

Wednesday, 22nd February, 1922

THE  
**COUNCIL OF STATE DEBATES**  
(Official Report)

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**SECOND SESSION**  
OF THE  
**COUNCIL OF STATE, 1922**



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# COUNCIL OF STATE.

*Wednesday, the 22nd February, 1922.*

The Council assembled at Metcalfe House at Eleven of the Clock.  
The Honourable the President was in the Chair.

## QUESTIONS AND ANSWERS.

### INDIAN TRADE COMMISSIONER, LONDON.

82. The HONOURABLE MR. KHAPARDE: Will the Government be pleased to lay on the table any report or reports made by Mr. Chadwick, I.C.S., Indian Trade Commissioner, London, since the year 1918?

The HONOURABLE MR. H. A. F. LINDSAY: Mr. Chadwick submitted a report on the working of his office, which covered the period from the 5th April 1918, to the 31st March 1920. This was published in the Supplement to the Gazette of India of the 23rd October 1920.

### PROPOSALS IN REGARD TO TRADE OF INDIA.

83. The HONOURABLE MR. KHAPARDE: Will the Government be pleased to indicate any concrete proposals made by the Indian Trade Commissioner, Mr. Chadwick, in regard to the trade of India and the action taken thereon?

The HONOURABLE MR. H. A. F. LINDSAY: The question shows a certain misapprehension of the functions of the Indian Trade Commissioner. Government does not attempt to direct the channels of India's trade officially, and any proposals from the Indian Trade Commissioner to this end would, therefore, be out of place. His duties are to assist Indian and English firms to get into closer touch with each other, and in this he has been increasingly successful. Practical measures to this end are described in the report referred to in my reply to the last question.

### RELATIONSHIP BETWEEN MR. CHADWICK AND INDIAN HIGH COMMISSIONER, LONDON.

84. The HONOURABLE MR. KHAPARDE: In what official relation does Mr. Chadwick stand to the Indian High Commissioner in London?

The HONOURABLE MR. H. A. F. LINDSAY: Mr. Chadwick is under the administrative control of the High Commissioner for India.

### SUMS PAID TO THE BANK OF ENGLAND.

85. The HONOURABLE MR. KHAPARDE: (a) Have the following sums been paid to the Bank of England for the supply of currency notes to India?

			£
1916-17	...	...	95,680
1917-18	...	...	91,038
1918-19	...	...	265,051
1919-20	...	...	135,744
1920-21	...	...	464,057

(b) If the reply be in the affirmative what is the total number of currency notes received by India during the years mentioned therein and their face value in rupees?

(c) Had the circulation of this paper money any effect on the prices of commodities as well as silver and gold?

(d) If so, does Government intend to take any steps, if so, what, to stop the said inflation?

The HONOURABLE MR. E. M. COOK: (a) The answer is in the affirmative.

(b) I lay on the table a statement giving the information asked for.

(c) and (d) There is no connection between the figures which I have given in reply to part (b) of this question and the prices of commodities. The Honourable Member's question refers to the purchase of currency note forms. These are purchased for the purpose of stock and merely represent pieces of paper until they are actually put into circulation. Except to the extent to which notes have in the past been issued against securities, under statutory authority, (and there has been no such issue for the past 18 months), a note is not put into circulation unless rupees or gold are tendered in exchange for it, and the net result obviously does not increase the total amount of currency, whether paper or metal, in the hands of the general public. Whether or not the total amount of currency in circulation in India is in excess of the legitimate requirements of trade, and, if so, whether such excess has been one of the causes of the increase in the general level of prices is another matter and in any case is a matter of opinion with which I could not undertake to deal in reply to a question.

*Statement showing the total number of currency notes received from England during the years 1916-17 to 1920-21, and their face value in rupees.*

		No. of notes.	Face value in Rs.
1916-17	...	67,225,000	90,81,75,000
1917-18	...	124,100,000	2,45,80,00,000
1918-19	...	293,850,000	1,37,41,00,000
1919-20	...	430,294,000	2,86,14,94,000
1920-21	...	336,450,000	2,72,68,00,000
		<hr/> 1,251,919,000 <hr/>	<hr/> 10,32,85,69,000 <hr/>

#### DEFICIT IN THE BUDGET.

86. The HONOURABLE MR. SETHNA: Will Government be pleased to state:

(a) If their attention has been drawn to a statement made by Mr. S. R. Bomanji at the annual meeting of the Indian Merchants' Chamber as reported in the "Bombay Chronicle" of February 6th, as follows:

"They all knew that in the budget of Government of India there was a big deficit and yet not a single pie was taken from the English Banks, English Insurance Companies and English Shipping Companies. They did not contribute a single pie in the shape of income-tax into the coffers of the Government

of India. They were taking away wealth from India to the tune of 400 million sterling every year and yet the Government did not exact a single pie from them in the shape of income-tax. Their plea was that they paid income-tax in England, but that was not the right excuse. If they made profit in India from Indian wealth they should pay income-tax to the Indian Government and not to the Home Government. But the reverse was the case with the foreign banks, insurance companies and shipping companies. They did not enjoy the same privilege as the English companies and the Government were exacting income-tax from them."

(b) Is the statement correct, and if not, will Government be pleased to give what figures or information they can to disprove the statement?

The HONOURABLE MR. E. M. COOK: (a) Yes.

(b) The statement that English Banks, Insurance Companies and Shipping Companies do not contribute a single pie in the shape of income-tax to the Government of India is not true. Under the Income-tax Act of 1886 all non-resident Shipping companies were exempted from income-tax. This exemption was withdrawn with effect from the 1st April 1919, except as regards Shipping companies incorporated or registered in the United Kingdom or in any of His Majesty's Dominions, and the exemption in favour of the latter was also withdrawn on the 22nd April 1921. The reason for the difference of the dates in withdrawing the exemption in favour of these two classes of Shipping companies is that it was decided not to withdraw the exemption in favour of British and Dominion Shipping companies until arrangements had been come to with the Government of the United Kingdom for relief from double income-tax. All Shipping companies have to pay income-tax in the current year. English Banks and English Insurance Companies have always been liable to pay Indian income-tax on their Indian profits.

#### CODIFICATION OF HINDU LAW.

87. The HONOURABLE DR. GANGANATH JHA: Will the Government be pleased to state what stage has been reached by the inquiry regarding the advisability of codifying Hindu Law?

The HONOURABLE MR. S. P. O'DONNELL: The replies of the Local Governments and other authorities who were consulted on this subject have been received and are under consideration.

#### REPORT OF JOINT COMMITTEE ON DELHI UNIVERSITY BILL.

The SECRETARY OF THE COUNCIL: Sir, I beg to lay on the table the Report of the Joint Committee on the Bill to establish and incorporate a unitary teaching and residential University at Delhi, which was presented to the Legislative Assembly on the 13th February 1922.

#### CONGRATULATIONS TO HER ROYAL HIGHNESS PRINCESS MARY.

The HONOURABLE THE PRESIDENT: Before we proceed to the business of the day, I desire to inform the Council that I have received from the

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Honourable Mr. Sethna a request that he be permitted to move a Resolution which does not appear on the paper. It is of a congratulatory character. In fact, it suggests that this Council should convey to Her Royal Highness Princess Mary its congratulations on her marriage. I think that the Council will probably desire that I should grant the permission. I, therefore, do so and would ask the Honourable Mr. Sethna to move his Resolution.

## RESOLUTION *RE* MARRIAGE OF PRINCESS MARY.

The HONOURABLE MR. SETHNA: I beg to move:—

‘That this Council do convey to Her Royal Highness Princess Mary the humble expression of its sincere congratulations on the occasion of her marriage and of its heart-felt desire for her future happiness.’

When some months back the news was received in India of the engagement of Her Royal Highness Princess Mary to Viscount Lascelles, it was hailed with delight because of the great esteem and regard in which their Gracious Majesties the King-Emperor and the Queen-Empress are held in this country. However much Indians may differ from Britishers and differ even amongst themselves in the matter of the political advancement of the country, they are all at one in their loyalty to the Throne and to the persons of Their Imperial Majesties, and it is but meet, therefore, that they should rejoice in whatever may contribute to the happiness of their august Sovereign and his illustrious Consort. The approaching wedding of Her Royal Highness Princess Mary on the 28th of this month is one such occasion and this Council would desire to convey their felicitations to the Royal Princess on this auspicious event. The only daughter of Their Majesties, she has endeared herself to the nation and the Empire for she combines in herself the dignity, the intelligence and the graceful display that belongs to her exalted station in life with the sweetness, the pleasantness and the loveableness that belongs to her sex. To praise Princess Mary is by no means to indulge in conventional courtesy towards one in her position, for in all reality she is so good, so kind, so simple and yet so gifted withal! In short, she is the child of her parents and no higher praise could be lavished on her. May the love the new couple bear to each other never be diminished, but go on increasing till it has reached the point when it can be considered the acme of perfect happiness. May their marriage prove so exceptionally happy that the union of thought, heart and action may fulfil the ideal and ‘bring duality near to the borders of identity.’

The HONOURABLE RAJA SIR HARNAM SINGH: Sir, I have great pleasure in supporting the motion of my Honourable Friend. We have heard with the greatest interest and joy the public announcement of the approaching wedding of Her Royal Highness the Princess Mary. The people of India share with the English people the pleasure to congratulate Her Royal Highness. Although we, in India, have not had the pleasure of welcoming her here, yet her name is held in high respect in this country, for the reports of her great qualities, and of the charm of her character have reached India and the farthest limits of the Empire. She has endeared herself to even the most distant subjects of her noble father, the King-Emperor.

Sir, I am only voicing the genuine wishes of the entire Indian people when I say that India sends her warmest congratulations. May God pour on her His choicest blessings and grant her a long and glorious life rich in love and happiness!

The HONOURABLE DIWAN BAHADUR V. RAMABHADRA NAIDU: Sir, I heartily support the Resolution so eloquently moved by my Honourable Friend, Mr. Sethna. Any addition to it on my part would only mar the beautiful eloquence with which he has referred to Princess Mary. I heartily support the Resolution.

The HONOURABLE SIR ARTHUR FROMM: Sir, I also heartily support the Resolution before the Council.

The HONOURABLE LALA RAM SARAN DAS: I also heartily support the Resolution.

The HONOURABLE COLONEL SIR UMAR HAYAT KHAN: Sir, I also heartily support the Resolution.

The HONOURABLE RAJA P. N. ROY of DIGHAPATIA: I also support the Resolution.

The HONOURABLE RAJA SIR RAMPAL SINGH: I also support the Resolution.

The Resolution was carried unanimously.

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The HONOURABLE the PRESIDENT: We will now resume the adjourned discussion on the Honourable Mr. Sethna's Resolution which he moved on the last occasion we met here.

