

19th February, 1924

**THE  
LEGISLATIVE ASSEMBLY DEBATES  
(Official Report)**

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**FIRST SESSION  
OF THE  
SECOND LEGISLATIVE ASSEMBLY, 1924**



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# LEGISLATIVE ASSEMBLY.

Tuesday, 19th February, 1924.



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

## QUESTION AND ANSWER.

### ARRESTS IN BENGAL UNDER REGULATION III OF 1818.

404. **\*Mr. Gaya Prasad Singh:** (a) Is the Government aware that His Excellency the Viceroy in the course of his address to the Members of the Council of State and the Legislative Assembly on the 31st January 1924, made the following statement:

"After the arrests in Bengal were made, as you are aware, all the documents and evidence relating to each individual have been placed before two Judges of the High Court for the purpose of thoroughly sifting the material on which action was taken, of submitting it to the technical tests of judicial knowledge and experience, and of framing recommendations regarding each case."

(b) Will the Government be pleased to state the names of the two High Court Judges mentioned in the above statement?

**The Honourable Sir Malcolm Halley:** The two Judges in question were not High Court Judges but Senior Sessions Judges.

**Mr. Gaya Prasad Singh:** Sir, what were the names of the two Judges?

**The Honourable Sir Malcolm Halley:** I shall inquire from the Bengal Government, whether they have any objection to divulge their names. It is quite possible that the Bengal Government does not wish to add to the list of those officers who are in danger of conspiracy from persons of the class of the one who has just been condemned to death at Calcutta.

**Mr. Gaya Prasad Singh:** Then I take it, Sir, that the Viceroy was wrong in saying that the materials were placed before two Judges of the High Court?

**The Honourable Sir Malcolm Halley:** I have already replied that they were placed before two Senior Sessions Judges.

## THE INDIAN PENAL CODE (AMENDMENT) BILL.

**The Honourable Sir Malcolm Halley (Home Member):** Sir, I beg to present the Report of the Select Committee on the Bill further to amend the Indian Penal Code for certain purposes.

## RESOLUTION RE MUHAMMADAN REPRESENTATION.

**Mr. K. Ahmed** (Rajshahi Division: Muhammadan Rural): Sir, I move the Resolution that stands in my name:

"That this Assembly recommends to the Governor General in Council that he may be pleased to take steps to give gradual effect to the following:

- (i) in a Province where Muhammadans are in a majority, they will get 52 per cent. and non-Muhammadans 48, and
- (ii) where the non-Muhammadans are in a majority, they will get 75 per cent. and the Muhammadans 25 per cent. of representation in both the Indian and Provincial Legislatures and Government services as far as possible."

Sir, the reason why I have taken the trouble of giving notice of this Resolution is this, that within the course of the last two months it has been taken up by the country and people of all shades of opinion are engaged in considering the subject. Ever since that Coconada Congress in Madras Presidency in last December dealt with the subject, the matter has been discussed in the press and the public platform. Some have approved of it, and some have opposed it. Sir, this is not a new thing in this country. There has been a Hindu-Muhammadan pact in 1916 called the Lucknow Pact. Government in the Provinces have issued circulars from time to time to the high officers of each department laying down certain principles to be followed with regard to the representation of the Muhammadan community in the public services. Government, Sir, since the Morley-Minto reform of 1909, have hitherto followed the principle that they have granted the percentage of representation in the Legislature both Indian and Provincial. Now, Sir, since then, the matter has engaged the attention of the people. It is better, Sir, that in this temple of justice, where all people representing all the communities, including the officials representing all the Provinces, are assembled, this matter should be finally settled. That is the reason why I have given notice of this Resolution. It is not myself alone, Sir, in this Assembly, but in the other provinces, such as Bengal, such as the Punjab, and other places, you see, Sir, that Resolutions of a similar kind, if not exactly in the same terms, have been brought forward. The matter has been discussed in the press and on public platforms. Leaders in important towns are holding meetings and there is great agitation, great commotion, all over the country. Now, Sir, you see that at the Coconada Congress there was a suggestion from Mr. C. R. Das, the leader of the Swarajist party, that the practice, as far as the province of Bengal is concerned, shall be as follows. There was a Resolution passed and this Resolution was adopted by the Bengal Swaraj Party in the meeting held on the 16th of December last, just a week or about ten days before they started for the Coconada Congress. They say, in connection with the Hindu-Muslim Pact:

"It is resolved that in order to establish real foundation of self-government in this province, it is necessary to bring about a pact between the Hindus and the Muhammadans of Bengal, dealing with the rights of each community when the foundation of self-government is secured.

Be it resolved that:

(a) *Representation in Council—*

Representation in the Bengal Legislative Council on the population basis with separate electorates, subject to such adjustment as may be necessary by the All-India Hindu-Muslim Pact and by the Khilafat and the Congress."

It further dealt with representation in local bodies, but this is not the place for dealing with a transferred subject. Then, with regard to Government posts, the Pact lays down that 55 per cent. of Government posts

should be given to the Muhammadans to be worked out in the following manner:

"Fixing of tests of different classes of appointments. The Muhammadans satisfying the least test should be preferred till the above percentage is attained; and after that according to the proportion of 55 to 45 the former to the Muhammadans and the latter to the non-Muhammadans, subject to this that for the intervening years a small percentage of posts, say 20 per cent., should go to the Hindus."

Now, Sir, that is as far as the province of Bengal is concerned. There was another Pact called the Indian National Pact. This was proposed and supported by Lala Lajpat Rai and Dr. Ansari, and that goes on to say:

"Whereas India being a dependency of the British Government has been deprived of all the rights and privileges of a free country and Indians are denied even full citizenship rights in several parts of the British Empire, and the present foreign Government does not use, and in the nature of things cannot be expected to use, all its resources to uphold the dignity and protect the elementary rights of Indians;

And whereas it is essential for the free and full moral and material development of her citizens and the enforcement of due respect for their human rights and their liberties in all parts of the globe that Indians should before all else possess in India the rights and privileges that the free nations of the world enjoy in their respective countries;

And whereas it is necessary that all the people of India, of whatever religion, race or colour, should unite together and apply all their resources, moral, mental and material, for the attainment of Swaraj and the only obstacle is the want of co-operation among the different communities due to misunderstandings and mutual suspicion about each other's aims and intentions;

And whereas a joint declaration by all communities of the goal which they seek to attain and the rights which they wish to secure for the people, which a Swaraj Government will be pledged to guarantee and safeguard, will be beneficial to the creating of that confidence and toleration, which are absolutely essential for a common endeavour,

It is hereby resolved that all the communities and committees represented by the signatories to this document shall enter into an agreement in terms of the following resolutions which shall be known as the Indian National Pact:

In pursuance thereof it is hereby resolved that:

1. It shall be the firm and unalterable object of the communities represented by the signatories to this pact to secure complete Swaraj for India, that is to say, the Swaraj which will secure and guarantee to Indians the same status, rights and privileges in India as every free and independent nation enjoys in its country.

2. The form of Government under Swaraj shall be democratic and of the federal type."

These are the principles on which both the Pacts, that is to say, the Indian National Pact and the Bengal Provincial Pact, were considered. Now, Sir, the other temple of justice, representing the masses and the people of this country, was engaged only a few weeks ago in considering this question, and naturally it has become a very great and important factor that Government should take up the matter, because it is the country's desire that they should come to a certain settlement. I have been asked by several of my friends, "You are a nationalist, what is the use of your bringing this matter before the Assembly? We understand it. We are giving effect to it. Then what is the use of bringing it before the Assembly?" But, Sir, it is the Government and the Government alone that make these appointments. It is the Government that have given expression to its views last year and some years ago. It was on the 10th March, 1923—only about 10 or 11 months ago—that the Honourable the Home Member made certain declarations in this Assembly about this matter. He gave an explanation or probably made a statement, a statement which probably the Honourable the Home Member would

[Mr. K. Ahmed.]

like to follow. But, Sir, 11 months have passed away; things have become quite different. It has been agitated and will be agitated unless you come to certain terms. Your officers in charge of departments of your Government have to follow certain principles that Government appointments should be distributed in a certain proportion. There is, Sir, I may tell you—I am sorry I have to do this painful duty—I live in the town of Calcutta and I know there are Government offices and Railway Stations there. My Honourable friend, Sir Charles Innes, is not here. I hear that there is a lot of abuse in those offices and the Railway stations. There is bribery, illegal gratification and corruption going on. Your officers are challenged. The rumour is that the officers there take bribes and give posts. There are many other things, Sir, and it has become absolutely necessary for you to come up with clean hands and say, "We have taken a step forward". You say, "No, now and then we shall make up our minds. We shall do whatever we like." You have your prestige. Well, prestige must have its principle. Prestige must go according to a principle. You do not follow a systematic principle. We represent the people of this country here and you follow the principle. I have been attacked, Sir, I have been put into a difficult position by some people of my community who say, "You have given notice of a Resolution. It is not good. You give a free hand to Government officers. You say, 'as far as possible Government should give effect.' You say further that they should give effect to it gradually." The word "gradual" appears in my Resolution, that is to say, slowly and steadily, in the course of 10 years, 20 years or a lifetime. This is what the Resolution says:

"This Assembly recommends to the Governor General in Council that he may be pleased to take steps to give gradual effect to the following"

and then appear the percentages. They come upon me and say, "Why should you pass a Resolution of this kind?" Before I gave notice of this Resolution, Sir, I took jolly good care to consult my friends with whom I have got to fight and take my due share, friends who are the legal heads of the profession to which I have the honour to belong, friends whose opinion is accepted by the Government from time to time. The other day in a meeting of the Finance Committee, there was a discussion as to the amount of fees to be given to the Advocate-General of Bengal. Our friends said "This will be the last full stop and if you come again with demands by instalments to give so much for perusal, so much for drafting and so much for other things, in the long run the whole revenue will be eaten up by the profession"—I have consulted that kind of people. Then, Sir, I have also realised the position of the Government under the circumstances, that is to say, the circumstances in which the Honourable the Home Member gave a word of advice to Mr. Muppil Nair of Madras last year when he brought a Resolution in which he wanted that Government should set apart certain posts for the non-Brahmins of Madras. My friend was representing the landholders of Madras. Here my case is quite different. I do not want to classify my community into sections like Brahmins and non-Brahmins. I come here on behalf of an important minority which can be divided into four main heads, the Sheikh, the Saiyid, the Moghul and the Pathan. No doubt, in each of these sections there are many branches. I come here with a proposal which has been accepted by the people of this country and I do not come here for pettifogging purposes. In this connection may I quote what that great man, who has been let off

on account of his ill-health, has said when he was consulted last week. It appeared in the newspapers dated the 16th :

" Nagpur, February 16th. Srijiut C. Rajagopalachariar, member of the All-India Khaddar Board, arrived here last evening. Srijiut C. Rajagopalachariar addressed a special meeting of the national workers belonging to different parties. In the course of his speech he said that if Hindu-Moslem unity is to be made a practical reality, the Hindus must be prepared to concede everything which the Muhammadans may demand without expecting anything in return. This was also the Mahatmaji's view and Mahatmaji's immediate work would be towards satisfactory solution of this great problem."

Sir, I am not quoting this to take undue advantage of it. I do so in order to show that that is the feeling in the country, the great leader of the country is engaged in thinking out a real solution to the problem. I do not see what reason there is for Government not to settle this problem which has cropped up in the path of Swaraj and other desirable things, especially when people consider that it ought to be settled once for all. The Honourable the Home Member made a certain statement in this House last year that they do not distinguish between Brahmins and non-Brahmins and that they are all Hindus and if they distinguished between different sub-sects the work would be voluminous and the task of dividing them into proportions would be an almost impossible task. The Honourable the Home Member has also said that it did not matter if a Muhammadan came from Bengal or anywhere else in India, so long as he was a Muhammadan. Why should it be so? Bengal is a province whose Muhammadan population is as much as, or a little less than half of the total Muhammadan population in India. As far as the Muhammadans of that province are concerned, there is not a single Muhammadan here in the Central Government. (*A Voice*: " You will have it next time.") If the Government decide such questions as these according to their sweet taste, whether their decision is right or wrong or whether there is any principle of justice or equity in it or not, is it not a despotic manner of settling matters? Is there no straightforwardness on the part of the Government? If the Government have committed an error, let them come and say, " We confess we have committed an error. We are going to rectify it." To err is human. When the masses are eager and anxious to solve this problem, why should Government ignore it? I have taken a very moderate view in my Resolution. I have given you ample room. You may run, I have given you a very broad road and a spacious avenue. But if you trade on me and run your motor car fast leaving me on its right and left, what will happen? It will only hurt me. Sir, without committing you one way or the other, you can accept my Resolution with a straightforward mind. My Resolution is a very modest one and, if the Government of this country or any country do not favourably consider it, I am only sorry for them. I think I have made out a very strong case for my Resolution. I further think that the percentage I have taken is a very low figure, and, if I have suggested a lower figure for some of the provinces considering their population, etc., I suppose they will not grumble because it is for the welfare of India as a whole. I suppose they will not grudge it because it is for the welfare of the community after all.

Sir, I understand there is an amendment and that amendment reads: " Except in Bombay and the United Provinces where the Muhammadans will get 33 per cent. " The population of Bombay is perhaps 28 per cent. If I make it 25 probably my Honourable friend Mr. Muhammad Ali Jinnah will have no objection because he is after all a sensible man and also my friend from the U.P. He is a very good man. He may say

[Mr. K. Ahmed.]

"Look here, we have already got 33 under the Lucknow Pact. Why should we accept your 25?" Well, things have changed since 1916. This is 1924, and there must be some alteration. I am sorry the alteration might not be very effective from their point of view. Their population basis will give 14 per cent. and in place of that, if you get 25 per cent. I think that is adequate. That will be a proper method of distribution and, even if they get a little more, I do not see why my friends should raise this sort of opposition. I do not know about the North-West Frontier Province where I understand the Muhammadans are 95 per cent. I do not know how far this Resolution, if carried, will take effect in the N.-W. F. Province. In the Punjab and Bengal we have put it at the modest figure of 52. We are not going to ask for very much. My Resolution has been drafted on the principle that where Muhammadans are in a majority they should get a majority of seats and that is a fair and honourable principle to adopt. I am ready to accept even 51. Punjab has got 50. I am ready to sacrifice in favour of my friends from the United Provinces, if they want to profit at my cost.

After the dissolution of the Coconada Congress there was a meeting representing the Khilafatists with whom our people both here and outside are on friendly terms. They passed a certain Resolution also. May I, Sir, with your permission, read what it is:

"This meeting of the Khilafat Conference accepts the fundamental principles of the Indian National Pact and the Bengal Pact"

—representation on the basis of population, protection of the rights of minorities, toleration between the different communities of India and full religious and communal freedom—

"It is resolved that the Khilafat Committees all over India and other Islamic institutions should give their full consideration to both the pacts and should forward their suggestions on the details of the Indian National Pact through the provincial Khilafat Committees."

But how can you stand in front of that President Mr. Shaikat Ali, under whose presidency your people in the United Provinces took part and came to that conclusion that, according to the population you will have your representation in the public services and in the provincial Legislature? According to that settlement you are not entitled to more than 14 per cent. But for the satisfaction of my friends I am willing to give effect to it in this way. In the Central Provinces you have got 4½ per cent. You have got in Madras 7 or 8 per cent. of the Muhammadan population. It is for the Home Member and it is for the Government to give effect to it. I give you a certain latitude and you avail yourself of it as far as possible to give effect to it gradually. I do not say, like the Resolution of yesterday, give effect to it forthwith. Take a month. We do not mind. You must make it a rule that "we shall have to give you what you demand and demand very successfully, because it is the common voice of the country. It is a demand that has been adopted by representatives of the people, both Hindus and Muhammadans."

