back on what we have done, especially since the Honourable Mr. Chadwick has now introduced an amendment which will become part of the law. I hope and trust that the provisions for appeal to the higher authorities shall be in no way taken away simply because there is in the rules something that provides particular causes of dismissal under which forfeiture is entailed. I do not quite follow my Honourable friend Mr. Karandikar when he speaks of the absence of rule-making provisions. He assumed that rules might be made. In fact, every one of these clauses, *e.g.*, 2 (a), 2 (b), contemplate that those in charge of the provident funds shall have powers to make rules. And if those rules do not come up before legislation is sanctioned, it will be open to any Honourable Member to bring them up and to have them corrected where it is necessary to correct them. I am not at all prepared to agree, Sir, that, because money comes from two sources, it immediately becomes part of the same fund inseparable for all time. On the other hand, if the definitions are read through carefully, it will be seen that it is really the object of those definitions to keep the two funds separate, as far as possible, for obvious reasons. If the provident fund takes the place of pensions, then the principle guiding the pension rules must also guide this. Nobody can claim a pension if he has been in service for five years or if he has been dismissed. For all these reasons, I think that the House should stand by its own decision and accept the amendment that the Honourable Mr. Chadwick has proposed.

THE HONOURABLE THE PRESIDENT: The question is:

“That in sub-clause (a) of clause 6 of the Bill, the letter ‘a’ within brackets and the word ‘or’ at the end of the sub-clause be retained, and that sub-clause (b) be retained with the following amendment, namely:—After the word ‘authority’ the words ‘for any reasons specified in this behalf in the rules of the Fund’ shall be inserted.”

The motion was adopted.

THE HONOURABLE THE PRESIDENT: The Bill as now further amended will go to the other Chamber.

The Council then adjourned till Eleven of the Clock on Wednesday, the 28th January, 1925.