#### RESOLUTION *RE* INCREASE IN NUMBER OF INDIAN JUDGES—*Contd.*

The HONOURABLE MR. SETHNA: Sir, my Resolution reads as follows:—

'This Council recommends to the Governor General in Council that early steps be taken to increase the number of Indian Judges of the High Courts and Chief Courts and also of Indian Judicial Commissioners to at least fifty per cent. of the total number of such appointments.'

Less than four weeks ago I brought forward a Resolution in this House asking Government to adopt ways and means whereby Indians might be employed in larger numbers in the service of the different Port Trusts in India. That Resolution met with the concurrence of this Council and also of the Government of India, I take it, because of the glaring injustice done to Indians which I was able to point out from the figures I quoted on that occasion. My Resolution to-day deals with the higher appointments in the Indian Judiciary in regard to which I will at once admit that the percentage of Indians is certainly and distinctly larger; and yet if I ask the Council to extend to it the same whole-hearted support as they did to the other Resolution, it is because I feel, and I am sure the Council will feel, that, in regard to these appointments, Indians, it is beyond cavil, have shown a great aptitude and also considerable proficiency. I am aware, Sir, that in the other House some months ago a similar Resolution was moved in which, amongst other appointments, the appointments of Judges of High Courts were also referred to. In that Resolution, however, to judge from the speeches made on the occasion, greater stress was laid on the equalisation of numbers in regard to the appointment of Chief Justices and Governors of different Provinces. My Resolution contemplates that from now onwards Government should take every opportunity, whenever vacancies arise, to fill them up by the appointment of Indians, so that at least 50 per cent. should be Indians to begin with, or rather, as early as possible, among the

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High Court and Chief Court Judges and Judicial Commissioners, and that such percentage should go on increasing gradually.

Let us examine what is the present position in regard to Indians in the service. In the six High Courts in India, namely, Calcutta, Bombay, Madras, Bihar and Orissa, the United Provinces and the Punjab, there are 17 Indian puisne Judges and 34 English Judges on judicial work; and out of the 6 Chief Justices there is one Indian Chief Justice so that the percentage of Indians is 30 per cent. In the Chief Court of Burma although there are 6 Judges there is only one Indian, so that the percentage there is only 16. We have Judicial Commissioners in Sind, Oudh, Central Provinces, North-West Frontier Province and Upper Burma; and of these 16 appointments only 5 are Indians. In Burma all the three Judicial Commissioners are Europeans as is also the solitary Judicial Commissioner in the North-West Frontier Province. Taking together all these officers we have 23 Indians and 55 Europeans, or a percentage of 29, which is certainly unsatisfactory. I say, Sir, it is certainly unsatisfactory because it is an acknowledged fact that Indian Judges have proved as efficient as their English compeers. The judicial service is the one service in which we might reasonably expect the most significant and rapid increases in the number of Indian appointments, because it is the legal profession to which Indians, as we know, during the last 50 years have taken very kindly and in which they have very greatly distinguished themselves. Competent authorities, like the Judicial Committee of the Privy Council, various Lord Chancellors and others, have admitted that Indian Judges have done remarkably well. Many judgments of the Indian Judges are to-day cited in the different High Courts and Chief Courts in this country. I recognise and recognise well enough that we have had some very able and distinguished Englishmen filling the positions of Judges in this country, notably amongst them, men of the type of Sir Barnes Peacock, Sir Richard Couch, Sir Richard Garth, Sir Comer Pethe-ram, Sir Lawrence Jenkins, Sir Charles Sargent, Sir Michael Westropp and others. But, Sir, we can say with equal force that we can put forward an equal galaxy of Indian names who have worthily filled the position of Judges of the different High Courts in this country. I refer to men of the stamp and ability of Sir Bhashyam Iyengar, Sir Muthuswami Iyer, Sir Dwarkanath Mitter, Sir Romesh Chunder Mitter, Dr. Gurudas Bannerjea, Mr. Kashinath Trimbak Telang, Mr. Mahadev Govind Ranade, and Mr. Justice Mahmood and many others. It must not be forgotten, Sir, that Indians have been appointed in these high positions comparatively recently. It must also not be forgotten that the percentages which I quoted a minute back are present-day percentages, and that the percentages of Indian Judges in the years gone by were absolutely negligible, and yet, as I say, we are able to boast of so many very distinguished men. Again, it may not be generally known and it may be a surprise to those who do not know it that every one of the Indian Judges whom I have named has had his education in this country and that not one of them was called to the English bar. . . .

The HONOURABLE MIAN SIR MUHAMMAD SHAFI: Except Justice Mahmood.

The HONOURABLE MR. SETHNA: I apologise and accept the correction so far as Justice Mahmood is concerned. To the same ranks, *viz.*, those who have had their legal education in India alone, we have had men of towering ability, like the late Dr. Rash Behari Ghose and others. If we

turn to the Indians who have been called to the English bar, we find amongst them such distinguished men as Mr. Monomohan Ghose, Mr. Womesh Chunder Bonnerjee, Sir Pherozshah Mehta, Mr. Budruddin Tyabji, Lord Sinha and various others, not forgetting our own distinguished colleague, Sir Binode Mitter, every one of whom would have adorned the bench, as indeed did Mr. Justice Budruddin Tyabji, and Mr. Justice Mahmood. This shows what Indians have been able to do in the department of law. In addition to the fact that Indian Judges have done as well as English Judges, they possess some other qualifications which greatly help in the administration of justice. In the first place, they know local conditions very much better; they are able to follow the witnesses in their own language and they can enter into the true spirit of the language of the documents which are put before them. These necessary qualifications the best of English Judges cannot possibly possess, and we cannot blame them for this deficiency. Therefore, if there are more Indian Judges in these appointments, efficiency will by no means be impaired; but rather the efficiency of the different Courts if anything will be greatly enhanced by the fact of such Indian Judges, who are the equals of their English compeers in knowledge of law, being able also to follow the witnesses and parties without the help of interpreters.

I may be told, Sir, that I am ignoring a very important factor, namely, that according to Charter several appointments to High Court Judgeships, etc., have to be made from the Indian Civil Service, and that because it has been now settled that the percentage of Indians in the Indian Civil Service must be gradually increased, consequently the number of Indian Judges will also be increased. To this I reply by saying that the appointment of Indian Civil Service Judges should be done away with, and that as soon as possible. Sir, the two cardinal principles to ensure a satisfactory administration of justice and to give satisfaction as well as to fulfil the aspirations of the people in regard to the appointment of the ablest men are, first, the gradual reduction in the number of Judges appointed from the Indian Civil Service until no more Indian Civil Service Judges are so appointed, and, secondly, a gradual increase in the number of Judges appointed from the legal profession, the same as is done in the United Kingdom, in the Dominions, and in the United States.

The system of Civil Service Judges has had its day; it is certainly considered obsolete now. In the Indian administration in the first stage we naturally had most of the officers as military men, same as perhaps is the case in Mesopotamia to-day. In the second stage came in Civil Service Judges. Now, in the third stage when we have so many specialised services, I say it is an anachronism to have members of the Indian Civil Service put in the most important judicial positions in the highest tribunals in the land. There was a time, Sir, when there were not elaborate Codes and there was no developed legal system, no Universities, hardly an Indian lawyer and a rough and ready system of administering justice. That was the time when Indian Civil Service Judges were wanted. To-day as we know the position is very considerably altered. We have lawyers all over the country, some of them very able men indeed. We have now a comprehensive system of law. Judicial work has become highly specialised and complex, and it is, therefore, imperatively necessary that Indian Civil Service Judges should be done away with altogether. In this connection I will quote from that well-known Minute of Mr. Justice Abdur Rahim, attached to the Public Services Commission Report, the

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opinion expressed in which is endorsed by all those who are disinterested and have given a close study to the question. This is what Mr. (now Sir) Abdur Rahim says:

‘A Civilian Judge, who has never been behind the scenes, never drafted a plaint or a written statement, nor examined or cross-examined a witness in his life, must be at considerable disadvantage in arriving at the true and important facts of a case. He can but dimly realise the value of interlocutory proceedings in bringing issues to a head, and his control over the conduct of a trial in Court must tend to be weak and uncertain. Not the least formidable of his difficulties is the inevitable lack of understanding and sympathy which must ordinarily be between him and the Bar. Supposing he has had the opportunity, which he has not, to bring to the bench a sufficient stock of the knowledge of the law, he will have realised, on the first day of his judicial career, that the really difficult task for which he had no preparation was to apply the right law to the facts before him. There have been Civil Service Judges who surmounted all these difficulties and made the continuance of the system possible for so long. But the system is itself unsound and the authorities should be prepared to discard it.’

It might be argued that, because Mr. (now Sir) Justice Abdur Rahim was himself a Barrister Judge, his opinion might be considered biased. I will, therefore, give the Council the opinion of a body of men which is unexceptionable, for I will quote now from a Despatch from the Government of India, during the Viceroyalty of Lord Minto, addressed to the Secretary of State and signed by Lord Minto, the then Commander-in-Chief, Lord Kitchener, and all the Members of the Executive Council of the day. This is what the Despatch says:

‘It would be difficult to exaggerate the political dangers of the present situation or the importance of effecting a material improvement in the capacity, training and status of the Indian Civil Service Judges. It is impossible at any rate in the advanced provinces to justify a system under which a gentleman who has no knowledge of the civil law, and who has never been inside a civil Court in his life, can be and is often at one step promoted to be a Judge of Appeal in civil cases, and to hear appeals from subordinate Judges who are trained lawyers with years of legal experience . . . If, however, we contrast the circumstances of the present day with those of a generation back, the considerations at once suggest themselves that the law which the modern civilian is called upon to administer is far more complicated, while the legal profession has vastly increased in numbers and has attained a far higher standard of training. At the same time, the knowledge of law possessed by the natives of India generally and their disposition to appeal has gone through a remarkable development . . . It is most frequently in criminal matters that the native newspapers attack our administration of justice, and that errors and irregularities have been a subject of public criticism. It is in such cases in all countries that mis-carriages of justice attract most attention, but in civil and revenue cases affecting private rights, it can scarcely be doubted that similar errors occur, and the departmental proceedings which come before us frequently disclose surprising ignorance. . . . Incompetent men cannot retain their position in the face of a well-founded criticism which is becoming more and more searching as time goes on. On public grounds it is imperative that drastic steps should be taken to remove the blot on our administration.’

This, Sir, is the considered opinion of the Government of India. Could anything be more emphatic, and is it not high time that the Government of India should take upon itself to ask the Home Government to effect a change in the Charter, whereby Civil Service Judges should no longer be appointed? . . .

THE HONOURABLE THE PRESIDENT: I would remind the Honourable Member that the provisions regarding the qualification for High Court Judges are in section 101 of the Government of India Act, and not under the Charter.