**Mr. President:** I must ask the Honourable Member to bring his remarks to a close.

**Mr. K. Ahmed:** Now, Sir, there has been a good deal of agitation in the form of letters to the daily press, particularly in Calcutta, in which various people have criticised the Bengal Pact and attacked each other. Sir, there is some purpose in those attacks. The attack on that Pact is

justified because the solution of this matter to the satisfaction of the majority of the population is one of considerable difficulty. But Sir, Government know some of the objections which have been raised to be unjustified. They are made by unsuccessful parties who in years gone by used to claim that they were Liberals and Moderates, whose voice is not heard by the masses and whose voice is therefore not acceptable even in this Assembly. With due regard, Sir, I am pressing the Resolution and particularly laying emphasis on the terms suggested by my Honourable friend the Leader of the Swarajist party. I know, Sir, he is a very open-hearted man; I know that he is very liberal; I know that he will have no objection because it is they, Sir, who have considered and are probably still considering the question. Other parties I know will have no objection. What difficulty is there then in carrying into effect the terms of this Resolution, so that in the future we may not have any abuse or difficulty and the people of this country will be satisfied? Now, knowing the strength which the Government possess, at the same time with the highest regard I beg of them to take a right course and to listen to the voice which is finding expression after a long time. I hope the voice will be heard and given effect to. If that is not done I shall be very sorry, probably the country will be very sorry and it may be that the whole Government Bench will be sorry when it is too late. Do not listen to that handful of people who have their own interests to serve. They cannot support you if you persist in opposing this Resolution. They will say for their personal gain to satisfy you, that you are right and the whole country will tell you that you are wrong. In that situation, Sir, I am begging of you to listen, and I say to the Government in a straightforward manner that, if they challenge me, in my right of reply, I shall open the purse of their secrets. If they, Sir, do not listen to the voice of the beggar who is begging of them to-day the beggar will have no alternative but to put them right. I will not trouble the House with any extracts from the little booklet on the Hindu-Muslim pact which has been distributed amongst all the 148 Members of the House recently by an Honourable friend of mine from the Upper Chamber. I am not going to read from that booklet because it is known to every one and every officer of the Government has been forwarded a copy, and if they have taken the trouble to read it, I am sure my friend Prof. Rushbrook-Williams must have digested it by this time. Now, Sir, I hope that I may be pardoned if I have used any strong language. I commend my Resolution to the House.

**Maulvi Muhammad Yakub** (Rohilkhand and Kumaon Divisions: Muhammadan Rural): Sir, I claim to be as good and probably a better Mussalman than my Honourable friend the Mover of this Resolution. I am also as anxious to come to an understanding with the other communities living in India as my Honourable friend is. But I am sorry I am unable to support his Resolution. I hope, Sir, that he will agree with me that the question of a national pact is a very intricate and a very thorny question, and, until the well-considered and mature views of all the leading men of the country are obtained, we are not in a position to form a national pact. The pact which he proposes in this House is more or less a reproduction of what is generally known as the Bengal Pact, and we all know, Sir, that there is not only a large number of non-Muhammadans in this country who are opposed to that pact but a large number of Muhammadans as well, especially those living in the United Provinces, to which I belong, and the Central Provinces and Bombay Presidency, who are not in favour of this pact. In fact, the floor of this House is not a proper place to

[Maulvi Muhammad Yakub.]

formulate a national pact. (Hear, hear.) A pact can only be formulated by representative men in a gathering of the different communities at a round table conference, in the same way as the well-known pact, the Congress-League Pact of 1916, came into being. No national pact can be of any value until and unless all the parties concerned agree to it. (Mr. K. Ahmed: "I was not talking about a national pact.") Well, I think it will not be wise for us to give the power of formulating a pact into the hands of the Government. Let us first come to an understanding amongst ourselves and then we will lay the result of our deliberations, along with the new constitution of this country, before this House to be given the force of law. For this reason, Sir, and in view of the Resolution which we passed last evening in which we have recognized the principle of the protection of minorities, I would humbly request my Honourable friend the Mover of this Resolution to withdraw his motion in this House.

**Khan Sahib Ghulam Bari** (West Central Punjab : Muhammadan): Sir, this question has got its own importance; it is not to be considered from the point of view of certain percentages to be allowed one side or the other. It should be considered from a different point of view. Mr. Kabeerud-Din Ahmed has offered this solution before the country which is a very valuable asset—you may accept it or reject it. It is not merely to formulate a pact between the two communities, but it is a request to the Government to act up to it at least so long as we are not able to make our own arrangements. That is what I believe he says. Now, Sir, he wants to create an atmosphere which is as important as Home Rule itself, because the Home Rule or self-government seed can neither germinate nor can it grow nor can it prosper naturally and in a healthy condition, nor can it bear fruit until such an atmosphere as that proposed by Mr. Kabeerud-Din Ahmed has been created. Now it rests with you to accept it, and to agree to the creation of such an atmosphere. His object is to bring about such unanimity, such good feelings and good relations between the two communities in the country as we aim at and as we long for. On the other hand, a feeling of satisfaction in the minds of Muhammadans that they are being paid regard to, and that their feelings are not disregarded, will create the state of affairs which is so necessary and absolutely essential for the natural development of the political relations between the two communities, and the natural development of the political conditions of the country. You know, Honourable friends, that we have a Lucknow Pact, and it was said by one of the leaders in this House, that he stood upon that pact, and he rested his arguments upon that—saying, that he had the Lucknow Pact, which settled our difficulties in 1916. Now these figures are not over and above those figures, these are rather lower—why disagree with them, and why reject them. If the Government kindly, for the satisfaction of our community and for the smooth going on of the affairs of the country, take it up and act according to it, we are at liberty to formulate our own proposals whenever we like—we can come before Government and say that here is our own pact which we have prepared for ourselves and we request that this should be acted upon for the future.

Now with regard to this Resolution, I may also submit that there is some sacrifice no doubt on the part of Muhammadans of the two provinces, and I would admit that there is a larger sacrifice on the part of Hindus in several provinces, but such a sacrifice is not a pure sacrifice. It is a sacrifice with a gain which is not a small one, but a gain which is much more than the loss they can suffer; and such a gain is sure to

benefit the country—and such general welfare of the country will be purchased at such a small rate as is proposed at present. There is another point to be considered which has not been touched by my Honourable friend.

Now, whatever insignificance may be attached to Muhammadans, I would say that such feelings would be against the real state of conditions of Muhammadans in this country. They will always bear and have always borne the greatest burden of military operations in this country. The Sikhs are a brave people, I have a great regard for them, but their population is not so much that the same arguments should apply in their case,—they are only about 25 lakhs in the whole of India—and they are some of the best agriculturists of the country; and, leaving sufficient numbers for the purposes of agriculture, how can we expect them to raise such large armies from the Sikhs, although they are brave, to take part in big offensive and defensive operations of this country? You might know that the Muhammadan armies in the great war formed three-fifths of the whole force sent out to fight the cause of the Empire, that is, 60 per cent., and in the same proportion they are sure to be composed in the future, because, being seven crores these are the only military people from which you can expect to raise large armies at times of big military operations; they are the only people who would have to go to war in large numbers; so if such a people or such a community, who have to bear such a great burden in times of war, ask you to give them one-third of the total percentage in place of one-fourth, where is the harm? Where is the difficulty? Moreover, consider their position; I may tell you that they are the real guardians of the dangerous routes to India. If Muhammadans are satisfied, well-contented, they can be in a position to contribute to the safe and peaceful going on of the Swaraj which is our object. But if Muhammadans are dissatisfied, not contented, you cannot get that advantage from them, which you can have otherwise.

One thing more for your great consideration. You want to walk very rapidly, don't you, on the path of Swaraj, as we have been seeing while discussing this subject for so many days, and you see, at the same time, that the pace of Muhammadans is not so rapid but very slow. Now do you want to slacken your speed to keep pace with Muhammadans? I guess you would say 'no.' What would be the remedy? The only remedy would be,—help them, encourage them, take them along with you so as to quicken their pace. That is the only way in which you can gain your object, otherwise not. So with this appeal and with these remarks, I very respectfully submit that it is not a question of certain percentages which may appear to you insignificant on the very face of it, and I quite agree with that; but this is a question of bringing about such a state of condition in the country as would bring about a natural, a healthy, atmosphere on both sides and bring about unanimity, agreement, satisfaction and contentment in all directions and will help you in every way.

Now two things are before you. On one side you have got the natural, uninterrupted and automatic development of political life and political progress in this country, if you agree to create such a good state of conditions. On the other side, a small percentage to be discussed internally and with no results. Put them on the scales and see which is the heavier; choose either of them. Would you choose the heavier scale or the lighter? I think, if you consider wisely and considerably you would like to accept the thing which bears more fruit and is more useful. With this appeal, with these remarks, I support the Resolution, which was not

[Khan Sahib Ghulam Bari.]

discussed in the way in which I have done, and I hope, considering the subject from this point of view, you would support it.

With regard to the amendment, I would submit that the United Provinces and Bombay have got such a state of Muhammadan society which has got special features, special culture and is on a special footing. In the case of those provinces, if you allow them 38 per cent., it would not be out of place. I on my part would not disagree with the idea that in view of that concession, the percentage for Madras and the Central Provinces should be 16 each, in place of  $4\frac{1}{2}$  and 7. 16 would, I think, be enough for these provinces, in consideration of the percentage allowed to Bombay and the United Provinces. These are my remarks. I support both the Resolution and the amendment.

**Mr. O. Duraiswami Aiyangar** (Madras ceded districts and Chittoor:

12 NOON. Non-Muhammadan Rural): Sir, I rise to give my whole-hearted

support to the Resolution which has been brought forward by my Honourable friend, Mr. Ahmed. Sir, in offering that whole-hearted support to that Resolution, I wish to mention at the very outset that as the least of all the *chelas* of Mahatma Gandhiji I stand and I take my stand upon the message which he has given both to his Hindu as well as his Muhammadan brethren. Sir, Mahatmaji says:

"I never realise any distinction between a Hindu and a Muhammadan. To my mind both are sons of mother India. I know that Hindus are in a numerical majority and that they are believed to be more advanced in knowledge and education. Accordingly, they should be able to give away so much the more to their Muhammadan brethren. As a man of truth I honestly believe that Hindus should yield up to the Muhammadans what the latter desire and that they should rejoice in so doing. We can expect unity only if such mutual large-heartedness is displayed. When the Hindus and Muhammadans act towards each other as blood-brothers then alone can there be any hope for the dawn of India."

Sir, I take my stand upon that message, a message which he has given with large-heartedness to the Muhammadans of India, even to those Muhammadans who in the last Assembly voted against the release of Mahatma Gandhi. Sir, this Resolution which has been moved by the Honourable Mr. Ahmed, I take it, is a Resolution which involves some complexities, but I am not personally troubled about those. He draws a distinction between Muhammadans and non-Muhammadans just as in the Madras Presidency they draw a distinction between Brahmins and the non-Brahmins. Everywhere the fashion seems to be to make divisions by dichotomy instead of recognising the enclosures which come under one section of it. I take it, Sir, that Mr. Ahmed includes in the term non-Muhammadans Europeans, Eurasians, Christians, Parsees, Sikhs and the Hindus and he gives that proportion 42 per cent. as also the 25 per cent. to all these, reserving the other percentage for the Muhammadans.

**Mr. K. Ahmed:** 25 for the Muhammadans, Sir, and 75 for non-Muhammadans.

**Mr. O. Duraiswami Aiyangar:** When the Honourable Mr. Ahmed puts in the Resolution that in a province where Muhammadans are in a majority, they will get 52 per cent. and non-Muhammadans 48, and where there is a minority of Muhammadans, he will take 25 per cent. and the remaining 75 per cent. will go to the non-Muhammadans, I take it, Sir, in that spirit, and I am glad that there is no amendment proposed to reduce this percentage from any other section of this Assembly. Sir, I wish also that we take into account that it is not only a particular portion of the services that the Honourable Mr. Ahmed contemplates in his mind but

he takes the entire service of India, the Imperial service, as well as the Provincial service, services recruited from England as well as services recruited in India. I wish this principle is applied entirely and then I will also be glad that we should say that even the recruitments in England ought to be guided by a principle like this. Sir, we have had recently a declaration made by the Secretary of State appointing Executive Engineers recruited in England. There he has promised or he has announced that he is going to make 15 appointments in the year 1924 of which he has given to Indians possessing English university qualifications 10 per cent. and  $1\frac{1}{2}$  will be appointed from Indians. Let that  $1\frac{1}{2}$  Indians be entirely given to Muhammadans; I shall certainly be personally glad. But let us all join together and fight for an increased percentage as against the non-Indians. Sir, there is one kind of tone that is adopted by our Muhammadan brethren in pressing these questions and it is that which I request them to avoid. (*Maulvi Sayad Murtuza Sahib Bahadur*: "Not all.") Those who move these questions move them as though the non-Muhammadans have been staying in the way of their progress, as though it is the non-Muhammadans or the Hindus in particular that have been standing in the way of any service being obtained by the Muhammadans. They forget, and we often forget, that there is one other body which is regulating the services. It has never been in the gift of the Hindus or any particular section to give a particular service to a particular section. It looks as if we forget who it is that treat us in this matter and we go and fight with a person who is not responsible for it. It looks like this, as the proverb goes, "I am not sorry for the husband beating but for the mother-in-law laughing." Is that the theory upon which we proceed, Sir? Let us all join together, Hindus as well as Muhammadans, Muhammadans as well as non-Muhammadans, and approach that party which is making this distinction and ask them not to make this distinction. Sir, whenever any question arises in this country of elevation of the depressed classes, I have always been thinking that it must be along with the depression of the elevated classes also, so that it is in thus giving and taking that we can come to a unanimity and a union.

Sir, this question about guaranteeing appointments must not always be pursued. That is a suggestion which I make to my friends in good spirit. We must never depend upon this guaranteed system always. By all means until we progress let us, if necessary, seek it. But, if we press for guaranteed appointments or guaranteed seats either in the Councils or in the service and always stand upon that guarantee, such a guarantee is always a premium for laziness and decline rather than for progress. It will be humiliating to any of us, be he a Hindu or a Muhammadan, to always ask for guaranteed appointments or guaranteed places in Councils or service, because we must progress and progress without these guarantees. Then alone will there be a stimulus for progress. In this connection I would like to read to you what Mr. Justice Abdur Rahim has said in his Report upon the Public Services Commission. At page 398 of his dissenting minute he reviews the situation and the progress which the Muhammadans have made along with the Hindus. There he says:

"The unifying and democratic spirit of Islam is well known, and among the Muhammadans there have been no such relics of an old system as the castes to mislead those whose knowledge of the Indian people is mostly historical and theoretical. Further, it must be remembered that care for the poor, so definitely enjoined by all religions of the east, has developed in the Indian character generally almost an overflow of charity and generosity, while the new movements have helped largely to divert much of that fund of philanthropy into more regulated channels.

The inquiry has disclosed a remarkable change in the attitude of the Muhammadan community towards the questions debated before us from what it was in 1886-87.

[Mr. C. Duraiswami Aiyangar.]

At that date the Muhammadan views were dominated by a revived hope that considerable encouragement would be afforded by the Government to their desire to regain a fair and fitting place in the public service of the country. Their representatives therefore pleaded for some special measures of protection not, perhaps, entirely compatible with a high standard of educational qualification. In the meantime, however, mainly under the guidance of Sir Syed Ahmad and his fellow-workers, the community has shown an earnestness in keeping abreast of the times not unworthy of their past traditions. It now holds its own in primary education along with other communities and Muhammadan graduates have increased within the last nine years by 80 per cent. There is much more way to be made up yet, but the unflagging determination with which the Muhammadan leaders are now seeking to adjust the ideals of the people to modern conditions indicates that the community is inspired with a new confidence.