THE HONOURABLE MR. SETHNA: It is I understand by Charter so far as Bengal and Bombay are concerned. However, I stand corrected. Any

way, Sir, the extract I have quoted will convince the Council of what the opinion of the Government of India was in regard to the question of Civil Service Judges. And I say it is high time that the Government of India should take it upon itself to bring about a change in the Act or Charter, whichever it may be. If the Indian Civil Service is one of the best paid Civil Services in the world, I admit it is also one of the most efficient Services in the world; but, at the same time, I also admit that Indian Civil Servants have not the necessary qualifications and do not possess the necessary training, because they have not been given it, to become High Court or Chief Court Judges or Judicial Commissioners. I, therefore, contend that the appointment of Judges should be restricted exclusively to the legal profession. I may remind the Council that, although we have had Civil Service Judges for years and years, and there have been hundreds or them filling these important positions, there has not been, so far as I know, one single person from the Indian Civil Service who could be bracketted with any of the English Barrister Judges and the Indian Judges I have named. That, Sir, is proof in itself of the statement I have made.

• Then, the Indian element amongst the legal profession is now so very strong that, almost all over the country, and in such important centres like Calcutta, Bombay, Madras, Allahabad, Bankipore, Lahore, the predominance of English Barristers is fast disappearing, if it has not already done so, and it is the Indian element in the Bar that is now predominating. There is, therefore, no difficulty in finding suitable Indians from the Bar.

Sir, I make one more quotation in regard to the efficiency of Indian Judges, and that from no less a personage than Lord Selborne, an opinion which he declared publicly in the House of Lords as far back as 1882, and he gave most flattering praise to Indians in such well deserved terms as these :

‘The question might be asked, what has been our experience hitherto of Native Judges? My Lords, for some years I practised in Indian cases before the Judicial Committee of the Privy Council and during those years there were few cases of any Imperial importance in which I was not concerned. I had considerable opportunities of observing the manner in which, in civil cases, the Native Judges did their duty, and I have no hesitation in saying, and I know this was also the opinion of the Judges during that time, that the judgment of the Native Judges bore most favourable comparison, as a general rule, with the judgments of the English Judges. I should be sorry to say anything in disparagement of English Judges, who, as a class, are most anxious to carefully discharge their duty; but I repeat that I have no hesitation in saying that in every instance, in respect of integrity, of learning, of knowledge, of the soundness and satisfactory character of the judgments arrived at, the Native judgments were quite as good as those of English Judges.’

If this, Sir, was the opinion expressed forty years ago, when, perhaps, only one or two of the eminent Indians, whose names I have mentioned, had reached the height of their fame, is there not much greater reason to-day to admit that the circumstances have so greatly altered that we can now have many more Indians to fill these positions, and to fill them with dignity and ability?

I hope Government in their reply will not take shelter under the plea that the appointment of Judges does not rest with them, but rests with the Secretary of State and the Home Government, because we know too well that the Government at Home always pay heed to the recommendations made from here. I may also be told that at times the Secretary of State does not consult the Government of India, but consults Provincial Governors direct. All I say is that if there is a will there is a way. If the Government at Home and the Government here are sincere in their professions of gradually Indianizing the Services in this country,

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they may well accept the Resolution; but if for technical objections, such as those I have just now referred to or others they are unable to do so, the least the Government can do is to say, in reply, that they accept the principle underlying the Resolution; and the best they can do, under existing conditions, is to forward the Resolution to the Secretary of State with their own strong recommendation, endorsing the proposal made in the Resolution.

The HONOURABLE RAJA SIR HARNAM SINGH: Sir, I am very glad that my friend the Honourable Mr. Sethna has so ably advocated the cause of our Indian Judges. The time has come when there should be a larger proportion of Indian Judges in the benches of the High Courts and Chief Courts; there should also be a greater number of Indian Judicial Commissioners. At present less than one-third of the highest posts in the judicial department are held by Indian lawyers, although the country is now producing a considerable number of eminent lawyers and jurists who would do credit to the legal profession of any country. The Indian Judges also have earned the reputation, not less remarkable, for their integrity, ability and efficiency. It will not be an exaggeration, I think, when I say that, whenever Indian lawyers have been given a chance, they have been no less an ornament to the bench.

I do not see any reason why the claims of eminent Indian members of the legal profession should not be duly recognized. For one thing they know the country and understand the people much better; and they have, as children of the soil, an equal, if not a better, claim to the highest services of their own country for which they are fit. With the spread of education not only the aspirations of the Indian people have risen, but their character and ability, I believe, have proportionately gone forward. They fully deserve a larger share in the administration of their country. And this has been recognized by the new policy of the Government. I want only to see this policy applied more liberally to the Judicial Department.

The HONOURABLE SIR EDGAR HOLBERTON: Sir, this Resolution is the successor of various other ones of a similar trend which have been brought forward in this House and in another place, and I think it has occurred to some of us as rather a pity that the Indian Legislature, at this early stage of its existence, should be in such a hurry to proceed at such a swift pace with the Indianisation of the various services. Government have repeatedly, on the occasion of these Resolutions and on others, asseverated their desire and intention of increasing the Indianisation of the services as swiftly as they consider consistent with safety and advantage to the country. In this particular case you will notice, if you study the wording of the Resolution, that there is an important omission to the extent that nothing is said about efficiency. The Resolution does not say 'if suitable candidates for the appointments can be found'; it simply makes a bald claim that the Indianisation of the service should be extended to at least 50 per cent. However, my Honourable Friend, the proposer of the Resolution has given us very many arguments in his speech to show that there are suitable candidates available in India, and I think that what we all know of the work that has been done by Indian Judges at present on the Bench will bear him out. Therefore, on the score of qualifications, to a certain extent, it is undoubtedly possible and desirable to spread the trend of appointment of Indian Judges to the

Bench; but I do strongly deprecate any exact percentage being put in. I do not see how it is possible to lay down a definite percentage as that which will ensure the greatest protection and assistance to the judiciary of the country. Moreover, there is some little difficulty in my mind with reference to the exact meaning of the word 'Indian'. My Honourable Friend will probably tell me that he means to cover thereby all persons born within the Indian Empire. Well, if that is so, what his Resolution really means is, that he advocates that each High Court and Chief Court in the country should contain at least 50 per cent. of gentlemen born in the country. Now, this, of course, if it were taken to its logical conclusion as a general proposition, would get us into the most terrible trouble. For instance, take the case of my own province. What would Burma say to a Bench of Indian Judges even if you confined yourself to India? Would Bombay care for a Bench of Bengalis? . . . .

The HONOURABLE MR. SETHNA: Why not?

The HONOURABLE MR. LALUBHAI SAMALDAS: Certainly, there would be no objection.

The HONOURABLE SIR EDGAR HOLBERTON: They would prefer it. Well, it was not my opinion that most of the provinces of India would prefer an Indian Bench coming from provinces other than their own to a mixed Bench of Europeans and Indians. However, it is on that point that there will be divergence of feeling, but I cannot help thinking that most of the Members of this Council will agree with me that, if the Resolution of the Honourable Member is to help, it would have to carry with it, if not exactly in the wording, at least in the intention, that 50 per cent. of the judicature of each province should come from the local talent of that province. If that is so, it would make it even more restricted and more difficult. . . . .

The HONOURABLE MR. SETHNA: It is not so.

The HONOURABLE SIR EDGAR HOLBERTON: Even as it is, I think it is a pity that the administration of the law under which we live should in any way be restricted by any other bar than that of efficiency.

I have been very much impressed by many of the remarks that have fallen from the Honourable the Mover as to the excellence of the Judges which India has produced and, in fact, I have not heard any dissenting view about that, but I do also stoutly maintain that the high standard of law that has been administered by the benches in India has been practically universal; it has not been confined to any one race or nationality or creed. In fact, as far as is known to me, there is really no complaint against the administration of justice by these High Courts. The desire, therefore, to push this Resolution through is due to a national, or what I might call an almost sentimental whim. Now, if we can be perfectly certain that, by agreeing to this we are in no way endangering the judicial administration of this country, he may well find supporters, but if, on the other hand, we admit that the law at present is properly and adequately administered and that the present system has resulted in the necessary safeguarding of the interests of the public, then it seems to me a pity to commit ourselves to any Resolution which may possibly do anything to endanger that standard of excellence.

I, therefore, find it necessary to oppose this Resolution.

The HONOURABLE MAHARAJA SHOSHI KANTA ACHARYYA CHAUDHURI: Sir, I beg to support the Resolution so ably moved by the Honourable Mr. Sethna. In supporting this Resolution I need not refer to the general claims of Indians to a greater share in all branches of administration. Indians have held judicial offices long before other administrative appointments were thrown open to them by the British Government. Even in the days of the Sudder Dewani Adalat in Bengal, Indian Judges have sat on the bench with the best of English Judges that ever came out to India. It is admitted by all that Indians have a natural aptitude for judicial work especially, and in the roll of Indian Judges of the different High Courts are found the distinguished names of many that will be ever remembered in the history of judicial administration in India. Sir, I do not mean any disrespect to any learned Judge when I say that the Indian Judges of the present day inspire greater confidence in the people than the average English Judges. Instances are not rare in Calcutta when even European suitors and European Solicitors have preferred to have their cases heard by an Indian Judge rather than a European in the Original side of the High Court. . . . .

The HONOURABLE SIR ALEXANDER MURRAY: I want to know whether the Honourable Member can mention a case, Sir.

The HONOURABLE THE PRESIDENT: Order, order.

The HONOURABLE MAHARAJA SHOSHI KANTA ACHARYYA CHAUDHURI: There is an impression that the High Court benches in India no longer attract English Barristers of eminence. If that be so the number of Indian Judges should be increased, so that justice, which is the bulwark of British rule in India, may not suffer in quality.

The HONOURABLE MR. S. P. O'DONNELL: Sir, if I have to oppose this Resolution it is not because in any way the Government is out of sympathy with the principle underlying it. That principle is in fact one which the Government itself has adopted and proclaimed. The increasing association of Indians with the administration of the country in all its branches was placed in the forefront of the declaration of August 1917, and since then the Government have given in the various orders passed regarding the Services definite and concrete evidence of their adherence to that principle. And just as the Indian element has increased and will increase in the various Services, so the Indian element in the High Courts and Courts of Judicial Commissioners has increased and will increase. I have here, Sir, certain figures which, I think, will bear out that statement. I find that in 1896 there were altogether 8 Indians holding appointments in the High Courts as against 36 Europeans. At the present moment, according to the Civil List for 1st October 1921 there are 25 Indians holding appointments in the High Courts—18 of them permanent and 7 temporary. The number of Indians, therefore, during that period has increased three-fold and the percentage about two-fold. A similar result is disclosed if the figures for 1910 are taken and compared with the existing figures. There appear to have been in 1910 13 Indians holding such appointments out of a total number of 62 appointments. And, Sir, the proportion will go on increasing.