This again, is but a proof that the Indian Muhammadans have not remained unaffected by the recent national movement. Their sense of the duty to live in amity and friendship with one's neighbours so strictly enforced by their religion has now insensibly glided into the channels of nationalism. The younger followers of Sir Syed Ahmad cite with cordial approval the simile in which he likened the Hindus and the Muhammadans to the two apples of India's eyes. They repudiate with equal warmth the dissent which he had at one time expressed from some of the more advanced political measures advocated by the Indian National Congress as being inconsistent with his own ideal. This change in the political outlook of the community was reflected in the views expressed before us by its representatives as to the principles which should regulate recruitment for the public service. The keynote of their attitude is the same as that of the others, a demand for a more intimate and more extensive association of the people with the administration and a complete removal of disabilities."

Sir, pardon me for having made this long quotation, but it contains so much which will be the means of elevating any nation, be it Hindu or Muhammadan. Sir, I should only recall to my Muhammadan friends that we ought never to go on the principle of "let go the rupees, let us divide the pies." Let us all join together in dividing the rupees themselves and make our own division as coparceners of the family.

Sir, the reservation of seats for them in the Assembly and the Councils, I put only as a minor point for the simple reason that at present the Assembly and the Councils are simply sitting for making gifts to others and not for making any appropriations to themselves. The proverb "charity begins at home" means, so far as our Indian finances are concerned, our Indian services are concerned, Indian interests are concerned, that the home is not the home of India, but the home elsewhere. Therefore, I would request all the Hindus and Muhammadans to join together to put their whole-hearted devotion to the question of how to set right their houses. I will not detain you long, but I will only mention to you, that to me personally it is as much a pleasure to see Mahatma Gandhi and the Ali brothers sitting together as brothers on the Congress platform, as to see Sir Narasimha Sarma and Sir Mian Muhammad Shafi adorning our Treasury Bench like twins. Be it in service or outside, the Hindus and Muhammadans must whole-heartedly join together and walk down the path that leads to Swaraj. I will only say one sentence more. Recently I had the privilege of translating to my brethren in Coconada a lecture delivered by Bi Aman, the grand old lady, who has the honour of having brought forth the Ali brothers, two gems of the Muhammadan community, two gems of the Indian nation, and I had the privilege, as I said, of translating her thoughts, and I will only tell you one sentence therein. She said:

"My Hindu brothers and my Muhammadan brothers, I request you to forget all your trivial disputes, all your domestic quarrels, until we bring back our Sardar from Yerawada, and until we get our Swaraj, let us forget our religious disputes over trivial matters. Let us leave them over for settlement after we have attained Swaraj."

That is the message which the grand old lady gave to India. I started with a message of Mahatma Gandhi, I close with a message of Bi Aman, and with these few words I give my whole-hearted support to the Resolution brought forward by my Honourable friend, Mr. K. Ahmed. I wish he had not brought this Resolution forward; I wish he had put his faith in the national pact which will be arranged for by the National Congress. But having brought it, I will also request the Honourable Member to withdraw the Resolution; but, if it goes to a division, Sir, I assure him that my whole-hearted support is on his side.

**Pandit Motilal Nehru** (Cities of the United Provinces: Non-Muhammadan Urban): Sir, my Honourable friend, Mr. Kabeerud-Din Ahmed, has referred to me in such generous terms in his speech that I feel it is my duty to take my humble part in the debate. Sir, it was only yesterday that we passed the Resolution on responsible government with a great and decisive majority. That Resolution affirmed the view that the best course to be adopted to protect the rights of important minorities was our assembling together at a round table conference, and that was taken to be the best means of adjusting our differences. It was understood that that Resolution covered the very ground which is covered by the Resolution of my Honourable friend to-day, and the passing of that Resolution, I submit, means that the House considers a round table conference to be the most effective means of settling all communal differences which have arisen, or may arise between the various communities of India. Now, Sir, it is, I submit, putting the House in a very awkward position to bring forward the motion which my learned friend has done, after the passing of that Resolution. The House, in my humble opinion, would stultify itself by entering into the merits of one of the very questions which it specifically reserved for the consideration of a round table conference. I must frankly tell my friend that we shall have no option but to vote against the Resolution if it goes to a division, not because we are not in full sympathy with the Honourable Mover, not because we think that it is not a most important matter which requires our immediate attention, but because, Sir, we have already agreed that a round table conference is much the better way of dealing with the questions. My Honourable friend need have no fear because the Government gave a very unsatisfactory response to the Resolution of yesterday. I can assure him that the round table conference to consider this question which he has raised, if not any other questions, is coming in spite of the Government. We have given the Government a full opportunity to do the right thing at the right moment. If the Government will not avail themselves of that opportunity, my friend knows that we have a way of doing the right thing independently of the Government, and I can assure him that we are bent upon doing that right thing by our Muhammadan friends. (*Mr. K. Ahmed*: "If the Government does not distribute the seats?") That round table conference, as I was saying, is going to take place at an early date, and I am quite hopeful; nay, indeed, I am absolutely certain that it is going to decide these questions so far at least as they come in the way of our attaining Swaraj.

My friend himself—my friend the learned Mover and my Honourable friend, Mr. Duraiswami Aiyangar—then referred to the last message of Mahatma Gandhi. That, the House will observe, makes it perfectly clear that the Mahatmaji is going to make it the sole work of his life to bring

[Pandit Motilal Nehru.]

Hindus and Muhamnadans together to settle their differences and to see that they live like friendly neighbours as they ought to.

**Mr. C. Duraiswami Aiyangar:** I would like to correct my Honourable friend on that point. The message I referred to was not the Mahatma's last message but the earliest message he gave to India soon after his coming to India.

**Pandit Motilal Nehru:** I thought he referred to his last message; I stand corrected. If that was the message, in his latest message in the letter which my friend has read addressed to Maulana Mahomed Ali he has said that he is not going to rest until he had done all he could to bring about perfect harmony and sympathy between Hindus and Muhamnadans and the various communities of India. Now, Sir, I was going to say we know that many great men have before this tried to solve the question of communal differences in the country, but as I have said before on another occasion, it was given to Mahatma Gandhi alone to bring the roaring lion of Islam and the gentle cow of Hinduism to lie down side by side in peace and harmony. There was, I admit, far too short a time; but I fully believe that, if his era of usefulness had not been interrupted by incarceration, Hindu-Moslem unity to-day would have been an accomplished fact and a lasting fact. However, Sir, we are concerned more with what is and not with what might have been, and as to that I can only give my friend an assurance that we shall make an honest and sincere and a strong effort to meet his wishes and to afford the amplest protection to all the minorities of India including the Muhamnadans. Now, Sir, I am but a humble individual by birth, and by belief a Hindu—a belief as unshakeable as that of any other Hindu; but I yield to none in my admiration of the religion and culture of Islam. As was the custom in the particular class of Brahmans from which I come, in the days of my boyhood my earliest education was in a Muhammadan *madrasah*. My earliest impressions were received at the feet of Muhammadan professors and teachers and the more than half a century that has since elapsed has not, I can assure my Muhammadan friends here, in the least blunted the effect which those first impressions produced upon my young mind. Indeed, Sir, I think I may with some confidence say that I have not ever said or done anything that can be taken in the least degree to affect that high conception which I formed at an earlier stage of my life, and as a sincere friend of my Muhammadan countrymen I assure them that their claims will receive the greatest and most careful attention at the hands of the conference which will be convened by ourselves in the absence of any sympathy being shown by the Government; and on those grounds I will ask my friend to withdraw his Resolution, because if he does not, as I have said he is placing us in a most awkward position—a position which will not be cleared by the voting upon it. My friend, Mr. Duraiswami Aiyangar has given his hearty support to the Resolution of the Honourable Mover. Now, Sir, I followed his speech very carefully but I found that all that he meant and all that he said was that the principle involved in the Resolution, namely, the effect it would have in bringing about Hindu-Muhammadan unity, has his fullest support. He did not enter into the merits of the various percentages with which the Resolution deals, and indeed if my friend will pardon my saying so, coming from the Presidency of Madras as he does, he is not

aware of the importance of these percentages. He does not know what the real causes of the differences between the Hindus and Muhammadans of Upper India are; and really it is these differences between the Hindus and Muhammadans of Upper India which are causing us all the inconvenience and all the trouble that we are experiencing. Indeed, as my friend, Mr. Muhammad Yakub, just informed the House, and he is as good a Muhammadan and he claims to be a better Muhammadan than the Honourable Mover—he comes from the United Provinces and as a Muhammadan he differs from the principle of this Resolution. So there are many intricate points involved in it. It will not do for this House to enter—this House is incapable of entering—into those intricacies, and indeed the one great reason why I ask my friend to withdraw his Resolution is that the Government is the last person in the world to go to in determining a question like that. You can only determine it by deciding it for yourselves. If you cannot decide it, then it will remain undecided. The Government have no say in the matter at all. What have the Government done so far? There was my friend, Mr. Muhammad Yakub, who said that the Government had not passed any legislation trying to remove these things. Well, in that I beg to differ from my Honourable friend. The Government could not, and if they did, it would not, have removed these differences. The only means of removing these differences is to arrive at an understanding between ourselves, and that is the understanding which has been suggested in the Resolution which I submit has been adopted yesterday by the House. In view of all these things I beg my Honourable friend to withdraw his Resolution.

**Mr. Mahmood Schamnad Sahib Bahadur** (West Coast and Nilgiris: Muhammadan): Sir, there is an amendment standing in my name, but, before I move it, I want to ask the House to adjourn the further consideration of this Resolution to the last non-official day in March; because, as has been pointed out by many speakers, it is a matter to be settled among the leaders first, and then only can it be brought before this Assembly; otherwise this question cannot be settled by discussion in this House. Therefore I request that this motion may be adjourned to the last non-official day in March. I hope the Government also will arrange for it.

**Mr. K. Ahmed:** May I know the object of it?

**Mr. Mahmood Schamnad Sahib Bahadur:** So that we may come to some understanding among ourselves and facilitate the settlement of the question. It is not practicable to settle it here without coming to some understanding among ourselves before hand. I hope therefore the Honourable Mover also will kindly accept the suggestion.

**The Honourable Sir Malcolm Halley** (Home Member): The suggestion perhaps concerns me as it refers to the arrangement of the business of the House. Mr. Schamnad suggests that the present discussion should be deferred until the last non-official day in March. I do not think that this falls within our procedure. When we adjourn a discussion, it is under two circumstances. There are times when business has to be adjourned before the House can arrive at a decision on a Resolution under discussion; in those circumstances it is deferred until the next non-official day. In the second set of circumstances, it is deferred by consent of Government till an official day. It is not, I think, the purpose of the Mover of this motion

[Sir Malcolm Hailey.]

that we should defer further discussion until the next non-official day, nor indeed do I think, Sir, in view of our ordinary procedure that you would allow such a motion. I am afraid that I cannot guarantee any official time in March. I do not know yet what the course of our business will be in regard to the Budget. It is possible that, as last year, official business may take up nearly the whole of that month. I should like to make it clear that I do not necessarily wish to see this discussion pushed to a vote to-day. I do not wish to interfere with the very reasonable desire of Members for an interval for further consideration on this question. And most emphatically, Sir, neither I nor any Member of Government would desire to see differences of opinion developed in this matter or would desire to do anything at all that would prevent the two great communities from settling the matter amicably between themselves without our intervention.

**Mr. President:** I understand the Honourable Member from Madras to have moved his motion for adjourning the debate?

**Mr. Mahmood Schamnad Sahib Bahadur:** I am willing to have it postponed *sine die*.

**Mr. President:** The question is that the further debate on this Resolution be adjourned *sine die*.

The motion was adopted.

## RESOLUTION RE CONSTITUTION OF HIGH COURTS.

**Diwan Bahadur T. Rangachariar** (Madras City: Non-Muhammadan Urban): Sir, I beg to move the Resolution which stands in my name:

"This Assembly recommends to the Governor General in Council that he may be pleased to take the necessary steps to get section 101 of the Government of India Act amended:

- (a) so as to make it clear that the Chief Justice of a High Court must be such barrister, advocate or pleader of a High Court as is referred to in the section, and
- (b) also to provide that not less than three-fourths of the Judges of a High Court, including the Chief Justice but excluding additional Judges, must be such barristers, advocates or pleaders."

Honourable Members will remember that section 101 of the Government of India Act defines the constitution of the High Courts established by letters patent in this country and provides for the number of Judges who may be appointed to the said Court and it also provides that

"A Judge of a High Court must be"—

one of three classes of persons,—

"(a) a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland of not less than five years' standing; or (b) a member of the Indian Civil Service of not less than ten years' standing, and having for at least three years served as, or exercised the powers of a district judge; or (c) a person having held judicial office, not inferior to that of a subordinate judge or a judge of a small cause court, for a period of not less than five years; or (d) a person who has been a pleader of one of the High Courts for an aggregate period of not less than ten years."

My proposition deals with the proviso contained in sub-clause (4). The proviso runs as follows:

" Provided that not less than one-third of the Judges of a High Court, including the Chief Justice but excluding additional Judges, must be such barristers or advocates as aforesaid, and that not less than one-third must be members of the Indian Civil Service."

The object of my Resolution is two-fold. It is firstly to remove this anachronism in the Act which has continued for a very long time providing for the constitution of a High Court. There was a time when the High Courts were constituted in this country in or about 1861, when there was a necessity for providing that not less than one-third of judges should be civilians and not less than one-third should be barristers and the rest from anywhere. That was a time when the old Supreme Court and the Sudder Court were consolidated. The Supreme Court was manned by barristers from England and the Sudder Court was manned from the Civil Service. That was a time when the Bar in India was absolutely and entirely dependent upon the bar from England and the Indian Bar had not much reputation and had not even much existence. Now, to retain such a provision at the present day, more than 100 years after the English system of jurisprudence has been worked in this country, seems to me, Sir, an absurd position to hold. The Bar in this country has achieved a reputation not only in our country, but it has won the admiration of the Bench and Bar in England. Sir, we are following the English system of jurisprudence in the administration of justice in this country and, Sir, what nobler example can we have for manning our High Courts than the English practice? In England the Bench is entirely recruited from the Bar and why the same procedure should not be adopted in this country is a question which it is rather difficult for me to answer. The eventual goal should be that, so far as recruitment to the Bench is concerned, the entire judiciary in this country should be recruited from the Bar. But I have not aimed so high in my proposition. I still leave it in my proposition that one-fourth of the strength of the High Court might be left to the Civil Service or to the Provincial Judicial Service, but I ask that three-fourths of the number should be recruited from the Bar. I have not confined it to the Indian Bar. It is not any racial question. I will be quite content if this three-fourths is recruited from the English Bar. The principle which I want to have established is that the major part of the Bench should be composed from the Bar and not from the Services. As it is, Sir, the proportion which now obtains sometimes works in practice to an absurd length. Supposing a High Court consists of seven Judges, not less than a third should be barristers, and that leaves 3 and 3 each, leaving only one—not less than a third it ought to be—leaving only one for the pleader or for the provincial judicial service. I know to-day it happens in Allahabad; it happened several years ago in the Madras High Court, and as I have already stated, whatever necessity there might have been for keeping such a proportion in those days, those circumstances have ceased to exist, and I submit that the High Court should be manned by people who can bring their training at the Bar to bear upon the administration of justice. It is important that the High Court should be manned by people who can take an unbiassed and a judicial view of all matters coming before it. The aim of all lawyers and all sound administrators in this country has been to separate the judicial from the executive. If we carry this in my proposition, we will be affirming that principle also, in that you will separate the executive from the judicial branch of the services. I do not

[Diwan Bahadur T. Rangachariar.]

want to entirely exclude the Civil Service from the High Court. There are men, there have been men, from time to time from the Civil Service who have been exceptionally able in the discharge of their duties as Judges of the High Court. In my own province, I have met with eminent Judges from the Civil Service, but it will be recognised that they are exceptions rather than the rule. Such exceptional cases can be provided for in the one-fourth margin which I have allowed. But, Sir, the principle that the Bench should be recruited from the Bar is one which has been universally accepted wherever English Courts exist, and I do not think I should labour that point before this House.

The other object which I have in view is in clause (a) as regards the Chief Justice. It has been contended on the existing section as it stands, that it does not exclude a pleader or a vakil from rising to the position of Chief Justice, but that construction, I am afraid, has not found favour with the Law Officers of the Crown in England. I know a reference went from Madras on that question, and I believe the reply from the Secretary of State was that the Law Officers of the Crown would not allow of such a construction. There is no reason why a Vakil of a High Court, when he is a Judge of that High Court, should not rise to the position of Chief Justice. We all remember that the section in the Government of India Act relating to the Law Membership was amended only recently so as to enable a vakil of a High Court to be appointed as a Law Member, so that it is an advance in the direction which we have already made in other matters, and it is not that every Vakil Judge would be made a Chief Justice. But there have been eminent Vakil Judges in various High Courts who have been denied this legitimate promotion to which they were entitled by reason of the restricted construction of section 101 of the Government of India Act. I therefore submit, Sir, that this Resolution is in conformity with the principle recognised in English Courts, it is in conformity with the precedent which has been established as regards the Law Membership and I submit it is also in conformity with the present requirements of the country, and to perpetuate this ancient anomaly will not be wise on our part. I therefore commend this Resolution for the acceptance of this House.

**The Honourable Sir Malcolm Halley** (Home Member): It is a great pleasure to me after the discussion of the last week to find that there is some one who wants merely an amendment of the Government of India Act. There were so many yesterday who wished to dispense with it altogether. I am not sure what the feelings were of my friend on that subject, but I welcome from him a statement that it is still possible for us to appeal to Parliament to put the situation right. And there is another source of pleasure; I do not see how by any exercise of imagination this can be made into a racial question. It is one purely of the efficiency of our law courts. Perhaps I may say that there is for me yet a third pleasure, and that is that on some points at least, I find no considerable reason to differ from the Honourable Mover. In discussing some of his proposals, I am of course at some difficulty, because, before I could agree to support on behalf of Government an amendment of the Government of India Act, it is necessary that the matter should be fully discussed with the authority who is responsible for putting such an amendment before Parliament, and although we have discussed one detail of the Resolution with the Secretary of State, there are others which we still have to discuss with him. The House will understand therefore the limitations under which I speak,

Now may I take the simplest point in the Resolution before the House, that which is marked as (a), in which he desires to make it clear that the Chief Justice of a High Court must be such barrister, advocate or pleader of a High Court as is referred to in sub-section (3) of section 101. On one point I am certainly at one with him, namely, that since the reading of the section does, as he says, appear to exclude the possibility of appointing a pleader as permanent Chief Justice of the High Court, that distinction ought to be removed, and the Act ought to be amended in order that it may be possible to appoint a pleader to the position of permanent Chief Justice of a High Court just as it is possible for him under section 105 to be appointed as officiating Chief Justice. Whether we should go further, in regard to the appointment of Chief Justice, and sweep away all distinctions or not are matters for further consideration. It is possible that we ought to go further and instead of saying that the Chief Justice should be a barrister, advocate or vakil, we should say that the Chief Justice should be found from any member of the Court or from outside the Court, whether he be a barrister, advocate or pleader, or whether he be one of the members of our Provincial or Imperial judicial services. That I say is a matter for further consideration.

Now, for the second point. He makes it clear that we have a somewhat restricted proposition to argue. He does not wish to confine the selection to the Bench of the High Court entirely to members of the legal profession. He admits for his part that we should do well to take some of our High Court Judges from those who have filled subordinate judicial positions. We have had it frequently argued here and in the other Chamber that selection should be confined entirely to members of the Bar. There is, I think, this justification—quite apart from any other consideration—for admitting to the Bench those who have served in subordinate judicial positions and who have not come to them through the Bar, that, unlike England, we have a large subordinate judicial service. We give to our district judges great powers, almost unlimited powers in ordinary civil work; very great powers in civil appellate work; our Sessions Judges have great powers on the criminal side. Now, if you are to secure the best men for that service, then you are more likely both to obtain and maintain an efficient service if they have openings to the High Court. There is that substantial argument in favour of the system we now follow—a proposition which the Mover himself in part admits. Though it is true that in England the practice is to obtain High Court Judges entirely from the legal profession, that practice does not prevail in many other countries whose judicial systems also enjoy a high reputation. I would instance that of France. There the practice is much as it is here, and I can quote the opinion of so impartial an observer as Lord Bryce that the system is one which works with the very best effect in that country:

“The Judicial Bench is one of the oldest and most respected of French institutions, adorned in times past by many illustrious names and constituting under the old *régime* what was called the nobility of the Robe. It is not, as in English-speaking countries, virtually a branch of the profession of Advocacy but is as in most parts of the European continent a distinct calling which young men enter when their legal education is finished instead of being the crowning stage, as in England, of a forensic career.”

I merely refer to that because I know that, though the Mover and I are at one in believing that some number, at all events, of our High Court Judges should be taken from those who have belonged to the judicial service, yet the fact that a system different from the English system

[Sir Malcolm Hailey.]

is followed in other countries has something, I think, to say to the exact numbers which should be so taken. Now, our present practice 1 P.M. as laid down by the law, is, as the Honourable Member says, inconvenient. That is to say, the proportions which are laid down frequently lead to great difficulty in practice. I fully agree with him that something must be done to amend the Act in this respect. It is an old provision; the section dates from about 1861, and the mere fact that it has in experience proved inconvenient is quite sufficient argument in itself to show that some amendment is necessary. The question is whether we are to amend it in the direction of giving such restricted opportunities for promotion from the judicial service as he would himself suggest. At present there are a minimum of one-third taken from the Indian Civil Service. What he would prescribe is that there should be a maximum of one-fourth taken from the Indian Civil Service and the Provincial Service combined. He will thus affect the chances of a very considerable number of men now in the Services who might not unreasonably be expecting promotion. He would do that, and he would also limit a good deal the chances of those who are in the Provincial Service. My difficulty in announcing a definite policy on behalf of Government in this respect is increased by the fact that this aspect of the case is also engaging the attention of the Lee Commission, and further, that the question is touched upon in the report of the Bar Committee of which the Mover is himself a Member. I may say for the information of the House that we have just received that report. I myself have only had just time to look at it and not to study it; I have not had time to place it before Government. In the circumstances, I could go no further than I have done at the moment. We have had this question under consideration. We have consulted Local Governments. We are unable to place before the Secretary of State any definite policy in the matter until we have considered also the opinions given us by the Lee Commission and the Bar Committee. But, as I have already said, we are at one with the Mover in agreeing that some amendment of the law is required if only to remove the existing inconvenience of it. What further amendment of the law we ought to make in order to secure the object which the Mover has at heart and the exact extent to which we should go in the direction he desires—on that point, for the moment I can give no certain views on the part of Government.

**Diwan Bahadur T. Rangachariar:** In that state of mind of the Honourable the Home Member—that both the questions are under consideration—I would leave it at that and commend this Resolution for the acceptance of Government in that way and I would not press my proposition to a division.

**The Honourable Sir Malcolm Hailey:** I am very glad to accept that settlement.

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

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

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The Assembly re-assembled after Lunch at Two of the Clock, Mr. Deputy President in the Chair.

## RESOLUTION RE THE RETURN TO INDIA OF MR. B. G. HORNIMAN.

**Mr. V. J. Patel** (Bombay City : Non-Muhammadan Urban): Mr. Deputy President, I read the Resolution which I have the honour to move :

" This Assembly recommends to the Governor General in Council that steps be forthwith taken to remove all restrictions in the way of Mr. B. G. Horniman to return to India."

This is rather a simple Resolution and I see from the back of my Honourable friend, the Home Member, that he is perhaps going to deal with it fairly. Therefore, I need not make any very lengthy comment in support of this Resolution.

The question is, who is Mr. Horniman and why was he deported? I will read from a foreword written by Mrs. Besant to a book entitled " Selections from the Speeches and writings of Mr. B. G. Horniman " and dedicated without permission to the Indian Bureaucracy. Mrs. Besant there says :

" Mr. B. G. Horniman, the author of the articles which are published in the present volume, is one of those all too few Englishmen who carry their British principles with them when they come to India and who keep them in the open air during the years of their stay in this land. The commonplaces of liberty of speech, liberty of the press, liberty of person unless deprived of it by the law—these, which in England are taken for granted as the inalienable rights of good citizen are matters of grace in India, are held at the mercy of autocrats, little and big, white and brown, from the ' Lat Sahib ' enthroned in Simla who issues *lettres de cachet* down to the constable who takes toll of the coolie's basket and cuffs him if he complains. But to Mr. Horniman these Rights are still Rights, and their effacement is a matter of constant pain. He feels, as though inflicted on his own person, the wrongs suffered by the Indian, and with passionate insistence seeks to arouse in the injured the courage to assert their God-given manhood."

This, Sir, explains who Mr. Horniman is and why he was deported. He was deported because he was a lover of liberty. He loved the liberty of person, he loved the liberty of the press and he loved the liberty of speech, the three inalienable rights of every person on this earth. Well, Sir, it was in 1919 April that Mr. Horniman was deported. He was then on a sick bed. He could not move about. He was taken bodily to the Bunder and put on the boat. It was perhaps a time of panic and at that time Government in their wisdom thought that the best method of keeping the public peace was to deport Mr. Horniman. He was deported under what is known as the Defence of India Act, an Act passed as an emergency measure to meet war conditions. It was an Act passed in 1915 and the very Preamble begins thus :

" Whereas owing to the existing state of war it is expedient to provide for special measures to secure the public safety and the defence of British India; It is hereby enacted as follows :—"

And in section 1, clause (d), it is laid down that :

" This Act shall be in force during the continuance of the present war and for a period of six months thereafter."

Section 2 gives power to the Governor General in Council to make rules for the purpose of securing the public safety and the defence of British India and in pursuance of those powers the Governor General in Council

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promulgated certain rules. The rule under which Mr. Horniman was deported is rule 8 of those rules which reads thus :

"Where in the opinion of the Local Government there are reasonable grounds for believing that any person has acted, is acting or is about to act in a manner prejudicial to the public safety or the defence of British India, the Local Government may by order in writing direct —"

I will only read the relevant part of the section, namely, (d)—

"that such person shall remove himself from British India in such manner and by such route and means as may be specified in such order and shall not return thereto."

Under this Rule, Mr. Horniman was deported, but the grounds were not specified in the order at the time. About a month after, there was a debate in the House of Commons on the Indian Budget, when the then Secretary of State, Mr. Montagu, declared that there were two reasons why Mr. Horniman was deported; one was that the paper of which Mr. Horniman was the editor, namely, the "Bombay Chronicle," had published certain false news regarding the use of soft-nosed bullets by the British troops in connection with the riots in Delhi; and the other was that the paper was distributed among the troops free with a view to excite disaffection or something of that character. These were the two reasons alleged, of course on the information supplied to him from India, by the Secretary of State in the House of Commons for the deportation of Mr. Horniman. As soon as Mr. Montagu made this statement in the House of Commons and it was communicated to the Indian papers, the Directors of the "Bombay Chronicle" held a meeting and sent a long cable to the Secretary of State repudiating the allegations contained in that statement. Then again, Mr. Horniman tried his best, his friends also tried their best, not once, not twice, but several times, for an opportunity to disprove the statements made by Mr. Montagu, but no such opportunity was given. Mr. Horniman asked for a trial; that request was also not granted. He wrote a letter to Mr. Montagu controverting the statements made by him in the House of Commons to which an acknowledgment was sent by Mr. Montagu saying that he would give Mr. Horniman his considered reply, and his considered reply after some time was that the House of Commons was the proper place to deal with such statements. So, Sir, the House will see that all attempts made by Mr. Horniman and his friends to have either a public trial or some opportunity to disprove the charges that were made against him had failed. No opportunity has hitherto been given to Mr. Horniman. He has now been deported for the last five years; or nearly that, four years and nine months. One does not know whether the deportation order still stands or does not stand. It was passed under a war measure. The Act has been repealed some three years ago, and from the answers that were given by the Secretary of State to the questions, the series of questions, put to him in the House of Commons by several Members of Parliament regarding Mr. Horniman's deportation, one could infer that, though the order really did not stand, the Secretary of State was not prepared to recommend the giving of a passport to Mr. Horniman. Under the Passport Act no person can enter India without a passport, and, unless the Secretary of State recommends that a passport should be given to Mr. Horniman, he would not get one. Acting on the advice of the authorities in India, the Secretary of State has so far refused to recommend the giving of a passport to Mr. Horniman. All along the Secretary of State, it seems, has absolutely given himself up into the

hands of the authorities on the spot in India. He in effect says, "Well, it is the Bombay Government that is responsible for it, and the Bombay Government does not want Mr. Horniman back in India, and he could not help it; he would ask the House to trust the Bombay Government". That was the reply that Mr. Montagu gave more than once in the House of Commons in answer to questions. I should like, with your permission, Sir, to refer to some of these questions and answers. On the 21st April 1920, a year after Mr. Horniman's deportation, a question was put by Mr. Rendell. He asked the Secretary of State for India:

"Under what clause, rules or regulations a British subject could be indefinitely excluded from British India; what are the exact terms or provisions of the rules under which Mr. Horniman was thus excluded from British India, and under what Act covering such rule the exclusion was made."

Mr. Montagu said that:

"Mr. Horniman was excluded under the terms of rule 3 (d)"—(which I just read)—"of the Defence of India Rules, 1915, a copy of which I have placed in the Library. The rule was made by the Government of India in exercise of the powers conferred on them by India Act No. IV of 1915."

Colonel Wedgewood asked: "When does the Defence of India Act come to an end?" Mr. Montagu said: "To the best of my recollection, six months after the conclusion of peace". Mr. Rendell asked the Secretary of State for India whether, "having regard to the recent refusal of the Government of India to allow Mr. B. G. Horniman to return to India and the statement made by him on the 23rd May last in the House regarding Mr. Horniman that there was plenty of case to put before the Courts, and the fact that Mr. Horniman has publicly asked to be put on his trial, he would order such trial to be held, or communicate to the House the materials on which his statement was made, or, in the alternative, withdraw the statement". Mr. Montagu said: "The question of putting Mr. Horniman on his trial is one within the discretion of the Government of Bombay." He would not take the responsibility. Mr. Rendell asked:

"May I ask whether the Right Honourable gentleman does not think that so serious a decision as the exclusion of a man from India should not take place in peace time without trial and possibly conviction and nothing else?"

"Mr. Montagu: The question of trial entirely lies with the Governor of Bombay. I would appeal to the House to support the Governor in the exercise of a discretion which has been given to him by Acts passed by a competent Legislature. Sir George Lloyd would of course be the first to admit that trial is always preferable but he must have regard to all the circumstances of the case.

Colonel Wedgewood: Would it not be better to appeal to this House to give the ordinary rights of fairplay to a British subject who cannot find out what his offence is?

Mr. Montagu: There is no question of finding out what the offence is. Mr. Horniman knows perfectly well.

Mr. Rendell: I merely want to know whether the Right Honourable gentleman proposes to recommend to the Government of India eventually, not now perhaps, that this man shall not be kept out of India without a fair trial and also conviction if that trial shows him to be guilty.

Mr. Montagu: I am prepared to repose complete confidence in the Governor, Sir George Lloyd.

Mr. Spoor asked the Secretary of State for India whether any investigation has been made into the grave charges made against Mr. B. G. Horniman by him in this House in his speech on the East India Revenue Accounts on 23rd May 1919 in justification of the deportation of that gentleman from India by the Government of Bombay without charge or trial and whether he will lay upon the table of the House the full correspondence passing between the Government of India, the Government of Bombay and the India Office regarding this matter and any other papers concerning it which

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may be available and in particular the details of such charges as have been made by the Government of India and the Government of Bombay against Mr. Horniman.