If I understood him aright, the Honourable Mr. Sethna seemed to think that the provision in the Government of India Act, under which one-third of the appointments is reserved for members of the Indian Civil Service, constitutes in some way an obstacle to the increase of the Indian element. There are two points on which I must join issue with the Honourable Mr. Sethna

as regards the Indian Civil Service; and firstly, as regards his contention that the appointment of Judges of the High Courts from the Civil Service is an obsolete and anachronistic arrangement unknown at present in civilised countries which should be abolished as soon as may be. Now, Sir, it is perfectly true that in England and the United States, and in the British Dominions, I believe, the practice is to appoint Judges from the Bar. But if the Honourable Mr. Sethna had extended his survey to the Continent of Europe, I think he would have found that it is the general practice to appoint Judges of the High Courts from the lower Courts. I do not profess to be an authority on the legal systems of the Continent, but certainly my impression is that in most continental countries that is the practice. And it certainly seems to me to be unreasonable to suggest that Judges who have been engaged in administering justice in the lower Courts for 20 years or more should be debarred from appointment to the higher Courts. Then the Honourable Mr. Sethna referred to a Despatch of the Government of India. He did not, however, I think, correctly appreciate the point of that Despatch. I have not the Despatch here, but judging from the quotations he gave from it, it is clear that what the Government of India had in view was the need for ensuring that Civilians appointed to the post of Sessions Judge should have had an adequate and sufficient preliminary training in Civil Law. It is admitted that in that respect the arrangements then in force were defective, but those defects have been or are in process of being removed, and the general practice now in all the Provinces is that Civilians are appointed first to posts like that of Munsif and given a training in Civil Law. I do not think there is anything in the Despatch which in any way suggests or implies that, in the opinion of the Government of India, Civilians selected for the High Courts have not had a sufficient training in Civil Law. In any case, so far as the Indian Civil Service is concerned, I cannot see that the provision of the Government of India Act in question whether it embodies a sound principle or not, constitutes an insuperable bar to an increase in the Indian element, because the Indian Civil Service is itself in process of being Indianised. A large number of Indians have recently been appointed to the Service and the percentage of such appointments is increasing from year to year.

I do not propose to discuss the merits of individual Civilian Judges, but I have myself known Civilian Judges of the High Court, who, I believe, in the opinion of the legal profession of that Province, fully held their own with the best of the Judges drawn from the Bar.

Then, as regards English Barrister Judges, the Honourable Mr. Sethna referred to a debate which took place last year in the Legislative Assembly. May I also refer to that debate. The Honourable the Law Member, himself an eminent Indian lawyer, said on the question of English Barrister Judges:

'My friend'—he was referring to Dr. Gour—'has contributed a valuable book to legal literature—I refer to his commentaries on the law of the transfer of property—and no one can appreciate better than Dr. Gour that so far as the essential features of our law of property are concerned, they are closely allied to the English system, and an English Barrister who comes out from England does no doubt contribute substantially to the elucidation of those intricate principles with which we have got to deal every day of our lives—and he also brings out with him those high traditions of independence and freedom which we all value and which we all expect from members of the Bench in any part of India. Pray do not understand that there are not men in this country who would rise equally to the standard, but what I do contend is that, at the present stage of our evolution and for some time to come, I do not think that it would be right for us, having regard to the larger interests of justice and law, to entirely dispense with the services of the English Barrister Judge.'

[Mr. S. P. O'Donnell.]

Sir, I fully endorse everything that the Honourable Mr. Sethna has said as regards the merits of those Indians who have been appointed to the High Courts. But I think the truth is that each of the sources from which Judges of the High Courts are recruited has made its own special contribution to our legal system. The Indian Judges have contributed their share and the English Judges theirs, and the sound principle is that the best men available, whether they are Indians or Europeans, should be appointed. That has been the practice in the past, and ought, it seems to me, to be the principle which should govern selections in the future. I may mention that the Government of India are not primarily concerned with the selections for most of these appointments. I do not lay much stress on that point, though I think it is a point which it is right to mention. As the figures I have given show, however, the authorities concerned are not oblivious of the claims of Indians. These claims have been fully recognised in the past and will continue to receive every consideration. The only objection therefore of the Government to this Resolution is not that it contemplates an increase in the Indian element in the High Courts,—on that point there is no difference—but simply that it would bind the Government to establishing a fixed arithmetical ratio within a particular period and that the acceptance of such an undertaking would be inconsistent with the principle that the best men available from time to time should be selected. That in no way implies that the existing proportion between Indians and Europeans will be maintained. On the contrary, as I have tried to make clear, there is not the least doubt that the Indian element will increase year by year—at any rate, steadily, until the proportion aimed at by the Honourable Mr. Sethna has been attained or exceeded.

At the same time, Sir, while such is the view of the Government as to the principle which should be followed in making appointments, they do not wish to meet this Resolution with a simple *non possumus*. They are quite prepared, if it is so desired, to consult Local Governments and High Courts regarding the whole question. I think it will be agreed that in any case if it is ever decided to make change in the existing procedure, such consultation would be essential. Perhaps that will sufficiently meet the Honourable Mr. Sethna.

**THE HONOURABLE MR. G. S. KHAPARDE:** Sir, I rise to support this Resolution on a ground which up to this time at any rate has not been put forward; and that ground is that, although in India laws are now codified and they are to a certain extent uniform, there is this difficulty in it, that no law can be so constructed as to leave no discretion to the Judge. This discretion it is the exercise of which is the most important part of judicial work. It happens, as in the case of Hindu law, Muhammadan law and other uncoded laws, that not only are points not codified and difficulties cleared up, but there are very many things left or rather coming up, which did not exist or did not come up when the laws themselves were framed; and those are cases not new in principle, but certainly new in the instances; and when law has to be extended from precedent to precedent, the important question arises as to what is the legal consciousness of the people for whom the laws were framed. In this matter of legal consciousness there is a celebrated judgment of Sir Raymond West in an important adoption case, which, I believe, covers over 100 pages, which tried to bring out what the legal consciousness of the society was. It was a case which was new in the instance and not in the principle, and in

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trying to extend that principle he had to argue it out at that great length and he came to a certain conclusion. That is the point which I wish to urge. It sounds a little bad to say that the present system has worked well and yet we desire to improve it; and it also looks as if we were casting a reflection upon it. I do not think the Honourable Mover intended to cast any slur, nor do I intend to cast any slur on the work of the Judges who have hitherto worked in India. But I still submit that there has always been something less than could be desired. When I began the study of law it used to be the practice that in matters of legal customs and in matters of Hindu and Muhammadan law and so on Shastris and Ulemas were consulted. In fact they were officers of the Court, and in deciding cases Judges used to send for them often and put the facts before them and ask their opinion as to what the judgment should be. That practice was discontinued and when I began to study law there was a complaint made that these Shastris and Ulemas ought to have been retained and they always said that they supplied a great part of the most valuable portions of the judgment. Now, that practice was discontinued and there used to be a great deal of complaint in the text-books of those times. I submit that what the Honourable Mover by moving this Resolution means to do is to try and bring back the Courts to the original character which they had, namely, not only men with knowledge of precedents of other countries, but also an element of people who know the legal consciousness of the people to whom the law is to be administered; and however eminent the Judges from England may be it is, I suppose, no disparagement to them to say that they could not correctly conceive the legal consciousness of the Indians here; and it is that element of it which is the most important part of the judgment, and therefore it is that I support this Resolution on this ground which I put forward, namely, that law, however codified, however clearly laid down, still involves discretion, and that discretion involves the legal consciousness of the society in which the law is administered. Therefore, it is necessary that as in the old days there was one Shastri or Ulema attached to one Judge, so also, as the Honourable Mover thinks, and very rightly thinks, half the number of Judges should be Indians who can supply the element of legal consciousness that is necessary, on all the benches. The Honourable Member has put the words 'at least fifty per cent' in his Resolution. One of the Honourable Members here said that it was wrong to put it at any figure like that; perhaps it may be so in many cases; but in this case what is desired, I believe, mostly by the learned Mover is that in every case that is decided there should be at least one representative, one person who understands the legal consciousness of the country; and, therefore, he puts it at at least fifty per cent. I am sure he does not object to its being made sixty per cent.; I suppose he will agree if it was raised to 75 per cent., that is to say, that this codified element is there and that in the discretion which it necessarily involves the element of legal consciousness should be very carefully brought out and looked after by Indians themselves. My Honourable Friend to the right raised an objection to the definition of the word 'Indian' and then tried to make it out that it would involve that each Bench of each High Court should have half its number brought up in that province, and probably it would go on to each district and then to each taluk and to each village, and thereby he wanted to make out that this was an impossible proposal. I humbly submit that it is not so. Legal consciousness is a thing which permeates the whole of society. Generally it is different in different countries. You may remember the historical fact that in England there used to be a complaint made that cases should be decided according to the English law

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and not according to the Roman law. These priest-judges that there used to be and many of them learned lawyers studied and derived their inspiration from the laws of Justinian and Rome; they used to introduce into the English law the principles of Roman jurisprudence; and the complaint then was that the cases should be decided according to the English law. We have got the same complaint on our side. True there are very eminent principles in English law; they are very good indeed in England, but applied to the circumstances of this country those principles of English jurisprudence do not generally fit in; in fact the laws have been bodily brought over from England and made applicable here. Now, I do not complain and it is too late even if I complained, that those principles should not have been brought in here. They have come in and they have to be interpreted so as to fit in and harmonise with the legal consciousness of the people of this country. That is a great argument in favour of increasing the number of Indian Judges; in fact my own idea is that they should be increased to the utmost. It has been said that we are forcing the pace, that we are, in the second year of our existence, trying to Indianise the whole system, and that this judiciary has been working well and why should we then tinker with that system now by trying to introduce more Indian Judges? That the judiciary have done well is from my point of view exactly the reason why we should make it better. It has done very well. Make it better and carry it as near perfection as human wits can carry it. There is a further argument and that further argument arises from this fact that the Indianisation of services is not a new grievance; it has not come into existence within the last few years. So far as I remember, the late father of the Congress, Dadabhoi Naoroji, went to England and carried with him this idea that Indian services required to be Indianised. He fought, as we all know and as his writings will show, that the examination for the selection of Civil Service men should be held in India; and he fought for 45 years in England; and also after returning to India at the Calcutta Congress, at which I was present, he also brought out the same thing. So this is a long-felt grievance. It has found expression before wherever people met; and now that this Legislature has come into existence, it naturally comes out from my friends who are sitting on this side or the other side of the House. So it is not a question of forcing the pace at all. In fact it is an old and long-standing grievance; and now having acquired the means of trying to set it right, we are doing it or rather doing our best to do it as early as possible. I suppose that is what we mean and our idea is to render the present administration more popular and also bring it home to the people that the Legislative Councils really do some amount of good and redress some old grievances at any rate. Anyhow, for these reasons, and mainly for the reason that I wish introduced an element of the legal consciousness of society that I support this motion.