*Mr. Montagu:* The statements made regarding Mr. Horniman were based upon the contents of the issues of the paper which he edited. There is no need of any inquiry regarding them. I will place a copy of the orders of the Government of Bombay on Mr. Horniman's deportation in the library.

*Mr. Spoor:* Is the Right Honourable gentleman aware that a Resolution dealing with Mr. Horniman's case was disallowed in the Bombay Council and can he give a reason for that decision?

Then followed a number of questions. With regard to the question whether the copy of "Bombay Chronicle" was distributed free of charge among the troops, several questions were put in the House of Commons and when cornered the Secretary of State, Mr. Montagu, had to admit "Yes, it is not proved that Mr. Horniman had any hand in the distribution of those copies, but the fact remains that someone did distribute copies." He was asked "Who?". The Secretary of State replied "Some reader of that paper passed it on to the troops." That is the charge on which Mr. Horniman has been kept out of India for the last four years and nine months! Some reader of a newspaper, of which Mr. Horniman was the editor, happened to hand over a copy of that paper to a member of the army—a grave offence, an unpardonable offence! Mr. Montagu could not possibly prove the so-called charges which he laid against Mr. Horniman in his speech at the time when the Indian Budget was presented to the House of Commons. He made certain charges but when he was questioned afterwards he had to admit that some reader had given some copy of that paper to the troops. Sir, apart from the question whether Mr. Horniman could or could not disprove those charges, I submit the troops are also citizens; they are entitled to know what happens outside their narrow circle. They are also human beings; they are entitled to know what is happening in the country. Even assuming that the alleged charge was true, I could not for the life of me understand what justification there is to take away the liberty of a man in these circumstances. But that is not the question before us. In fact the charge was entirely false. The Chairman of the Board of Directors, Mr. Jinnah, sent a long cable controverting Mr. Montagu's statement, namely, that the paper was distributed free of charge among the troops, and to this I do not think any satisfactory reply has been made so far by the Secretary of State, except this that some reader had given a copy of the "Bombay Chronicle" to some one in the Army. I am glad Mr. Jinnah is here and he will put this part of the case more effectively because it is within his personal knowledge. Well, Sir, as a matter of fact, Mr. Montagu had completely resigned himself. He refused to exercise his judgment; he left everything to Sir George Lloyd, the then Governor of Bombay. Happily, Sir George Lloyd is no longer the Governor of Bombay, and his successor so far has made a good beginning. You know, Sir, that immediately after he took charge of his high office, he gave redress to the people of Borsad.

(At this stage Mr. President resumed the Chair.)

You, Sir, are aware that the people of Borsad had started a campaign of mass civil disobedience in the form of non-payment of a punitive tax and had thus successfully drawn the attention of the authorities to the grievance from which they were suffering, and the successor of Sir George Lloyd, very soon after he took charge, sent the Home Member of his Government to Borsad to make personal inquiries into the matter as a result of which full redress was promptly given to the people of Borsad.

My friend the Honourable the Home Member will thus see what civil disobedience is capable of doing. It is not mere Resolutions in this Assembly, nor Resolutions in the Indian National Congress that draw the attention of the authorities. It is civil disobedience or some such action that draws the attention of the authorities to the real state of affairs in the country. But, Sir, what I wanted to point out was that the new Governor of Bombay had made a good beginning. He got the release of Mahatma Gandhi, and I feel confident that the new Governor will not come in the way of Mr. Horniman's return.

**Mr. C. Duraiswami Aiyangar** (Madras ceded districts and Chittoor: Non-Muhammadian Rural): There was also the case of Savarkar.

**Mr. V. J. Patel:** The release of Savarkar is the third instance of his good intentions after His Excellency Colonel Sir Leslie Wilson took charge in Bombay. There was, as I have shown, absolutely no justification for the deportation of Mr. Horniman. It was wrong from the beginning and I submit no civilized Government would take such action. This Resolution is intended to convey the sense of this Assembly on this question to the Government. We are here for that purpose, and we hereby make this demand that all restrictions in the way of Mr. Horniman's return to India should be forthwith removed. I trust I have made out a case to show that the deportation of Mr. Horniman was wrong from its inception, that the continued disregard of the feelings of the people of India on this question should be a matter of grave concern to any civilized Government. Perhaps the Honourable the Home Member is aware that people of every shade of opinion all over the country have demanded that Mr. Horniman should be allowed to return to India. Numerous meetings were held in Bombay and elsewhere demanding the release; but true to their traditions the Government of Bombay or the Government of India have not so far cared for public opinion in this matter as in many other matters. I leave the matter entirely in the hands of the non-official Members of this Assembly for such action as they like.

**Mr. N. M. Dumas** (Bombay City: Non-Muhammadian Urban): Mr. President, as a member of the profession to which Mr. Horniman belonged and as one who did not see eye to eye with him when he was editing the "Bombay Chronicle", I have great pleasure in supporting this Resolution as it accords with those principles of liberalism for which the British Parliament and the British nation stand. Sir, I was one of those who did not see eye to eye with Mr. Horniman in his political views. I did not agree with him in his extreme political views and I believed that he was not justified in his attack upon the liberal administration of Lord Willingdon. But, Sir, there was one thing in Mr. Horniman to compensate for all those things. During the war he helped to the best of his power towards the prosecution of the war in a manner that might bring victory to the British arms and the Allies. He was then pro-British; he was then pro-Ally. He stood for self-determination, but that cry was placed before the world by Dr. Woodrow Wilson and by our late Prime Minister, Mr. Lloyd George. Mr. Horniman felt that after the War the principle of self-determination was applied to the enemy countries and those who helped the Government in winning the war, which was waged for the protection and independence of smaller and weaker nations, were left in the cold. That was his idea, that was his view. Mr. Horniman has now been for five years in England. The Home Government have not regarded him as a danger; the Home Government have not considered him

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as an enemy, and I hope that the Government of India will restore him his freedom and his liberty. Whatever the circumstances might have been, whatever justification there might have been for the extraordinary and unprecedented steps that were taken then, I submit, Sir, that a man should not be deprived of his livelihood for ever. Mr. Horniman had stood for the liberty and freedom of speech for others. It behoves us that we should strive our best to restore him his liberty. As I have said, I do not agree with Mr. Horniman in many things that he said and in many things that he did; but, Sir, I honestly believe that the public wants to know why he was deported. I honestly believe that the Government have not taken the public into their confidence as to why he was deprived of his liberty. We know that Mr. Horniman's policy was not approved of by many people; but, if he had committed any offence, he ought to have been given a fair trial. Sir, it is the birth-right of every Britisher that he should be given a fair trial (Mr. V. J. Patel: "And of every Indian.") Mr. Horniman was deprived of his livelihood as a journalist; and, as a member of the profession to which Mr. Horniman belonged, I must say that it is the duty of everybody to maintain those honourable traditions of our profession. Sir, the arm of law is long enough and strong enough. If Mr. Horniman has committed any offence, let him come here and stand his trial. Even if there was any justification for his deportation in those panicky days in which we lived in 1919, those times are now changed; and we must consider the altered conditions. Even His Royal Highness the Duke of Connaught appealed to us all to forget and forgive. Let us bury in oblivion the episodes of those dark days and let us now begin a new chapter; and let not anyone say that we have deprived any man of his right and of his liberty, because we disagreed with his views. The British Government is founded on the solid rock of justice. Let justice be done even to a man who did not agree with us, who gave expression to extreme views, perhaps even to revolutionary views. We must remember, Sir, that those times were abnormal; those times were different. The war was being waged for the principles of self-determination, and we were fighting for the privileges and rights of minor nations and Mr. Horniman gave expression to those views in a fearless manner. I entreat Government now not to stand in the way of Mr. Horniman's return to India. It might be said that the matter lay with the Home Government or with the officer who issues passports. But, Sir, we must remember that even our present Premier was denied a passport when he wanted to go to Russia, and even the sailors refused to take him on their steamer; and that gentleman has survived all the calumny and has become the Prime Minister of England now. Let us not stand in the way of Mr. Horniman and his honest living, and we should not do anything to destroy his honest activities. With these remarks, Sir, I heartily beg to support the Resolution moved by my Honourable friend, Mr. Patel, and I am glad to say that for once I am in his camp.

**Maulvi Abul Kasem** (Bengal: Nominated Non-Official): Sir, I beg to associate myself with the Resolution as it stands. I had the honour and the privilege of Mr. Horniman's acquaintance and friendship. When it was known in the City of Bombay that Mr. Horniman was carried from his sick bed to Ballard Pier for being deported to England, the news came to many of us as a shock and a surprise. Knowing Mr. Horniman as I do, I can say this much, that, firstly, he was incapable of any intrigue or

any conspiracy, and even if he were so inclined and had the capacity, he had not the opportunity for any conspiracy or intrigue. Therefore, Sir, there was absolutely no justification to turn him out of the country.

Sir, Mr. Patel has read out reports from the House of Commons proceedings in which it is said that one of the reasons for which Mr. Horniman was deported was that the paper of which he was then the editor, was circulated to the army free of cost. Whether free of cost or at some cost, Mr. Horniman was the editor, and not the manager or proprietor of the paper, and he had nothing to do with the circulation of the paper either to the paid subscribers or to the purchasers or to those to whom it was given as a free gift. Now, Sir, the answer which was given by the Secretary of State in the House of Commons, as it has been brought to the notice of this House, reminds me of an incident, an old incident, which happened in the old province of Bengal. A bazar was burnt down in a town, and the police sent up some people before the Magistrate for trial for the burning of that bazar. The magistrate after inquiry and taking the evidence found that the evidence was not proved against any of them, and although about forty men were sent up, all were acquitted. The Lieutenant-Governor of Bengal when he visited that town examined the records and said that whether evidence was forthcoming or not, the Magistrate ought to have considered that a serious offence had been committed and some one ought to have been punished.

**The Honourable Sir Malcolm Halley** (Home Member): Did he say that publicly?

**Maulvi Abul Kasem**: He said so in his Report, and it was taken serious notice of by the Chief Justice, and the Lieutenant-Governor, Sir Charles Elliott, had, I think, to apologise in a way, because, Sir, the Chief Justice made serious remarks on interference with judicial proceedings.

Well, the bazar that was burnt down was in the city of Cuttack. I say it happened many years ago. And so, this is a similar instance. Because the paper was distributed free of cost to the army, and therefore Mr. Horniman must be deported. But that is only in connection with the answer given in the House of Commons. I submit, Sir, that this is a matter which does not admit of any controversy at the present day. Mr. Horniman was sent Home, if I may say so, in an hour of panic. There might have been some justification for action on the part of Government in an hour of panic, but fortunately the situation has now changed, and since Mr. Horniman's deportation there has been the Gracious Proclamation of His Majesty the King Emperor when all persons who were either sent to gaol or put in custody were acquitted with the exception of Mr. Horniman who still suffers extradition. I join myself in the appeal which has just been made, and it will be very hard on Mr. Horniman if the restrictions are not removed, because India is the land of his labours, the land of his love and the land where he can earn a living by his profession. And, therefore, Sir, I do not think that either the Government of Bombay or the Government of India think that Mr. Horniman is so dangerous that it will be difficult for them with all the machinery at their command to cope with him if he comes to this country. I believe, Sir, that his presence here will be more useful in the interest of the public and the Government alike if he is allowed to come, and it will remove a great stigma from the Government that they have innocently sent a man out of this country, it may be out of fear or out of anger—in both cases it is bad and it should be remedied as soon as practicable.

**Mr. Gaya Prasad Singh** (Tirhut Division: Non-Muhammadan): Sir, I beg wholeheartedly to associate myself with this Resolution. I need not say much in connection with Mr. Horniman as the Honourable Mover of the Resolution has already spoken much about him. Mr. Horniman, as we all know, is a well-known publicist, with a wide outlook, and a genuine desire to be useful to those who are struggling for liberty. In fact, the deportation of Mr. Horniman was a most unfortunate blunder, as the impression created by his deportation was that those who are lovers of liberty are an eye-sore to the bureaucracy who will stick at nothing to have such men out of their way. Sir, I think the Government has lowered itself more than it hoped to lower Mr. Horniman by this act. His name is cherished by the vast majority of the people as a strong champion of popular causes, a staunch lover of liberty, and one whose fine sense of justice is not deflected by questions of race or religion or the latitude or longitude of a place. He had not been given a fair or honest trial by the Government, and it will only be an act of tardy justice to withdraw the order of deportation, and allow Mr. Horniman to return to India, if he likes, to continue the good work in which he was engaged. Sir, it is these few broad-minded and far-sighted Englishmen who quietly and silently do more real service to England and the Empire than the whole host of Imperialists and Die-hards. The Honourable Mr. Dumas said that, although he did not agree with many of the political views of Mr. Horniman, still Mr. Horniman did a lot for the British in the late war. It is a strange irony of fate that even such a man could not be left free. This should be an eye-opener to many of our vocal loyalists and all those who are so eager to sell their birthright for the proverbial mess of pottage. I quote, Sir, one passage from a book called "The Rising Temper of the East" by Mr. Frazier Hunt:

"The day when force shall cease to be the vehicle for the dissemination of our civilisation is fast dawning. Lord Reading in India is learning—just as the Allied Powers have learned in Russia—that ideas cannot be checked by bayonets or projected by bullets."

With these few words, I beg heartily to support the Resolution now before the House.

**The Honourable Sir Malcolm Hailey:** Sir, it may be of advantage at this stage if I try to bring the debate on to a somewhat different plane than that chosen by the last speaker. We are not now discussing the deportation of Mr. Horniman or the cancellation of any order of deportation. As Mr. Patel has correctly pointed out, Mr. Horniman was deported under the provisions of an Act which is now extinct. There is no order of deportation in force against him; all that is needed is that he should be given a passport before coming to India. What therefore is really sought is this,—not that any statutory restrictions should be withdrawn, not that an order of deportation should be cancelled, but that the passport authorities in England should give him the necessary leave to travel to India. There is no restriction on his liberty in England itself. The sole restriction is on his proceeding to India. For that reason, I do not propose to take up the challenge extended by Mr. Patel to me that we should examine here the causes for Mr. Horniman's deportation. Let me only say this that they were connected with his conduct of his paper, but were not confined to the one charge that Mr. Patel has mentioned; they extended to the whole course of his conduct of his newspaper for a series of some months. Much has been said here in praise of Mr. Horniman, his love of

liberty and love of India; I shall say nothing in dispraise or in criticism of his character, for it is not itself in question. I do not think that it is fitting that I should attack his character or seek to justify an order that was then passed against him, for that order itself is not now in question. If he had been made the subject of a judicial trial, then it might have been necessary for me, as it has been in other cases of persons who have appeared before our courts, to discuss the judgment of those courts in so far as they threw light on any question of remittance of sentence; in the circumstances, I do not propose to go through the articles published by his paper which formed the reason for his deportation. I say only this. The grounds taken were that the course of conduct of his paper for many months was such that it was dangerous to the public peace and leading to serious disaffection against Government. That was the ground, correct or not correct: and, when we are charged with declining to justify the grounds of his deportation, we can only say that this decision was honestly come to by the Government of the time from a consideration of the articles which he then wrote or allowed to appear.

Now, Sir, from what I have indicated it will be seen that the real venue for decision is not here but in London; that is to say, that the decision lies really with the passport authorities acting on the advice of the Secretary of State. That was previously recognised in Parliament; that still is the case.

**Mr. Chaman Lal** (West Punjab: Non-Muhammadan): On a point of order, Sir. May I remind the Honourable the Home Member that Mr. Montagu replied on May 5th, 1920, to a question put by Mr. Lund that the Government of India did not consider Mr. Horniman's return to India compatible with the public safety and that he left the decision with regard to Mr. Horniman to the Government of India entirely?

**The Honourable Sir Malcolm Hailey:** That is a somewhat unusual point of order. The fact remains, as it must remain, that we do not issue passports from England to India; they are issued in England itself by constituted authorities, who, of course, take the advice of the Secretary of State before doing so. As I say, the proper venue, therefore, for decision is London and not Delhi. I was about to add, when the Honourable Member raised his point of order, that the Secretary of State, before giving his advice to the passport issuing authorities, naturally consults us and we consult the Government of Bombay. I do not in any way deny our responsibilities in this matter; as has been clearly indicated by the answer in Parliament which we have just heard; the Secretary of State attaches the highest importance to those recommendations. The House will ask, should Mr. Horniman again apply for a passport, what will our recommendation be? Do we feel that the grounds on which he was deported should carry on as against him now? On the past occasions on which we have been consulted, we have held that it was undesirable to allow him to return to India, that is to say, we have held that the conduct of his editorship before he was deported shows that, if he still conducted his paper in the same manner, the results would be highly undesirable in the public interests. That, I say it frankly, is still our view. Mr. Patel has told us that they have in Bombay a new Governor. He has told us that the arrival of the new Governor has brought with it a certain change in the attitude of the Government of Bombay. We are necessarily in such a case largely dependent on the view taken by a Local Government of the results likely to follow within their territory of any measure such as that

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advocated in the Resolution. If they consider at any time that the circumstances have so far changed that they can allow Mr. Horniman to return, I can only say this that we shall attach great importance to their opinion.

**Mr. V. J. Patel:** Has not the Honourable Member consulted the Government of Bombay since I gave notice of this Resolution?

**The Honourable Sir Malcolm Hailey:** No, Sir. We have not.

**Mr. V. J. Patel:** That shows your anxiety.

**The Honourable Sir Malcolm Hailey:** The anxiety lies with my Honourable friend. As I said, should the Government of Bombay believe that there is no danger to the public in allowing Mr. Horniman to return to India, then we shall attach the greatest importance to its opinion, and no doubt, the Secretary of State will do the same. But for the present our own view, based on our own examination of the question, is the same as it was in the past. That is the only answer I can give on the subject. I have stated the circumstances under which we should vary the recommendation we have made in the past. Until those circumstances change I could give no other answer on the matter.

**Mr. M. A. Jinnah (Bombay City: Muhammadan Urban):** I must really say that I am astonished at the answer the Honourable the Home Member has given. The Honourable the Home Member really reminded me, as if he was pleading before a third class magistrate, and he has displayed no sense of responsibility in giving his answer. In the first instance, he says, "I do not want to go into the merits of the case as to why Mr. Horniman was deported." Then he said that the venue is in London, the Secretary of State for India. Then he said, "Our attitude is exactly the same, namely, that we are not prepared to recommend that Mr. Horniman should get his passport." Again he said, "You might ask the Government of Bombay." Could you possibly imagine a worse quibble than this? The Honourable the Home Member knows perfectly well that no Secretary of State for India will go against the advice of the Government of India in this matter.

**The Honourable Sir Malcolm Hailey:** I am delighted to hear that.

**Mr. M. A. Jinnah:** In this matter only. If the Government of India say that the return of Mr. Horniman is dangerous to India, surely that must have an enormous effect on the Secretary of State for India and in ninety-nine cases out of a hundred he would not take the responsibility of acting against that advice. The issue therefore to-day is this. The

Government of India say we do not want to go into the merits.  
 3 P.M. It is perfectly true that he was deported. I may remind the Honourable Member that the order of deportation came to an end as soon as he left British India. That order did not continue. It was exhausted as soon as he reached London and you, not being in a position to continue that order of deportation, resorted to a circuitous method, which is a most discreditable thing for any Government to adopt, and that was to resort to this method and prevent his getting a passport. You refused to give him a trial and you make allegations against that man. You deport that man, a most horrible procedure to adopt, and I say no civilised government in any country should resort to that. You have

deprived that man of his livelihood. You have prevented that man from going out of England. How do you justify that? And you have done it for four years. That is what I want to know from the Government. How do you justify that? I am really shocked at the manner in which the Honourable Member has pleaded his case. It is not worthy of a responsible government to put forward. He says "we are not concerned with the merits." But, Sir, we are concerned with the merits. Why is a British subject not allowed to go anywhere he likes in any part of the British Empire? We are concerned with it. Why do you refuse that? Why have you prevented that?

Your Secretary of State for India was given absolutely false information and he put forward two allegations, which are absolutely false, and I am prepared to convince this House, because I know that they are false allegations. One allegation was that Mr. Horniman allowed a report to appear in his paper that soft nose bullets were used in the streets of Delhi. The Honourable Member ought to know, because he was Chief Commissioner of Delhi then.

**The Honourable Sir Malcolm Hailey:** No.

**Mr. M. A. Jinnah:** Then he ought to know that now. He ought to make inquiries. What happened was that a special correspondent of the "Bombay Chronicle" sent a report and what is more, Sir, even the Government notification admitted that the appearance of the bullets did lend colour to this conclusion that they were soft nose bullets, and that information was sent by a correspondent of the "Bombay Chronicle." Mr. Horniman was not responsible for it but that very correspondent on further examination of those bullets sent a further report. That report, I am prepared to prove anywhere you like, was not allowed to go out of Delhi and was detained. In the meantime Mr. Horniman was deported under the Defence of India Act on a charge not of allowing publication of the soft nose bullets being used, not on a charge of distributing his paper amongst the troops but on a charge of having written two articles. The security was forfeited and censorship was imposed upon the paper and thereupon the "Bombay Chronicle" had to suspend its publication. It was after Mr. Horniman was deported and when the Secretary of State for India was heckled—I do not know who was responsible—but it was then that this case was made out against Mr. Horniman and Mr. Montagu had to put forward that case. So far, Sir, with regard to the soft-nosed bullets, and I will add one thing more. This telegram which was sent by the "Bombay Chronicle" correspondent was detained and in the meantime the paper was suspended by us ourselves for the simple reason that the editor was deported, security was forfeited and censorship was imposed upon the paper. Therefore, the Board of Directors had in the meantime to suspend the paper. After five or six days this correspondent wrote to us a letter saying: "I sent you this telegram contradicting my first report on further examination of the character of these bullets and how is it that it has not appeared in your paper?" Sir, the very first day when the "Chronicle" re-appeared after its suspension this explanation was published in that paper; and, as I said before, even the Government notification—and I challenge the Home Member to look it up—admitted that the appearance of the bullets was that of soft-nosed bullets. Is that the case on which you deport a man?

Then, with regard to the distribution of the paper amongst the troops. Sir, a greater lie was never manufactured in any tribunal. As soon as this

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allegation was made by Mr. Montagu in the House of Commons, we, and I, as the Chairman of the "Bombay Chronicle," instituted the minutest inquiries and we found and we were convinced that there was no man connected with the "Bombay Chronicle" who ever distributed a single copy of the paper to any member of the British troops. I challenge the Home Member to give me the slightest proof of that. It was a lie manufactured for the purpose of justifying the deportation of Mr. Horniman. I speak very feelingly, because I feel that no man should be deported and certainly not on such fabricated allegations as these, which, to my knowledge, are absolutely false.

Sir, I am not one of those men who encourages any crime or any offence, but I do maintain, and I have drunk deep at the fountain of constitutional law, that the liberty of a man is the dearest thing in the law of any constitution and it should not be taken away in this fashion. If you have any case, if Mr. Horniman has committed an offence, place him before a tribunal; let him be tried; let him be convicted, and, if he is convicted by a tribunal, I shall have nothing more to say; then he must take the consequences. But, Sir, after four years to hear a reply of this character solemnly declared by the Government that they consider that it is still dangerous for Mr. Horniman to be allowed to come to India and therefore to resort to what I call this most humiliating process of preventing the passport authority from issuing a passport to him, is that compatible with the dignity of any Government; is that the manner in which to treat the liberty of your subjects? Sir, I feel that this is so important and so serious a matter that I hope that every one in this House, be he an Englishman or anybody else, who has the freedom of voting and who has any sense of propriety, will vote in favour of this Resolution, and so make the Government understand that this stands as the biggest blot both on their administration and on their sense of justice and fair play.

**Pandit Madan Mohan Malaviya** (Allahabad and Jhansi Divisions: Non-Muhammadian Rural): Sir, I support the Resolution which has been moved by Mr. Patel, and I largely support what my Honourable friend, Mr. Jinnah, has said regarding this matter. Of course he has a personal knowledge of many things on which he alone could speak, but in all his general observations on the subject I strongly support him. I consider it was a piece of melancholy meanness that Mr. Horniman was deported. I was in Bombay at the time. I saw him the day before his deportation. I know how he was busy at the time in serving this country and England, how he prepared the cablegram which was sent regarding the tragedy that had occurred at Amritsar in the previous week, and how anxious he was that men's minds should be kept calm and that the matter should be taken up constitutionally. I have heard nothing from the Home Member which would give the smallest justification for the extraordinary measure that was adopted against him. All that has been said by the Home Member is that during the course of some months, the articles which were published in the "Bombay Chronicle" were not of a satisfactory character, that is to say, not satisfactory to those who were in authority. I know that they were not satisfactory in that sense that they were not liked by some of those whom Mr. Horniman criticized. Mr. Horniman was a capable journalist and an honest journalist. He took care to sift his evidence and, when he had got his facts, he went straight at the man who had committed a wrong or was responsible for any corruption; he went straight at a man when he considered that the man was not acting in the public interest, and naturally

he aroused opposition, he created enemies. There were some men in high quarters whom he criticised. He was wrong in some of his criticisms; I myself did not agree with him in some of the criticisms which he levelled at some of my senior friends in Bombay, but that was a different matter. The man was honest to the core, he had his love of liberty, he had his sense of right, he had his sense of justice, and he spoke as he felt, as an Englishman. Now, Sir, that a man should be deported during the time of the war under the shelter of the Defence of India Act for having written a certain number of articles which did not satisfy some people, which did not meet with the approval of the authorities,—I consider that a very strong condemnation of the administration at the time. Undoubtedly, primarily the Governor of Bombay was responsible for that act, and I submit—I regret to say it—he showed great little-mindedness, a personal malice, in dealing with Mr. Horniman. He showed little-mindedness in keeping out an Englishman from Bombay whose criticisms he could not stand, the searchlight of whose criticisms he could not bear, and he kept him out of Bombay for too long a period without any justification. If there was any reason for keeping out Mr. Horniman from Bombay during the time of the war, that reason should have been published. It was a libel upon Mr. Horniman—it was an untrue charge—to say that his presence in the country was not compatible with the public interests or was dangerous to the public peace. The allegation that the presence of a man like Mr. Horniman, an honest Englishman, who loved his own country, and who loved this country, was not compatible with the public interests or was dangerous to the public peace, was absolutely untrue; it was absolutely untenable and unsupportable. And how did the Bombay Government justify its action in keeping Mr. Horniman all these four years out of Bombay? Sir George Lloyd showed what small-mindedness a man could be capable of when he said that he would not allow Mr. Horniman to come back while he himself remained in India! He passed his order, and the Government of India allowed him to pass that order, and therefore shared the responsibility of having allowed him to do so.

The Honourable the Home Member has tried to put the case in a very very misleading manner; he tried to show that the responsibility for not granting a passport to Mr. Horniman now lay with the Secretary of State for India. I did not think that he would give up the Secretary of State after having advised him, as a Member of the Government of India, that it was still dangerous to allow Mr. Horniman to come back to this country. I did not think that he would take shelter under the plea that the Government of Bombay was the proper authority to decide the question. What is the Government of India here for? I know, we know it to our sorrow, that the Government of India have during the last three years very often relegated their authority to the Local Governments. The Government of India have ceased to exist. The Government of India have shown that they did not exist on many occasions, while repression has gone on in many parts of the country. This is also an instance where the Government of India succumbed to the influence of a local Governor, who was not large-minded, who did not look at the question of the liberty of a fellow-subject from the same point of view from which he should have done in conformity with the oath of allegiance to the Sovereign which he had taken. What was the Government of India here for? Why did not the Government of India ask for the grounds why Mr. Horniman was still kept out from Bombay; and having asked for the grounds and having in possession all

[Pandit Madan Mohan Malaviya.]

those grounds, how can the Honourable the Home Member get up before this House and tell us that he wants us to believe that it is undesirable that Mr. Horniman should come back to India, that it would be dangerous to the public interest to allow him to come back. He ought to tell us what the danger is and wherein the undesirability lies. Does it behove any Englishman or any gentleman to get up before this Assembly and to impeach the character of a fellow-subject on grounds which he is not able to disclose, on reasons which he cannot advance, and to insist that he should be kept out of this country, simply because those who are in power in Delhi or Bombay have decided that Mr. Horniman should not be allowed to come back to India. I submit, Sir, it is derogatory to the Government of India. It is derogatory to the Home Member's position as the Member in charge of the Home Affairs of India, to put forward such a miserable plea which cannot be supported for a moment. I hope, Sir, that the Government of India will be compelled by the force of public opinion, by this strong censure which the public opinion of this country as represented in this House is passing upon the action of the Government of Bombay and upon the Government of India and upon the Secretary of State's action, in keeping an Englishman out of India for no justifiable reason, to yield to that opinion. It is an abuse of power, for which there is no parallel so far as I can see in recent times, and it is time that this abuse of power came to an end and that those who are responsible for it should feel that they have acted in a very small-minded manner in upholding this high-handed, unjust, and unjustifiable act of the Bombay Government.

**Mr. Harchandrai Vishindas** (Sind: Non-Muhammadian): Sir, Englishmen,—you know, as you are one of them—pride themselves upon their sportsmanship. Well, I thought, before this discussion began, when I had no intention to speak on it, that the Home Member would be able to explain the intricacies of Mr. Horniman's case, which up to now were not open to the public. But everyone here, I suppose, must have been greatly disappointed by the reply of the Honourable the Home Member which showed that there was no sportsmanship in this case at all. I want to tell Honourable Members the mentality which is responsible for this kind of treatment of Mr. Horniman. It is this. You Indians may write anything you like; you may say anything; you may act in any way you please; even when we inflict punishment upon you, as is done in very many cases, there may be amnesty and all those punishments may be modified or remitted. But when an Englishman comes and does that, then that is an unpardonable sin. "*Et tu Brute,*" "*and you Brutus.*" That is what Government tell their Englishmen. Now, I was the other day reading a book in which it was said that all those great Englishmen who have been friends of India, Sir Thomas Munro, Mountstuart Elphinstone, and others would cry out "What shall we do? We want to give rights and privileges to Indians; but all our Englishmen are against it." Now, I find, when there is an Englishman, whether it be Mr. Horniman or whether it be Lord Ripon or whether it be Sir Thomas Munro, if he shows any kind of friendship or sympathy towards Indians, then he is a social outcaste with his own countrymen; he is taboo. I think Honourable Members ought to bear that in mind when discussing this question. If there is any kind of persistence on the part of the Government here or the Secretary of State in continuing their conduct towards Mr. Horniman, you can very easily understand it.