THE HONOURABLE MR. LALUBHAI SAMALDAS: I rise to support this motion, but before I speak on the Resolution I would like to reply to a question asked by my Honourable Friend, Sir Edgar Holberton. He inquired whether we in Bombay would care to have Bengali Judges. If we don't object to English Judges, why should we object to Bengali or Madras or Punjabi Judges? There is not the least objection on our part. They are less of foreigners than Englishmen, and if we can have Englishmen as good Judges why should we object to Bengalis if they come up to the standard we wish to set? The Honourable Sir Edgar Holberton tried to mix up the question of Burma, and said that the

Burmans would not agree to have Indians as Judges. I cannot speak for Burma, but if the Burmans believe that they belong to the country and that they are Indians, I consider that, so long as you get the right type of men, it is much better to have people from India rather than from elsewhere.

I believe the Honourable Mr. O'Donnell was right when he said that Lord Minto's Despatch referred to Sessions Judges. That was my impression also, because we have often had complaints that Civilian Sessions Judges, who did not know anything about civil law, made a hash of civil cases when they came before them on appeal, and the High Court very often had to reverse their decisions. In the local Council questions were asked to find out what the percentage was of appeals in the High Court against such judgments, and we found that very often High Courts agreed more with the Subordinate Judges than with the Sessions Judges. That was the ground on which the Despatch was written. That defect has been remedied, legal knowledge is being given to Sessions Judges, and I don't think there is any ground for complaint now.

My Honourable Friend, Mr. Sethna, was rather hard on the Civilian Judges. He inquired if one could find any names from the Indian Civil Service that could be bracketed with those of the English Barrister and Indian Judges that he named. I think I can. I could give many names, but there is one at least, which has been accepted on all sides as a name that can very well hold its own with any, I mean Sir Raymond West. His name was a household word in my part, and I am somewhat surprised that the Honourable Mr. Sethna forgot his name. My Honourable Friend, Mr. Sethna, is opposed to having any Civilians as High Court Judges. We know that lawyer Judges have certain advantages, but the Civilian Judges who have had district experience have proved very good criminal appeal Judges. I don't see why my friend has any objections, so long as he gets his point. What we want is at least half the number of Judges being Indians, even gradually appointed, as my Friend, the Honourable Mr. O'Donnell, says. I don't suggest that they should be appointed all at once. We want to be given the assurance that Government accepts the principle and that they will raise the number to 50 per cent. If they give that assurance I think that my Honourable Friend, Mr. Sethna, will agree to modify his Resolution by adding the words 'as soon as practicable.'

The increase in the number of Indian High Court Judges does not appear to me to be quite satisfactory, and I think they will not appear quite satisfactory to the other Members of the House also. The Honourable Mr. O'Donnell said that, while in 1896 there were eight Indian Judges, there were now 25, but he added the remark that out of these 25, eighteen were permanent and seven temporary. If within 25 years the number of High Court Judges had increased from eight to eighteen only, the percentage of Indian Judges to the total number of Judges will not have doubled as the Honourable Mr. O'Donnell said . . . .

THE HONOURABLE MR. S. P. O'DONNELL: Of the eight appointments referred to in 1896, seven were permanent and one was temporary, and the number of temporary appointments include not merely officiating appointments, but also appointments of additional Judges. In practice there is a strong tendency I believe in the case of the High Courts, for additional appointments to become permanent appointments, therefore it would not

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be reasonable to exclude temporary appointments in estimating the increase in the number of Indian Judges.

The HONOURABLE MR. LALUBHAI SAMALDAS: At that rate when shall we get the 50 per cent? It will take perhaps twenty years more. We do not want to wait twenty years. If we can be given an assurance that, say, within the next five years, the Government will try to have fifty per cent. of the Judges as Indians, I don't think my Honourable Friend, Mr. Sethna, ought to press his Resolution. But that assurance has not been given. What my Honourable Friend, Mr. O'Donnell, has said is that 'We will consult Local Governments'. Of course Local Governments have to be consulted, but why cannot he say that he, on behalf of the Government of India, is prepared to accept the principle, and that, as far as possible, in the near future, Government will do their best to increase the number of Indian Judges up to fifty per cent? If that assurance is given, I, on my part, will be satisfied, and my Honourable Friend, Mr. Sethna, will also be satisfied, I am sure.

We have heard much about the bogey of efficiency. We have as much regard for purity of judicial administration as any Englishman in this House or outside this House. We have great faith all over the country in the justice of the High Courts. We do not want the efficiency of the High Courts to be lessened to the smallest extent, and if the Honourable Sir Edgar Holberton had carefully followed the speech of my Honourable Friend, Mr. Sethna, he would have seen that what Mr. Sethna tried to prove was that we have a sufficient number of efficient Indians who could take the place of Englishmen. I can assure the House that we do not want the efficiency of the High Courts to be lessened to the smallest extent. If that assurance is satisfactory, I think the Home Secretary will give us his assurance that he will raise the number of Indian Judges to fifty per cent., as early as possible.

The HONOURABLE SIR DINSHAW WACHA: Sir, so far as my experience goes, during the last fifty years, I would say that it is a foregone conclusion that the number of Indian Judges in the different High Courts should naturally increase from time to time (Hear, hear). So far as I have seen, there has been no arrest of progress in that direction, whatever may be the reason. My Honourable Friend, Mr. Lalubhai Samaldas, said that in 1896 there were so many Indian Judges, therefore, it will take twenty years before we reach fifty per cent. But twenty years has made all the difference in the world, as far as Indian progress in every department of the Services is concerned. Now my own countrymen have said that India is not the same as it was 20 years ago. It is not even the India in the time of Lord Minto. Exactly, that is so. So far as all the Services are concerned, progress has gone steadily forward, every-way better than before; in some cases it has been slow, in some cases fair, and in some cases we are going faster or fast enough. There is not the slightest doubt of that progress. Therefore, I do say that, as far as the increase of Indian Judges in the different High Courts is concerned, it is a foregone conclusion that the increase will keep pace. I have not the slightest fear that, considering the wise principle which the Government has established under the reformed constitution, we shall considerably accelerate the number of Indian Judges in the Indian High Courts. As far as efficiency is concerned, I think my friend, the Honourable Mr. Lalubhai Samaldas, has answered the Honourable Sir Edgar Holberton.

Efficiency, of course, always is what you may call a relative term. We cannot always have ideal efficiency, whether it be ideal efficiency in the Civil Service or in the Military Service, or in other State Services. Efficiency is more or less said to be comparative, and what you want in a large country like India is average efficiency. Average efficiency might of course be improved. You might go from good to better and thence to best, but to go from good to best is a matter of slow progress. In a country like this it must always happen that efficiency will be of the average kind and you must go on progressing, I repeat, from good to better and from better to best in years to come. As we ourselves progress in self-government, I am quite sure that we shall perhaps attain in another fifty years that ideal efficiency which we want.

As far as justice is concerned, we are all lovers of justice, and, if we are all lovers of justice to-day, we owe it entirely to the English, who have taught us what justice is. What was justice in the time of the Moghuls? What was justice in the time of the Mahrattas? I ask my countrymen that question. The fact is that it is the education imparted by the English that has made us learn that there is nothing so valuable as justice; it is education on British principles and British line that has taught us what freedom is, what liberty is, not liberty of the kind which, of course, is licensed liberty which we see rampant now here and there. Therefore, I do say, Sir, that, as far as justice is concerned and other matters are concerned, we owe everything to the English and we are grateful to them for the education they have given us, which has taught us what liberty is and what justice is. And, as far as justice is concerned, we have in India to-day a Viceroy and Governor General, Lord Reading, till late the highest judicial officer in the United Kingdom, namely, Lord Chief Justice of England. He has told us that, if he has come out to India for anything, it is for the supreme purpose of enforcing equality of justice everywhere, justice between man and man and between Europeans and Indians. Therefore, Sir, as far as efficiency and justice are concerned, there is nothing more to be said. But I do say this, that, if Indian Judges are now very capable, they must not forget that they owe it to the English. I ask, who first suggested that the English law should be codified? Was it not Lord Macaulay? In these days of Universities, every school boy knows that it was Lord Macaulay who fought hard not only for English education, but also for the codification of the English law, and it was on the basis of the suggestions made by Lord Macaulay that the Civil Procedure Code and the Criminal Procedure Code were eventually framed and placed on the Statute-book. Of course, codification means allowing time to mature; but still we are proud to-day that we have got an Indian Civil Code and an Indian Criminal Code which are considered to be among the best in the world. To whom do we owe that? To Lord Macaulay, to Sir Barnes Peacock, to Sir James Fitz James Stephen, to Sir Henry Sumner Maine and others. I appeal to my countrymen, never to forget, when we talk of law and justice, that we are indebted to Englishmen for those invaluable boons.

Then, my friend, the Honourable Mr. Sethna, spoke of Civilian Judges. Of course, there has been a complaint that certain Civilian Judges have not been very satisfactory; but it must not be forgotten at the same time that there have been some very distinguished Civilian Judges. So far as the Bombay Presidency is concerned, the Honourable Mr. Lalubhai Samaldas has mentioned the name of Sir Raymond West. Of course, Sir Raymond West's name is a household word. He was a Civilian Judge,

[Sir Dinshaw Wacha.]

but he surpassed some of the most brilliant Barrister Judges ever known. Then, I can go a little further afield and speak of Sir Maxwell Melville, who was a very great civilian and also a very great lawyer, and his is also a household name in Bombay. Before him there was another Civilian Judge Mr. Kinloch Forbes, and that was as far back as 1864. His was a great name also. He was not only a great Judge on the Appellate Side, but was besides a great Oriental scholar whose name is very well known. Kinloch Forbes, Maxwell Melville, Raymond West are some of the names to be remembered and conjured with. There are other names besides of civilian Judges who have done very well, and we of Bombay are certainly proud of them, Bombay remembers them with gratitude. This being the case, Sir, it is not surprising the progress which Indian Judges have made, thanks to the English spirit of law and justice and English judicial models, which they have followed. That progress is of the greatest value and an invaluable future asset. Therefore, I am strongly of opinion that, irrespective of the Honourable Mr. Sethna's Resolution, the evolution of justice is such that we are bound, gradually and stage by stage, to have a larger and larger element of competent Indian Judges on the bench of our High Courts. That being the case, I think my friend, the Honourable Mr. Sethna, will agree with me that, if he only modifies his Resolution in the way suggested by the Honourable Mr. Lalubhai Samaldas, namely, by omitting the words '50 per cent.' and substituting the words 'a considerably larger number,' he would carry the House with him in the Resolution he has moved.

The HONOURABLE COLONEL SIR UMAR HAYAT KHAN: Sir, I have just one thing to put before the House and that is, that we should think very much higher, and I think to differentiate between Indians and Englishmen is not the right thing. I think the Empire should have equal rights in India and we should have equal rights in the Empire. . . .

The HONOURABLE MR. LALUBHAI SAMALDAS: That we have not got, unfortunately.

The HONOURABLE COLONEL SIR UMAR HAYAT KHAN: It is on this principle that I oppose the Resolution.