**Mr Jamnadas Mehta** (Bombay Northern Division: Non-Muhammedan Rural): Sir, the reply of the Honourable the Home Member shows that with all the reforms and all the constitutional changes the Government still remains the lawless Government that it used to be. Sir, the Governor of Bombay who was responsible for deporting Mr. Horniman, once told the students of the Bombay University as Chancellor that nobody need be a slave to anything except to law. This self-same gentleman deported Mr. Horniman without any justification, without any trial, without attempting even to justify his deportation and nearly five years after, we have this spectacle of the Home Member of the Government of India practically defending that step. The last Viceroy said, when the Reforms were inaugurated, that the Reforms constituted a deliberate and solemn abandonment of autocracy. Could we have found a more autocratic exhibition of power than the reply of the Home Member? We are told that he does not want to say anything against Mr. Horniman, that he would not mention anything against Mr. Horniman here, but in the next sentence he said "we still consider him undesirable." What more could he have said? When you consider a man undesirable, you have said almost everything you can say against him, and that without any formal proof as to his guilt. But, Sir, there are reasons why Mr. Horniman continues to be out of India, and some of them I would like to mention. The most important reason is that Mr. Horniman refused to belong to the ruling caste in India. Although he was born an Englishman, he refused to belong to the caste of the white Brahmin in India. He continued to believe, as Mrs. Besant says in the preface to the book, referred to by Mr. Patel, that it was the inalienable right of every man to be free in his own country. Mr. Horniman, Sir, was not a new comer here. He had been, when he was deported, for nearly 13 years a resident of India and a journalist. He began on the staff of the "Statesman" of Calcutta when that paper had not yet ceased to be the "Friend of India." As one on the staff of the "Statesman" newspaper, Sir, he visited Jamalpur during the riots of 1906 and exposed how it was that the Government of Sir Bampfylde Fuller, who had made the Muhammadans his favourite wife against the Hindus, was fomenting trouble. That was the first crime of Mr. Horniman, and the bureaucracy took a note of it. The second crime was when in 1916 he exposed and brought to light a conspiracy, not very far short of a Guy Fawkes conspiracy, against the progress of the people of India, —a conspiracy which four people were hatching in the U. P., and Mr. Horniman brought out that secret document. The parties to it were Mr. Lionel Curtis of "The Round-table," Sir William Marris, Sir Valentine Chirol and Lord Meston. This secret circular was published at a Government press and Mr. Horniman unearthed it. He exposed it to the world; and the people who concocted and were responsible for that document of conspiracy against the liberties of the Indian people, who did not hesitate to say . . . . .

**The Honourable Sir Malcolm Hailey:** I am very loath to have the discourtesy of interrupting the Honourable Member, but if he is going, in the course of this debate, to bring charges of this gravity against men who are not here to defend themselves, the House must allow me the liberty of defending them. I cannot sit in my place and hear that men like Lord Meston and Sir William Marris have conspired against India. On the face of it a more ridiculous charge to bring against men of that type it would be impossible to imagine.

**Mr. Jamnadas Mehta:** I am willing to quote, Sir, that document if the Home Member wants it. It was published in the newspapers in India, and the only fault of Mr. Horniman was that he was the first to unearth it and to show it the light of day. Nobody said anything in defence of it.

I am here to tell the Honourable the Home Member that of all these four gentlemen not one stood up for the document. Everybody was willing to repudiate it; everybody was willing to say it did not mean what it said.

**The Honourable Sir Malcolm Hailey:** I am sorry that the Honourable Member is still discussing the question of what is known as the Round-table Circular. Might I suggest that he should discuss Mr. Horniman.

**Mr. Jamnadas Mehta:** I am pointing out the crime for which Mr. Horniman was deported. The Honourable the Home Member has not given any evidence . . . . .

**The Honourable Sir Malcolm Hailey:** Perhaps the Honourable Member will accept an assurance from me that the deportation of Mr. Horniman had nothing whatever to do with anything that he ever wrote on the subject of the Round-table Circular. I have much doubt in my own mind whether those who were responsible for the deportation of Mr. Horniman ever knew that he had written on the subject at all.

**Mr. M. A. Jinnah:** What were the grounds for Mr. Horniman's deportation?

**Mr. Jamnadas Mehta:** I will give up that point if the Honourable the Home Member assures the House that it had nothing whatever to do with Mr. Horniman's deportation.

**The Honourable Sir Malcolm Hailey:** I certainly do.

**Mr. M. A. Jinnah:** What are his grounds?

**Mr. President:** Order, order.

**Mr. Jamnadas Mehta:** There are other crimes which Mr. Horniman did commit. One further crime was that he exposed ruthlessly the Rowlatt Act. When it was being pressed in this Legislature, he went round the country and he said, if the people cared for liberty, let the whole country be aflame, let your fire of indignation exhibit itself in thousands and tens of thousands of meetings. Mr. Horniman did that, and that, as I said, is another of his crimes.

Last of all, when the Rowlatt Act was passed in spite of this protest, Mr. Horniman joined Mahatma Gandhi in civil disobedience to that Act; and it was when this civil disobedience was in progress that Mr. Horniman was found to be a man of real peace, of real friendliness to the Government. When riots broke out in the Punjab, Mr. Horniman wrote in his newspaper the "Bombay Chronicle" and said that in view of what was happening in the Punjab, let us stop this civil disobedience. Does the Honourable the Home Member know these circumstances in favour of Mr. Horniman? He clearly said that, in view of what was happening in the Punjab, civil disobedience to the Rowlatt Act must stop. And yet within 18 days of that article in which Mr. Horniman wrote that the Punjab incidents were a warning and therefore civil disobedience should stop, he was deported. The man who was the first man in India at the time to

stand out immediately the Punjab riots broke out against the continuance of civil disobedience—this man was deported within 18 days.

Well, Sir, I have only one thing more to say, and that is the last of his crimes I would mention here. Mr. Horniman and other people in this country were expecting the report of the Montagu-Chelmsford Inquiry and the bulky volume was published on a Sunday or handed over to the press on a Sunday, Mr. Horniman came out the next morning with an article on it in the "Chronicle" headed "Unacceptable". It is a great tribute to the man who could digest a big volume of so many hundreds of pages in one day and pronounce a judgment on that document which stands true to-day after four years—that the reforms were unacceptable. These are all the crimes that I can find out from the career of Mr. Horniman as a public man.

Well, Sir, now as a humanitarian; when that terrible epidemic of influenza in the City of Bombay broke out which increased its mortality to 80 per thousand per year, Mr. Horniman was seen every day in Bombay regardless of danger to his life or health helping the poor and miserable people who were either dying or about to die of influenza. This was the service of Mr. Horniman both to humanity and to Government. Again, no man during the war was keener that it should be fought to the finish in favour of the Allies. No one helped the War Loans more than Mr. Horniman did. And yet for no conceivable reason that the House can understand he is still being kept out of his employment, kept out of his means of livelihood, and the Government have not the courage to face him in a law court; once and once only his enemies attempted to face him in a law court. They had libelled him of some very vile offence; Mr. Horniman brought them to book and successfully prosecuted them to conviction and one of the men who had libelled him was sentenced to jail. Ever since then his enemies have not had the courage to face him in a law court proceeding; and here we have the spectacle of a very powerful Government which confess that they are afraid of one honest man, that the Government of this country are so weak, so autocratic, that they dare not face the criticism of one honest man. That confession is the substance of the Home Member's speech. Therefore, Sir, all I can say is that the House should now be justified in showing by its vote that the Government have lost the entire confidence of the people, at least over this affair. I listened to the Home Member's speech with certainly a very sad attention. I could find nothing in it even to hope that he would reconsider the case. All he said was "I think he is undesirable," the answer of an autocrat. No House with any self-respect can accept an answer which is an insult to its intelligence. When you ask him to come out with an explanation, he says "I have no explanation; still I will do what I like."

**Mr. W. S. J. Willson** (Associated Chambers of Commerce: Nominated Non-Official): Sir, like my Honourable friend, Mr. Abul Kasem, time was when I was a friend of Mr. Horniman. I will not neglect the advice of Pandit Madan Mohan Malaviya and make charges against a man which I cannot prove. However much I may or may not believe them, I will certainly not be guilty of making any charge against a man which I cannot prove. But my friendship with Mr. Horniman died a great many years ago. The Home Member is the only Member who has spoken in support of his exclusion. It would be a source of great satisfaction to me had I found so many Indian friends championing the cause of an

[Mr. W. S. J. Willson.]

Englishman who had been ill-treated in any way, if I were convinced that the character of that man was sufficient to justify it. But, Sir, I cannot say that in the present instance. It is a very difficult subject to discuss and I do not wish to labour the point, but I think I should be lacking in my duty did I not say that I can assure Sir Malcolm Hailey that the view he has taken is a correct one from the point of view of all my non-official Colleagues, who ever knew Mr. Horniman. We Englishmen are jealous of the characters of the Europeans who come to this country and occupy public positions, and I only wish before I sit down, Sir, to say that I know no Englishman of standing to-day who has a single good word to say for Mr. Horniman. It is perfectly right to say that he was not admitted to any of our clubs and was not a man that we have any pride in having in this country, and we prefer to be without him.

**Mr. C. S. Ranga Iyer** (Rohilkhand and Kumaon Divisions: Non-Muhammadan Rural): Mr. President, I had no intention of speaking after having heard some of my Swarajist friends; but the last speaker has compelled me to make a few observations. Sir, I believe he said in this House that no English gentleman has any good opinion about Mr. Horniman, and that he was not admitted to any of the English clubs. Well, Sir, when Mr. B. G. Horniman identified himself with the national movement which every English gentleman in India thinks jeopardises his existence, naturally he would not have been admitted to any of the English clubs. But I know, Sir, that Mr. B. G. Horniman was not an applicant to get admission to any of the English clubs because there were no English clubs in India as Indians knew them in England. You have bureaucratic clubs here. Mr. B. G. Horniman was not a bureaucrat. He did not belong, Sir, to the tribe which the present British Premier has sarcastically characterised in his interesting book "The Awakening of India" as 'Imperial and Imperious'. Sir, Mr. Horniman does not belong to that imperial caste as Mr. Ramsay MacDonald has characterised the bureaucracy in this country. He was not an interpreter of what Mr. Ramsay MacDonald calls flamboyant imperialism, bombastic imperialism. Mr. Horniman was a friend of the Empire, not in the sense in which the bureaucracy is, which believes in imperialism. Mr. Horniman believed in freedom of the Campbell-Bannerman school. Mr. Campbell-Bannerman said 'Good Government cannot be a substitute for self-government'. The bureaucratic Government has been in all conscience very bad, but, even if it were good, Mr. Horniman would not have supported a bureaucratic Government. He was an apostle, he was a supporter, he was an advocate of self-government, and naturally every English bureaucrat in India here could not have admitted Mr. Horniman to the club. Therefore, Sir, the attitude taken by the previous speaker, the attitude taken by the community to which Mr. Horniman belongs, cannot change the opinion of all honest men, it cannot change the opinion of people even in England, who value the freedom of man. Of England it is said:

"It is the land that freemen till  
That sober-suited freedom chose  
The land, where girt with friends or foes  
A man may speak the thing he will."

But when an Englishman comes to India and tells the bureaucracy: "You are wrong, you are destroying the English Empire, you are the greatest

enemies of the English Empire," as Mr. Horniman repeatedly said in his newspaper, then we are told that he was an outcaste, he was looked down upon by European clubs and they did not admit him to their clubs. Well, I suppose Mr. Horniman was not very keen about it. Not only has he no place in a European club, but he has no place in a country which is ridden by a bureaucracy. His place is in England—why? because there are Englishmen in England who value England's freedom. He has no place in India—why? because Englishmen here do not value India's freedom, because this is not a place for any honest Englishman who can tell Englishmen: "You are misgoverning Indians, you are putting Indians in gaol, you are destroying the English Empire". Sir, Mr. B. G. Horniman day after day wrote, said, and felt, in private and in public, in the press and on the platform, that the greatest enemies of England were the present administrators of India. He said, he felt and he repeatedly wrote, that they were goading India into a revolution, and it is true that he charged them with being the authors of the anarchist movement. A staunch believer in the non-violent movement for India's deliverance, he was the Vice-President of the Satyagraha Sabha and worked in association with Mahatma Gandhi, and when violence broke out in the Punjab, when the lives of Europeans were in danger, this very "man" who was not admitted to European clubs in India, was responsible for withdrawing, for advising from his sick bed Mahatma Gandhi to suspend the Satyagraha movement; and Mahatmaji did suspend the movement. And now members of Mr. Horniman's community stand up in this hall, stab at, strike at and assail his character behind his back, without giving him an opportunity to have his say. He is not in this country; you have driven him out of this country, and then you say he was not a gentleman and that no Englishman had a respectable word for him. I say, no English gentleman will speak in that manner.

**Mr. Chaman Lal:** Sir, I had no intention to intervene in this debate, particularly as the subject is such that one can hardly speak with restraint about it. But since my friend, Mr. Jamnadas Mehta, has related the crimes committed by Mr. Horniman, I was waiting to hear from the Honourable the Home Member the crimes committed by the Government. One of the crimes committed by the Government in the eyes of all honest men, not only in this Assembly but in this country, is that they have robbed an Englishman, their own compatriot, of the liberty which was due to him. Sir, history has parallels where rebellions were born on the suppression of human liberty. But I dare say that sentences like that would probably be considered by the Honourable the Home Member as an essay, probably a juvenile essay. I hear him murmuring "Yes, Sir". No doubt, when the question of human liberty, when the question of human lives is at stake, it can easily conveniently be brushed aside as an attempt at a juvenile essay. But when the Honourable Member himself got up to speak on this particular Resolution and said that the question was not a question to be dealt with by the Government of India but by the Secretary of State, I was really amazed at his audacity. I think nothing could have been more frivolous than the statement which he has just uttered. May I remind him of what Mr. Montagu said on two separate occasions in the House of Commons—on the 21st of April 1920 and on the 5th of May 1920? I ask your indulgence for reading this short extract. Mr. Montagu on the 21st of April said:

"A difficult question arises, when is that deportation (i.e., Mr. Horniman's deportation) to end? I propose to leave the matter entirely to the Government of Bombay."

[Mr. Chaman Lal.]

Does that mean, Sir, that the question does not rest with the Honourable Member over there but that it rests with the Secretary of State in England? I emphatically say, Sir, that out of Mr. Montagu's own lips we have it that the matter rests with the Honourable Member over there. I proceed to May the 5th. Mr. Lund, M.P., asked Mr. Montagu the following question:

"Why after a year Mr. Horniman should not be allowed to return since the circumstances which necessitated his deportation do not now exist?"

And Mr. Montagu replied:

"The Government of India do not consider Mr. Horniman's return to India compatible with the public safety. As I stated in the House on the 21st April, 1920, I do not propose to interfere with their discretion. I am content to leave to the Government of India and the Government of Bombay the decision as to the date on which Mr. Horniman can be allowed to return."

Commander Kenworthy:

"Will Mr. Horniman be allowed to return after peace is finally ratified?"

Mr. Montagu:

"The decision will be left to the Government of Bombay. If they decide that he shall return when peace is signed, I shall accept their decision. If they do not so decide, I shall again accept their decision."

Does the Honourable the Home Member, Sir, in the face of these quotations still persist in stating that the decision rests with the Home Government and not with the Government of India? There is not a Member here who has heard these quotations, I dare say, who would be prepared to accept that statement as a correct statement of facts as they exist to-day. Sir, it is a question not of mere procedure, not of the wilfulness of the Swaraj Party or of the Independents in this House, that they demand the return of Mr. Horniman to the people of India. The people of India, as he knows it, as we know it, love Mr. Horniman not because he was a fiery journalist who excited the people of this country, which I do not believe, but because, Sir, he was an honest Englishman who was prepared to lose his liberty, to lose his own life, in the cause of this country, because he believed that the Government of this country were not prepared to grant the freedom due to this country, because he believed that British rule in India was not only a failure but that it was a crime, and he had the courage to say it even, as I said, at the risk of his liberty and, if necessary, at the risk of his life. No doubt, Mr. Horniman was deported. Other Englishmen in his position are the pampered darlings of the bureaucracy because they have not the courage to state the truth that is in their hearts. When Mr. Willson gets up and says that there is not an English gentleman who has a good word to say of Mr. Horniman, may I remind him of what Mr. Ramsay MacDonald thinks of Mr. Horniman, and may I remind him of what Mr. George Lansbury, Editor of the "Daily Herald", thinks of Mr. Horniman? May I remind him of what Colonel Commander Kenworthy thinks of Mr. Horniman? Are they English gentlemen or are they not English gentlemen? Are they not the purest type of English gentleman that you can have, men who are prepared to take an impartial view of history, men who are prepared to take an impartial view of world currents? They are the friends of Mr. B. G. Horniman. It has been said that he did not belong to any English Club. I tell you in reply that he

belonged to the one club that any decent human being can belong to, the club of honest men. It is an honour to belong to that club and I hope his English friends in this country will follow in his foot-steps and will vote with us if there is a division on this question and prove to the British Government in England and to the Government of India here that they are prepared to fight for any man who is prepared to stand for human liberty, and for the cause of human freedom. The greatest crime that Mr. Horniman has committed is a crime against constituted authority, and constituted authority is taking its pound of flesh out of Horniman. Sir, for articles of a seditious nature, if a man is prosecuted, he generally gets two years. But Mr. Horniman has been out of the country for nearly five years. His crime is apparently greater than that of any other journalist except perhaps that of Mahatma Gandhi who was sentenced to six years' imprisonment, but wisely released after two years. Five years for charges which cannot be proved, five years for charges which the Honourable the Home Member has not the courage to prove in this House! I challenge him to prove those charges. I challenge any Honourable Member here to prove those charges. The speech which we have heard from the Honourable Mr. Jinnah is conclusive on that point. He has said that there were three charges against Mr. Horniman. The first was that he had written in the "Bombay Chronicle" that soft-nosed bullets were being employed in the riots of Delhi. That statement was that of a correspondent and that correspondent sent a repudiation which was not published because it was not allowed to be transmitted to the "Bombay Chronicle" by the censor authorities. The second charge against him was that he distributed free copies of the "Bombay Chronicle". That charge, the Chairman of the Board of Directors of the Bombay Chronicle is prepared to deny, and I challenge the Honourable the Home Member to substantiate it. The third charge, Sir, was the charge, according to Mr. Montagu, of spreading and fanning the flame of rebellion. It is a very vague charge. I dare say, Sir, there are very many members on the Treasury Bench who, under ordinary circumstances, would probably be charged with a crime of that nature, and I dare say there are many Members of the Swaraj Party who can be charged with a crime of that nature. But it is only a vague general expression of opinion on the part of Mr. Montagu, not substantiated by any facts because, if he had any facts, he would have given them on the floor of the House of Commons when he was charged repeatedly to bring forward his accusation of Mr. Horniman. Mr. Horniman took the earliest opportunity to my personal knowledge—I have the privilege of knowing that great Englishman and of claiming him as a dear friend—of writing a letter to Mr. Montagu challenging him to make public the grounds upon which he made those charges against him on the floor of the House of Commons. Mr. Horniman never received a reply to his letter. He could not have received a reply to his letter, because, as Mr. Jinnah has pointed out, those charges levelled against Mr. Horniman were concocted charges, false charges, charges made on an occasion when it was thought that Mr. Horniman would not be on the spot to deny them. But, Sir, the truth of it is that in 1920 a deputation went to see Sir George Lloyd in Bombay to place before him the Resolution passed by the All-India Trade Union Congress demanding the return of Mr. Horniman in the interests of the working classes of this country. Sir George Lloyd is reported to have said that, as long as he was Governor of Bombay, he would not allow Mr. Horniman to come back. Sir George Lloyd has now departed from this country. He has visited the tomb of Tutankhamen and he is now probably in Whitehall. It is time that his successor should be advised by the Honourable the Home

[Mr. Chaman Lal.]

Member to take the necessary action under the circumstances to obtain the immediate release of Mr. Horniman. I say it, Sir, emphatically that Mr. Horniman is not merely a deportee but really a prisoner in the hands of the British Government and it is for them to take the necessary action—not the British Government in England but the British Government in India, because the responsibility, according to the Secretary of State, has been thrown upon their shoulders. Do not mock at liberty. Do not laugh at oppression. Was it not Abraham Lincoln who said that those who rob human beings of their liberty will not retain it for long themselves? It is for you to look at the human factor of the case. It is for you to look for justice, to grant justice, and may you grant it with expedition.

**Mr. A. Rengaswamy Iyengar** (Tanjore *cum* Trichinopoly: Non-Muham-madan Rural): I had no idea of saying anything on this motion because I had not the least expectation that the Honourable the Home Member would take the position that he has taken. He first told this House that he was not going to discuss the question as to whether the charges against Mr. Horniman were well founded or not and that he was not going into the merits of the charges. But presently he contradicted himself when he said that the opinion of the Government of India still was that he was an undesirable person who should not be allowed to come to this country. That was a judgment on the merits for which he vouched no grounds whatever to this House and that was a judgment which the Government of India, the Government of Bombay and the Secretary of State for India were continually dinning into the ears of those who had no means of knowing Mr. Horniman personally and of judging whether all that was said of him by people in those circumstances was justified or not. Mr. Willson said generally that Mr. Horniman was not well thought of by any English gentleman in this country and that he would not be admitted to any English Club. It is this kind of statement, this persistent throwing out of an atmosphere of suspicion against an English gentleman born, who loved his liberty and the liberty of all Britishers and of all Indians within the Empire,—it is this creation of an atmosphere of suspicion that has injured Mr. Horniman more than any question of passport or any other thing. Mr. Horniman has been deprived of his living by this kind of thing. When I was in England I had an opportunity of visiting many institutions of journalists and there questions were put to me as to what really was the matter with Mr. Horniman. Why should Government say such dark things about him without stating exactly what the grounds are? These statements are made without giving him an opportunity of justifying his conduct, and the result of it is that it is impossible for him to get his proper living. He has been most unjustly and most unjustifiably deprived of the means of coming out to this country to earn his living. Sir, the question of living is a trivial consideration. "Who steals my purse steals trash, but who steals from me my own good name robs me of that which not enricheth him, but makes me poor indeed." That is the position of Mr. Horniman in this country and in England. Government have, by their persistent suspicions, persistent conduct, by not coming out into the open and placing the facts before the country, but by saying in these general terms that he is an undesirable person,—tried to rob him of his good name. They are doing it in a manner which certainly does not seem to be what we should consider to be the conduct of a gentleman, if it was an individual. I hope that the Government will free themselves from this charge of being privy to robbing a man of his reputation in this land.

**Pandit Motilal Nehru** (Cities of the United Provinces: Non-Muham-madan Urban): I rise only to say one word lest my silence on this occasion should be misconstrued and that word is that I fully associate myself with the Resolution which has been moved by my Honourable friend Mr. Patel. This morning I had a conference with my friend and we both thought that this was a Resolution which would not take more than a quarter of an hour in this House. We tried our best to discover what the Government could possibly say in answer to the demand which was contained in that Resolution. I confess, Sir, that, used as I am to anticipate various arguments, I wholly failed to carry my mind into the channels in which the mind of the Honourable the Home Member has travelled. I heard his speech and what do I find? He declined to go into the merits of the case. He says that this is not the proper tribunal for it. But he gives his decisions and he says, "we hold by those decisions." Then he says, "if we take a different view we shall change our mind and we shall allow him to come". The House was kept absolutely in the dark as to what those reasons may be. Mr. Horniman is a dangerous character. Mr. Horniman has insulted the dignity of the Government. These are grave, yet very vague, charges which no human being can answer. Then, when a series of allegations were made by other speakers in the House and specially by my friend, Mr. Jamnadas, the Honourable the Home Member got up and said it is not true that that was one of those allegations. So it comes to this, that the Government in depriving a man and an Englishman of his liberty have not the courage to come into the open and state the charge upon which they have deported him and they resort to a process of inanity. They hate other people coming forward with what conceivable charges may possibly have been in the mind of the Government and as to one of them they say 'it is not true'. That is a process of reasoning which I have for the first time in my life come across on the floor of this House to-day. What is there to prevent the Government now, after five years have elapsed after the deportation of Mr. Horniman, saying, what it was that he had done which merited the sentence which was passed upon him, which merited the punishment from which he is now suffering. Is it not in the public interest to divulge that? If there is anything criminal in it, why not prosecute him? I cannot conceive of a charge which cannot be uttered, which cannot be proved and yet of such a grave and serious nature that you feel yourself compelled to deprive one of your own compatriots of his liberty and keep him confined in England and rob him of all freedom of movement and of visiting any place he likes. Sir, I need not go into any other arguments. All I need say is that the case made out for the removal of the restraints which still continue against Mr. Horniman is an irresistible one. It is an unanswerable one and one which has not been answered and not even attempted to be answered by the Honourable Member. I therefore wholly associate myself with this Resolution.

**Mr. V. J. Patel:** Sir, I do not desire to add to the embarrassment of my friend the Honourable the Home Member by adding anything more to what has already fallen from my friends here. But I will say this, Sir, that I am not at all disappointed at the answer given by my Honourable friend, the Home Member, as my friend, Mr. Vishindas, has been: and neither am I shocked or surprised as my Honourable friend, Mr. Jinnah. I knew what was coming and the question for us on this side of the House to consider is, what are we going to do? Shall we go on passing Resolutions? We will pass this Resolution and any number of other Resolutions, but how are we going to enforce them? That is the question of questions for us.

[Mr. V. J. Patel.]

We are told times without number to rely upon the reason and the sense of fair play of Government. There is every reason and there is all fair play in the arguments which have been advanced to-day in support of this Resolution. An irresistible case has been made out, but Government remain unyielding. So the question now for us is, what are we going to do? I hope this debate, if it does any good at all, will do this much good, that it will help those friends of mine who are still considering whether they should accept the Swaraj Party's programme in making up their minds.

**The Honourable Sir Malcolm Halley:** I am grateful to Mr. Patel for not adding to my embarrassments; but I can bear the burden. I take up the first charge which has been levelled against us, namely, that I have endeavoured to place on the Secretary of State or elsewhere responsibility which should properly be shouldered by us. I have done no such thing. I have said that the final decision lies in London, as it must do. I have not concealed the fact that our recommendations are asked for and are given. I disclaim no responsibility at all. Mr. Chaman Lal says that the Secretary of State has asserted in Parliament that he has placed the responsibility entirely on us. I have merely said that the final decision lies in London, but, if the Secretary of State regards himself as bound by our views on the subject, then I am willing to accept both the onus and the burden of responsibility given to me. I have no fear myself of the consequences of my actions. I do not myself edit a newspaper and then, afraid of the consequences of anything I may write, appoint a dummy editor.

**Mr. Chaman Lal:** Sir, on a point of order. If that remark is meant to read that "Mr. Chaman Lal edited a paper and then appointed a dummy editor", I may say that I never edited a paper.

**The Honourable Sir Malcolm Halley:** Owned it perhaps, Sir.

**Mr. Chaman Lal:** Does the fact that a man owns a paper imply that he also edits it? My friend, Pandit Motilal Nehru, is the owner of a paper; does that mean that he edits it?

**The Honourable Sir Malcolm Halley:** If the Honourable Member does not understand my allusion, I invite him to read again his own evidence in what is known as the Akali trial.

**Mr. Chaman Lal:** On a point of order. May I draw the Honourable Member's attention to my own evidence in that case?

**The Honourable Sir Malcolm Halley:** It is his own evidence in that case to which I am referring.

**Mr. Devaki Prasad Sinha** (Chota Nagpur Division: Non-Muhammadan): Can the Honourable Member refer to a case which is *sub judice*?

**Mr. Chaman Lal:** On a point of order again. May I draw the Honourable Member's attention to the fact that it is not really very dignified for the Honourable Member to make charges which he cannot substantiate by any conceivable piece of evidence?

**Pandit Motilal Nehru:** On a point of order, Sir. What has the fact that Mr. Chaman Lal was the dummy editor while he was the real editor got to do at all with Mr. Horniman, or with the reasons for the deportation of Mr. Horniman or with the continuance of the restraint. . . .

**The Honourable Sir Malcolm Hailey:** Very little indeed, Sir, but it has got a good deal to do with a gentleman who brings against me a charge of shirking my responsibility . . . .

**Mr. Chaman Lal:** Sir, on a point of order . . . .

**Mr. President:** Order, order. We have had enough of points of order which are not points of order. Honourable Members are aware that I allow a reasonable latitude of interruption and interjection because it helps to elicit the facts, but a point comes where the Chair must intervene and the debate must proceed without interruption.

**The Honourable Sir Malcolm Hailey:** If I have done anything to wound the feelings of the Honourable Member, I shall be the first to apologize—as I hope that he will apologize to me for saying that I have shirked my responsibility in this connection. I have not done so, and I do not intend to do so. Then, there is another point. Charges have been levelled, not against us this time but against the late Governor of Bombay. I have heard the word "malice" used in that connection. "Malice," implies personal feeling; used as it has been, it suggests that a high officer of Government has been actuated by personal motives in his judgment as to action taken in a public matter. (*An Honourable Member:* "Political malice.") There was no question here of political malice. Was it intended to insinuate in this connection that the Governor of Bombay in taking action against Mr. Horniman was actuated by personal malice? If so, I must, on his behalf, repudiate any such charge, and I refuse to believe that any officer in his position would dare to bring his personal feelings into a matter of this nature.

**Pandit Madan Mohan Malaviya:** He was guilty of the most melancholy meanness shown by any officer of Government.

**The Honourable Sir Malcolm Hailey:** The Honourable Member does not improve his case by varying his epithets. He asks us so often, so eloquently, that justice should be done to others that I may justly ask him to cultivate a little of that quality himself.

**Pandit Madan Mohan Malaviya:** Thank you.

**The Honourable Sir Malcolm Hailey:** The action taken against Mr. Horniman, as I say, was not on personal grounds due to any idiosyncrasy of any Governor,—it was not on personal grounds due to any idiosyncrasy of Mr. Horniman. I have been challenged again to say exactly what were the grounds. I said before that the conduct of his paper was such for some months that it was considered that it was undesirable at that time that he should be allowed to stay on in the country and continue to conduct his paper in the same strain. Now it must always be a matter of judgment whether the action of a publicist is or is not in the public interest or against the public safety. Governments may very well make a mistake on that point. It is, after all, a matter of human judgment. But I must ask the House to believe that a judgment in a matter

[Sir Malcolm Hailey.]

such as that is taken anxiously and carefully, and that the decision is not swayed by any motive other than that of a real conviction, right or wrong, as to the public interests. I say further that, if we still hold the opinion which was held by Government then, it is again a matter of judgment. It is difficult to prove, and it is difficult to disprove, but for my part I would invite anybody to take the files of the "Bombay Chronicle" for the last months during which Mr. Horniman edited it and to say that we were unreasonable and above all that we were unfairly prejudiced in maintaining that, if he returned to India and edited the "Chronicle" in the same manner as he had done in the past, then it would not be to the public interest, and it might be to the public danger. That is our case. I put it again to the House that, if they will study the files of that paper, they will see that our conduct has not been unreasonable. It was a matter on which we ourselves and the Bombay Government had to form a judgment; we formed it to the best of our ability, and we stand for the present by that judgment. That, Sir, is not shirking the issue. That is not refusing our responsibilities; that is not bringing vague charges against a man who cannot defend himself. It is simply a statement that we believe that the conduct of his paper at that time was prejudicial to the public interests and to public safety, and we equally believe that, if he returned and continued to conduct his paper in the same manner, the same results would follow.

**Mr. M. A. Jinnah:** Why not prosecute him?

**The Honourable Sir Malcolm Hailey:** We prefer, Sir, to prevent it. I have no more to say. But I wish once more to emphasize that we do not suggest that we have no hand in the matter or the Bombay Government has no hand in the matter; in what I said regarding the decision being taken elsewhere, I was merely putting before the House the exact facts of the case. If the Secretary of State asks us for our opinion, we shall give it unreservedly. If the Bombay Government sees any reason to believe that in the altered circumstances now or henceforth the return of Mr. Horniman would not be a danger, then that would carry great weight on the question whether he should be refused a passport. We must be guided largely by their opinion; the results of his return would primarily be felt by them, and we shall not shirk our responsibility if they ask our support in his further exclusion, in spite of any criticisms which may be levelled against us or any imputations to which that attitude may lay us open.

**Mr. President:** The question is that the following Resolution be adopted:

"This Assembly recommends to the Governor General in Council that steps be forthwith taken to remove all restrictions in the way of Mr. B. G. Horniman to return to India."

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Wednesday, the 20th February, 1924.