The HONOURABLE LALA RAM SARAN DAS: Sir, the object of this Resolution is quite in accordance with the present policy of the Government and the Honourable Mr. O'Donnell has borne testimony to this fact. The Honourable the Mover and his supporters have so exhaustively dealt with the object of the Resolution, that further comment seems unnecessary. The Honourable Sir Edgar Holberton is wrong in holding that each province likes to have its Judges from its own jurisdiction. Burma may be an exception. In the Punjab we had a Bengali gentleman in Sir Protul Chandra Chatterji as a Judge of the then Chief Court, and I can strongly say, Sir, that every Punjabi welcomed and hailed his appointment, and held him in great esteem. I am sure that, if our most distinguished Chief Justice, the Honourable Justice Sir Shadi Lal, were sent to any other province, he would be equally welcomed. . . .

The HONOURABLE MR. LALUBHAI SAMALDAS: Quite.

The HONOURABLE LALA RAM SARAN DAS: Well, the British Parliament has now itself laid down a certain percentage for the Indian Civil

Service and other Imperial Services, and I cannot understand why the Honourable the Home Secretary should object to laying down the percentage in this case. The reason, at least to me, is not clear. I wish to bring to the notice of this House that the English Judges have done extremely well. For instance, in the Punjab, the name of the Honourable Sir Meredith Plowden is so famous and popular, that every Punjabi remembers him with great respect and gratefulness.

With these words, I support the Resolution.

The HONOURABLE MR. SETHNA: Sir, I have listened with great attention to the speeches made by Honourable Members in support of, or against, my Resolution. All the Indian Members, with one exception, have supported my Resolution. The only Indian non-official Member who opposed had no cogent reason for doing so or had reasons which he urged but which I could not follow. The other opposition came from the only European non-official Member who spoke, and the support which I received from the Indian non-official Members is the best answer to the Honourable Sir Edgar Holberton. In the remarks with which he commenced his speech he said that my Resolution is a successor to similar Resolutions based on sentimental or national whim to hurry on the pace in regard to the Indianisation of the Services. I say, Sir, the almost unanimous opinion of the Indian non-official Members who have spoken in favour of the Resolution is the best answer to the Honourable Sir Edgar Holberton—*viz.*, that because the pace was not accelerated by Government in the past, because Indians were not allowed to come into their own and that it is only of late that their claims have been admitted that as a national or sentimental whim, as he chooses to call it, we are now urging an increase in the number of Indians in the different services. And I think that in consequence of this perfectly legitimate feeling in the country my friend, the Honourable Sir Edgar Holberton, will have to put up with similar Resolutions until such time as the promises and professions of Government have been given effect to by them.

In regard to the other objections raised by the Honourable Sir Edgar Holberton, the first point he made was that efficiency must not be sacrificed. I think I took pains in the course of my remarks to show that Indian Judges had proved in the opinion, if not of Sir Edgar Holberton, certainly in the opinion of such a world famed critic as Lord Selborne that they are as efficient as the best English Judges, and my point is that if their knowledge of the law is equal to that of English Judges they have the further advantage because of the reasons I advanced in my opening speech, that they understand the language, the feeling, and the local conditions of the parties appearing before them better than any English Judges can do. I do not say for one moment that efficiency should be sacrificed, but I contend that conditions in this country have so changed in the last 20 or 25 years, that you can find as able and as efficient members in the legal profession in India as you can import from England or draw from the Indian Civil Service to fill the highest judicial positions. Sir, if I may be allowed to refer once again to the Indian Civil Service, I would like to say that I have made no reflection on that Service. I have said, and I repeat that if it is the best paid Civil Service in the world, it is also the most efficient Civil Service in the world. But in the department of law, and for filling the high position of Judges in the highest tribunals in the country, in spite of what may have been done as a result of Lord Minto's famous Despatch, there is still a feeling that for the post either of Sessions Judges or

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High Court Judges, Civil Servants can be better replaced by members of the legal profession itself.

My Honourable Friend, Sir Edgar Holberton, wanted to know what I meant by 'Indians.' Broadly speaking by Indians I mean all those who are not Europeans. I hope this definition will satisfy him. My Honourable Friend then raised the point with regard to Burma that they did not like the presence of Indians there. He has not told us whether the solitary Indian Judge in the Chief Court in Burma is not giving satisfaction. . . .

The HONOURABLE SIR EDGAR HOLBERTON: He is a Burman.

The HONOURABLE MR. SETHNA: I am very pleased to hear that. I hope, Sir, that as the result of my Resolution there will be more Burmans and perhaps Indians too as Judges in the Burma Chief Court. My friend the Honourable Lala Ram Saran Das gave the instance of a Bengali gentleman who was Judge of the Punjab High Court—Sir Protul Chandra Chatterjee. May I also inform my friend the Honourable Sir Edgar Holberton, that Sir Abdur Rahim, who is at present a Member of the Executive Council of the Governor of Bengal, and whose opinion I quoted in my opening speech, was for years a Judge of the High Court of Madras though he is a native of Bengal. I now come to another name in the Bombay Presidency—Mr. Faiz Tyabji who held the appointment of acting Judge in the Madras High Court; then again Mr. Justice Bannerji, who though a Bengali, was a Judge of the Allahabad High Court . . . .

The HONOURABLE MR. E. M. COOK: He is domiciled in the United Provinces.

The HONOURABLE MR. SETHNA: I thank the Honourable Mr. Cook for the information. The Honourable Sir Edgar Holberton's opinion was that because the majority of Bengalis are from Bengal, the United Provinces men would be opposed to his serving as a Judge in the United Provinces High Court. The Honourable Mr. Lalubhai Samaldas has already pointed out that, so far as the Indian Provinces are concerned, I mean after leaving out Burma, we have no objection to any Indian Judges, be they Hindus, Muhammadans, Parsis or Christians, serving in a Province which is not their own domicile. What we want are more Indian Judges. Sir Edgar Holberton laid great stress on the question of efficiency. I can give him instance after instance of Indian Judges who have done remarkably well. Why then should they not be employed in larger numbers?

Great stress was also laid by various speakers on the fact that I have in my Resolution laid down a definite percentage. In doing so, I have only followed what Government themselves have done. In the case of the principal service, the Indian Civil Service, Government have fixed a minimum of 33 per cent. to be increased by  $1\frac{1}{2}$  per cent. every year. I am, therefore, only following Government, and if, because in the opinion of those who are able to judge the Indian judiciary has done very well, there is every reason why I should ask for a minimum of 50 per cent as a start. I am not content with 50 per cent. and I want it to go on gradually increasing.

I entirely agree with my friend, the Honourable Sir Dinshaw Wacha, that Indians owe a lasting debt of gratitude to England for the manner in which it has taught us to administer justice in this country and we are equally grateful for other benefits. But, at the same time, our rulers have known all along that English Judges were to be for a time and were by degrees to

be replaced by Indian Judges. This is exactly what my Resolution aims at, namely, that because the Indian judiciary have distinguished themselves far better in this particular line than in any other service or any other service, therefore we should fix the minimum at a higher figure than even in the premier service, the Indian Civil Service. I hope I have answered this point to the satisfaction of those Honourable friends who carped at my figure of 50 per cent. as the minimum.

My Honourable Friend, Mr. O'Donnell, speaking for Government quoted a passage from a speech made by the Honourable Dr. Tej Bahadur Sapru in the other House in regard to English Barrister Judges. I did not for one moment say that English Barristers should not come to this country—that might have been so at the other place—for the reasons which the Honourable Dr. Sapru mentioned at that meeting. The presence of more English Barristers in this country will help my point further. At the present moment, as I pointed out in my opening remarks, the predominance lies with the Indian element at the Bar and not with the English at all the important centres, like Calcutta, Bombay, Madras, Allahabad, Lahore, Bankipore. Government are importing Barrister Judges from England without Indian experience. I contend that if more English Barristers come here, and if Government recognise that hereafter Judges will be selected, whether Indians or Europeans mainly from among those who have practised at the Indian Bar, I say many an English Barrister Judge practising in India will rise to the Bench, and this is my reply to the point raised by my Honourable Friend, Mr. O'Donnell.

Referring again to Indian Civil Service Judges, the Honourable Mr. Lalubhai Samaldas taxed me for not having included Sir Raymond West in the list of illustrious names that I quoted. My Friend the Honourable Sir Dinshaw Wacha also named two English Civilian Judges on the Bombay side—Mr. Kinloch-Forbes and Sir Maxwell Melville. However much I respect both my friends, I certainly would accept the opinion of lawyers on a point of this importance to a greater extent than theirs, and I think my legal friends must admit that if Sir Raymond West's name was a household word in the Bombay Presidency, it was more as that of an educationist, for he was Vice-Chancellor of the Bombay University, where he made his name, more than he did as an exceptionally capable Judge. The same may be said in regard to Mr. Kinloch Forbes to whom Sir Dinshaw Wacha referred, that he excelled more as a scholar than as a Judge. However, Sir, this is beside the point. I do not say that the Indian Civil Service Judges were not or are not capable. I do not say that they have not proved efficient; not for one moment. But I do say that, although there have been hundreds of Civilian Judges in the different Presidencies, we have hardly any to compare with the illustrious worthies, Indian and English, whose names I have placed before this Council.

My friend, Mr. Khaparde, anticipated me when he said that I intended to cast no slur on English Civilian Judges, certainly not. I say they have done their work well; but their day is past; things are changing and we must move with the times, and consequently it is that I desire that 50 per cent. of these appointments should be given to Indians and that percentage should go on gradually increasing.

Now, Sir, to come to the most important point in the Honourable Member's reply on behalf of Government. It gave me great gratification to hear him say that the Government of India are not out of sympathy with my Resolution. That is certainly a great thing. I quite realise their

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difficulties; in fact I referred to them myself, technical objections and others. But if as has been said they are in sympathy, it will be a great help if, when this question is finally decided, that sympathy is given practical effect to. My Honourable Friend, Mr. O'Donnell, has said that he proposes to invite the opinion of the Local Governments. I accept that suggestion; and I hope that, when the Honourable Member gets up to speak on my reply, he will give us an assurance that he will endeavour to do so as quickly as possible and that the Government of India in their turn will, also, after consultation with the Home Government, give effect to the recommendations as soon as possible, so that in this service in which I repeat, and emphatically repeat, Indians have done uncommonly well, there will soon be at least 50 per cent. of Indians to begin with and that percentage will go on increasing. With these observations, I shall accept the suggestion of Mr. O'Donnell in his reply if he is prepared to give the assurance that I have asked for.

The HONOURABLE MR. S. P. O'DONNELL: Sir, I can certainly give the Council and the Honourable Mr. Sethna an assurance that Local Governments and High Courts will be consulted with the least delay practicable. I can also give the assurance that the views of the Local Governments and High Courts will be taken into consideration at the earliest possible moment. I cannot of course say what the conclusions of the Government of India will be when they receive and consider the opinions received. I can only undertake that the consultation will be made as rapidly as possible. Local Governments and High Courts will be addressed and copies of this debate will be sent for their information and consideration; and when their replies are received, they will be taken into consideration at the earliest possible moment. I hope that that will satisfy the Honourable Member.

The HONOURABLE MR. SETHNA: That will quite satisfy me; and on this assurance I beg to withdraw the Resolution.

The HONOURABLE THE PRESIDENT: The Honourable Member cannot withdraw the Resolution himself. It is now my business to inquire if the Council will give him permission to withdraw his Resolution.

The HONOURABLE MR. SETHNA: I stand corrected, Sir. I ask for permission to withdraw the Resolution.

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

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## RESOLUTION *RE* CUSTOMS DUTY LEVIED ON ROAD METAL.

The HONOURABLE KHAN BAHADUR AHMEDTHAMBY MARICAIR: The Resolution that stands in my name runs as follows:

'This Council recommends to the Governor General in Council that the customs duty levied on road metal imported from Ceylon for the use of roads maintained by local bodies be cancelled *in toto* or reduced to 50 per cent. of the existing rate.'

This is a subject that affects greatly the interests of local bodies. Since the commencement of the war the scarcity of rolling stock has become so great that local bodies, such as District Boards and Municipalities, were finding very great difficulty in obtaining road metal from quarries in Southern India especially those where the roads are at a very great distance from the quarries. This difficulty is felt in a very serious manner in Municipalities and other Local Boards on the seacoast of the Madras Presidency.

There are two French Ports in the Madras Presidency, *viz.*, Pondicherry and Karikal.

(At this stage the Honourable the President left the Chair which was taken by the Honourable Sir Alexander Murray.)

The Local Boards of the French Government first introduced the system of importing road metal from Jaffna, a port in Ceylon, free of duty and utilising that metal to their roads. Owing to the difficulties our local bodies were experiencing in getting road metal consigned by Railways they followed the example of the French Government and began importing metal from Jaffna. But the British Customs authorities, however, levied a duty of 5 per cent. on the value of the metal landed. This was before the War. The duty was raised to 7½ per cent. during the war, and this rate continued till last year when they increased the charge to 11 per cent., with effect from 1st March 1921. Considering the public nature of the interests served by the import of this metal, the duty now charged *viz.*, 11 per cent. is certainly exorbitant. Metal is not goods imported for trade or profiteering. It is only imported for metalling roads for the convenience of the public.

Local bodies in these days are hampered by several difficulties not the least of which is having to work with a deficit balance and on several occasions they are at their wits' end to find ways and means. Extra taxation of this kind will only add to the financial difficulties of the local bodies seriously. These local bodies are only quasi-Government institutions, and the imposition of such an undue tax by one body on another when both alike serve public interests will be inequitable. Moreover, while the French Town which initiated the system gets the metal cheap, the British towns which followed that system get it dear on account of the duty levied.

I, therefore, trust the Government will see its way to help the local bodies by either cancelling the duty *in toto* or, if this is not possible, at least by reducing the tax by 50 per cent. of the existing rate, *viz.*, by 5½ per cent. This would mean a rate of ½ per cent. in excess of what was charged before the war.

As the Honourable Members of this House who are of mature wisdom and experience know the disadvantages of the present practice only too well, I do not propose to make a lengthy speech but leave the matter entirely in the hands of my Honourable Colleagues.

With these few remarks I commend my Resolution for the acceptance of the House.

The HONOURABLE DIWAN BAHADUR V. RAMABHADRA NAIDU: I heartily support the Resilution.

The HONOURABLE LALA RAM SARAN DAS: I also support it.

The HONOURABLE MR. H. A. F. LINDSAY: Sir, I am afraid that I cannot join my two predecessors in supporting this Resolution, and I must ask the House to consider it very seriously before they accept it. I oppose it with much regret, because I am sure that my Honourable Friend has not quite realised all the consequences that might accrue if it was accepted.

It is realised of course that this Resolution raises to a certain extent principles of protection and free-trade into which the House will not require me to enter in detail to-day. If my Honourable Friend, Mr. Kale, had spoken this morning, he would have explained to us the principle on which the Indian tariff is based. It is entirely a revenue and is not a protective tariff. It is a tariff which is based on a general all-round moderate

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rate of 11 per cent., and is to be distinguished entirely from a protective tariff, which, while levying low rates on raw materials, would levy a considerably higher rate on manufactured products. I ask the Honourable Mover to consider it from this point of view. The bodies to which he refers are at present paying 11 per cent. on their road metal; they are paying at the same time considerably lower rates on a hundred-and-one other products which are essential to their existence. I refer to such manufactured articles as girders for their bridges, the street lamps of local municipalities; or, to take the larger Corporations and Municipalities, the steam-rollers and all the other hundred-and-one articles which are so essential to municipalities and local public life.

Now, Sir, I think that the Honourable Mover will agree that in his Resolution he is asking to have it both ways. If he is speaking sincerely, in the interests of the local bodies, he wants that they should continue to pay a lower rate of duty on the iron and steel goods which they import. But while they pay that lower rate of duty on manufactured goods, it is a little too much to expect them also to pay a still lower rate of duty on raw materials. You cannot have it both ways; it must either be a protective or a revenue tariff, and the principle on which the Indian tariff is based at present is purely a revenue tariff, an all-round moderate tariff on all classes of goods with a few exceptions, such as luxuries and other articles.

There is a further consideration which I press on the notice of the House. If this concession is granted, where are we to stop? It is true that in its present wording it applies only to a comparatively small number of local bodies in Southern India. I should not think that in any other part of the country is road metal imported from Ceylon. I think the Honourable Mover will agree that although the magic word 'Customs' brings this Resolution before the House, it is really of very restricted application. Where, Sir, are we going to stop, if we accept this Resolution? If the South Indian Municipalities and Local Boards are to benefit by it, are the terms to be applied, *mutatis mutandis*, to the requirements of, say, the Calcutta Corporation, Port Trusts, the different local bodies, which are equally in need, no doubt, of financial assistance? I should like, if I could, to show the House even only a few of the hundred-and-one applications which the Commerce Department receive for remission of customs duty on one deserving object or another. These applications are received from local bodies, from charitable and other associations. Perhaps the Honourable Mr. Sethna will remember that only the other day the Bombay Port Trust came up for remission of import duty on a dredger. The Bombay City Improvement Trust also came up for remission of import duty on railway material. Towards all these appeals we must be absolutely consistent. If we are going to give way in one case, we must give way in all, and I should like the House to consider what the effect on our customs revenue would be. This is, Sir, an appeal *ad misericordiam* to the House on behalf of a certain number of the local bodies in South India; but I hope the House will harden their hearts and decide this case purely on the grounds of logic and reason. In conclusion, Sir, I should like to make a suggestion to my Honourable Friend, if he will accept it. It is that he should withdraw this Resolution and, instead, forward the considered opinion of the local bodies he represents to the Fiscal Committee, who have been appointed to examine the whole case of the fiscal policy of India. I should like just to mention in this connection the actual terms on which the Fiscal Committee was appointed and

asked to inquire. It has been appointed on the following terms of reference:

*'To examine, with reference to all interests concerned, the tariff policy of the Government of India.'*

So that I think that my Honourable Friend can assure himself, in view of the very wide wording of the terms of appointment of the Fiscal Commission, that he will receive due consideration from that body.

The HONOURABLE MR. V. G. KALE: Sir, I think that the point of view which has been placed before the House by our Honourable Friend, with regard to the fiscal aspect of the proposition which we are called upon to consider is an important one. Really what the Honourable Mr. Lindsay has said amounts to the fact that in a matter like this, the conflict lies between the fiscal aspect and the general, social and economic aspect of the proposition. At the present moment, the country is confronted with very serious financial difficulties. The Government of India has to lay hands upon every source of revenue it can. While, on the one hand, we are all of us anxious that the cost of living and the cost of production should be reduced, on the other hand, the fiscal needs of the country must be paramount. Certainly, local and other bodies might claim concessions from the Government in order to facilitate their beneficent activities, and I believe that my Honourable Friend here has brought forward this proposition in the interests of such beneficent activities. Consequently, if it were possible for Government, without serious sacrifice of revenue, to meet the wishes of local bodies, certainly Government ought to do it. The difficulty, however, which has been laid before us by the Honourable Mr. Lindsay, is that it will be a kind of a thin edge of the wedge if this concession is to be made to some local bodies, and that there is the certainty of similar demands being put forward on behalf of other bodies. The question will then arise, what will happen to the revenue tariff of Government and whether it will be necessary for them to revise the whole tariff? It would be invidious in any event, for Government to make concessions to one class of local bodies and refuse similar concessions to other bodies; that seems to me to be a real difficulty in which Government is placed. Consequently,

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I should like that my Honourable Friend, Mr. Maricair, should accept the suggestion of the Honourable Mr. Lindsay and ask the Government to forward this proposal for the consideration of the Fiscal Commission, because, after all, the Government of India will have to reconsider its whole fiscal policy in the light of the different interests that are involved in the problem, in the light of the interests of industries and, at the same time, in the light of the interests of the national treasury. All these interests will have to be reconciled and without any prejudice to any of these interests, the general fiscal policy of the country will have to be fixed. In these circumstances nothing will be lost if the suggestion goes to the Fiscal Commission so that the Government will be in a position then to consider how such questions should be dealt with in the future.

The HONOURABLE SIR DINSHAW WACHA: Sir, I should also like to request my Honourable Friend, Mr. Maricair, to agree to the suggestion made by the Honourable Mr. Lindsay. The question involves a very big principle and affects many interests as the Honourable Mr. Kale has so lucidly explained. It affects the imports of building materials, cement, etc., and all these people who are importing these materials will ask for concessions in a similar manner. Where is the Government to stop? I

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only hope that the Honourable Mr. Maricair will understand and appreciate the arguments so impartially put forward by the Honourable Mr. Lindsay and will agree to his suggestion.

The HONOURABLE KHAN BAHADUR AHMEDTHAMBY MARICAIR: Sir, as the Honourable Mr. Lindsay has suggested, I have no objection to the withdrawal of my Resolution with the permission of the House, as he has said it is a matter that will go to the Fiscal Commission for consideration. I also heard that some non-official Members are also in favour of it. But, before withdrawing it, I should like to make a few observations. It is all well and good for the Member on behalf of Government to say that similar concessions will be asked for by the other local bodies, if this Resolution is accepted. My only case before the House is that it is a very small and trifling matter. It cannot be compared with the manufactured articles of steel materials and other things. It is only road metal that has been imported at a very cheap rate, and practically it is only found in places like the Madras coast ports and not in any other place. A comparison of this nature will not go very far ahead.

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

Again, my main object is that there is the French port of Karikal, a few miles from Negapatam, and they are importing this metal free of charge and keeping their roads in good order and condition, while local bodies of the sea-coast towns are really finding it a great difficulty in getting this stuff landed. I am not asking the Government to remit the duty altogether, but I am suggesting that the duty that was levied in pre-war days, that is 5 per cent. and even a half per cent. more, can be levied, as the present duty of 11 per cent. is considered to be very high. I hope that the Honourable Member in charge of the Government portfolio will consider the point I put before him when submitting my proposals to the Fiscal Commission for their consideration.

With these few remarks I withdraw my Resolution with the approval of the Council.

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

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#### PRESIDENT'S RULING *RE* BALLOT FOR RESOLUTIONS BY NOMINATED OFFICIAL MEMBERS.

The HONOURABLE the PRESIDENT: Before I call upon the Honourable Dr. Ganganath Jha to move his Resolution, I must draw attention to a matter that is of some importance. It has apparently escaped attention that the Honourable Dr. Ganganath Jha is an official Member nominated by Government. I understand that on the present occasion and at least on one previous occasion he has taken part in the ballot for Resolutions. Well, that is not strictly in accordance with Standing Order 6. If Honourable Members will refer to that Standing Order they will see that the division of business is business which is Government business and business promoted by non-official Members. I think myself there is probably a defect in the Standing Order. I should like to have been able to rule, but I cannot on the Standing Order as it stands, that business was divided into Government business, that is business promoted by the members of the Government of India, and business promoted by other members. That, however, is not within the Standing Order, and, for future, I shall have to lay down the ruling that, unless and until there is an amendment of the Standing

Order, if an official Member nominated by Government, not being a Member of the Government of India, desires to move a Resolution, he must get time from Government on a Government day and cannot take part in the ballot. I trust that Government will consider any such applications favourably. I think there is undoubtedly some defect in the rule. It can hardly have been intended that Official Provincial Members should not be able to promote any business at all except in Government time. It may have been so intended, but it hardly seems probable, and I hope at any rate that Government will consider that point in any applications they may receive. In the meantime I propose to allow the Honourable Pandit to move his Resolution. I draw attention to the fact that in future, till the Standing Order is changed, he and his fellow Members in the same position will not be able to take part in the ballot.

THE HONOURABLE MR. H. MONCRIEFF SMITH: Sir, may I take it that your remark refers only to Resolutions promoted by Official Members who have been nominated by the Governor General, or does it in fact refer to all nominated Members? A non-official Member who is nominated is none the less, I suggest, a non-official.

THE HONOURABLE THE PRESIDENT: I hardly understood the Honourable Member's point. There are three classes of members; members who are members of the Government of India, as Members of the Executive Council and Secretaries to the Government of India; they are one class. The other class are elected and nominated Members who are not officials. There is the remaining class of Members who are officials and are nominated by Government, but are not directly subordinate to the Government of India. My remarks refer to the last class.

THE HONOURABLE MIAN SIR MUHAMMAD SHAFI: Do I understand, Sir, that your remarks do not refer to non-officials who have been nominated as Members of this Council?

THE HONOURABLE THE PRESIDENT: Obviously not; they are non-officials.

#### RESOLUTION *RE* SEARCH FOR MANUSCRIPTS IN BRITISH INDIA.

THE HONOURABLE DR. GANGANATH JHA: Before I move this Resolution, I may be allowed to explain, in regard to what has fallen from you, Sir, that, in connection with the first Resolution which I had the honour of moving before this Council last year, I did approach the Member of Government concerned with the request that I might be allowed time on an official day. I did not hear anything in reply, so I thought that I was not perhaps entitled to time on an official day. So the thing has gone on.

I beg to move, Sir, that—

‘This Council recommends to the Governor General in Council that steps be taken for carrying on a systematic search for manuscripts in British India, and for the acquisition or transcription of such as may be available for these purposes.’

We know, Sir, that much has been done on these lines by the Government of India ever since the early seventies or perhaps the later sixties. We have, if not quite a hundred volumes, very nearly a hundred volumes, containing notices of Sanskrit manuscripts found by eminent scholars in Bombay and Bengal. Madras has come in only latterly, and it is still going on with its work; but, unfortunately, the work in Bengal and Bombay has practically ceased.

[Dr. Ganganath Jha.]

In the United Provinces and the Punjab practically nothing has been done. Some slight attempt was made long, long ago, but it did not come to very much, and it was for some reason or other stopped. At the present moment it is only the Madras Presidency that is doing any justice to this kind of work. The volumes that have been published bear testimony to the fact that there is a very large amount of manuscript treasure lying buried in the country. That they are important of course need not be argued. Even when the work was done, Sir, in the various Provinces it was not done on any systematic basis. It was left to the predilections and the prejudices of individual scholars, so that the search was not made actually on scientific lines. That is why I am moving this Council because if the work is systematised by the Central Government in the same manner as it is systematised in regard to the Archæology Department, the work would be done on less partial lines and the search or the survey would be more complete than it has been in the past. But more important than the actual notice of manuscripts is the work of acquiring these manuscripts and taking steps for their safe custody. Even in my own limited field of study, I have come across several manuscripts that we find mentioned in these volumes as having been found with a certain owner—the full address of the owner is given, every detail is there, but when I have tried to find these manuscripts they could not be found; and the reason is obvious. In this country, Sir, specially in the villages, these manuscripts are subject to various kinds of ravages—water, white ants, and above all, fire. Most of the houses in the villages are thatched houses, and during these months that are coming now, April and May, entire villages are often burnt down and a very large number of manuscripts have been irretrievably lost in this fashion. Of course, Local Governments here and there have made some small provision for the purchase of manuscripts, as they do for the purchase of printed books; but I do not know if any Province makes anything like an adequate provision for this. In my own Province—the United Provinces—we had till lately only a grant of Rs. 500 which did not go very far. The grant has been recently increased, but even with that it will not be at all adequate. The work is very urgent. Every year that passes we lose so many manuscripts which cannot be recovered, so that some steps have to be taken by the Central Government for the preservation of these treasures. When funds will be available it is of course not for a man like me to say; but I hope whenever funds are available this subject will not be forgotten, because there are not many people directly interested; that is why I thought it to be my duty to bring it forward before this Council.

A friend of mine—perhaps in a jocular spirit, but I do not know whether it was altogether in a jocular spirit—proposed that a suggestion might be made to Germany that a portion of the reparations due from that country may be made in the shape of the valuable manuscripts which lie in the royal archives at Berlin. I do not know whether that is a practical suggestion, but if it were we should certainly recover some very valuable treasures.

The HONOURABLE MIAN SIR MUHAMMAD SHAFI: Sir, it is not necessary for me to assure the House that the Government of India are in entire sympathy with the object which the Honourable Dr. Ganganath Jha has in view. Indeed Honourable Members who are aware of what the Government have done in the past in this direction will readily recognise that the policy advocated by my Honourable friend has already been acted

upon by Government for many a past year. As far back as 1868, the Government of India made a permanent grant of Rs. 24,000 a year for the discovery and preservation of records of ancient Sanskrit literature. This grant was provincialised in the year 1904, and up to this time a sum of Rs. 12,72,000 has been spent towards the object of this grant. Again, a grant of Rs. 5,000 a year was sanctioned for five years in 1904 and has been regularly renewed after that date for the acquisition and cataloguing of Persian and Arabic manuscripts, and up to this time a sum of Rs. 90,000 has been spent in that connection. Again, in the year 1904, a grant of Rs. 2,000 a year for five years was sanctioned for the purchase of Arabic and Persian manuscripts of exceptional value and interest. The House will see that under this head the Government of India, in pursuance of that grant, have spent a sum of Rs. 10,000. Again, a non-recurring grant of Rs. 5,000 was sanctioned in the year 1906 for the purchase of Arabic and Persian manuscripts of exceptional value and interest, and a grant of Rs. 6,000 a year was sanctioned in 1914 for the editing of the Bardic Chronicles by Dr. Tessotory and a sum of Rs. 34,500 was spent under that head until the year 1919 when the Doctor died and in consequence of this the work had to be stopped. Honourable Members will thus see that, under the various grants which have already been made by Government, a sum of Rs. 14,11,500 has been spent up to date. I am sure the Honourable Mover will recognise that in the existing financial stringency it is impossible, at any rate for some time to come, for the Government to make any further grants in this direction. The grant at present amounts to Rs. 29,000 a year, and it is impossible for us to do anything more; but he may rest assured that the systematisation of this work which he has in view will be borne in mind, and I trust that with that assurance the House will be satisfied.

THE HONOURABLE DIWAN BAHADUR RAMABHADRA NAIDU: Sir, I rise to heartily support this Resolution brought forward by my learned friend, Dr. Ganganath Jha. The subject, since it emanates from such a profound Sanskrit scholar as he is, must necessarily have the careful consideration of us all.

Lord Curzon must be thanked for the preservation of monuments in India. Had it not been for his efforts, many buildings, which have a history of their own, might have been, by this time, destroyed.

Along with the preservation of monuments, manuscripts of antiquity must also be taken care of. It is needless for me to say that many works of rarity and antiquity are left in oblivion in the houses of oriental scholars. Poverty and conservatism are the chief causes why those rare works have not yet seen the light of day. Works have been written on cudjeon leaves. If proper care is not bestowed on them, they are likely, in many cases, to become an easy prey to white ants. Their value would, thus, be lost to the public.

Although there are some societies and libraries which are taking a deep interest in securing those ancient works, yet they are not, owing to the paucity of funds, able to do full justice to the task. For instance, the Tanjore Palace Library contains many valuable works on Art, Literature, Science, Astronomy, Music, etc. I hear that even such a library finds it difficult to meet the cost of securing the services of competent pundits, who can transcribe, from palm leaves into manuscripts, rare and unprinted works found in that library and elsewhere and remunerate their labours. Similar difficulties are felt by the Madura Tamil Sangam and the Madras

[Diwan Bahadur Ramabhadra Naidu.]

Telugu Academy which are trying to bring out, with their limited means, certain rare works.

With a view to secure rare manuscripts which are still unprinted and which are likely to be lost to the public, may I appeal to Government to provide funds for the acquisition, by purchase or transcription, of such manuscripts as may be available for the purpose so that a systematic search may be carried on in British India? The value of such treasures may be well preserved to the oriental scholars and to the reading public. I venture to say that this forms one of the important duties of the State. For instance, many of the Native States, such as Mysore, Baroda, Travancore, have taken the trouble of searching for ancient manuscripts and of making them available to the public by printing them at the cost of their States. I once more say that State aid is necessary and legitimate in this very important matter.

The HONOURABLE DR. GANGANATH JHA: Sir, I have got nothing to say except to thank the Honourable Member for his assurance. I beg to withdraw the Resolution.

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

The Council adjourned for Lunch till 2-30 P.M.

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The Council re-assembled after Lunch at Two-thirty of the Clock, with the Honourable the President in the Chair.

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#### RESOLUTION *RE* CONTRACTS OF THE EAST INDIAN AND GREAT INDIAN PENINSULA RAILWAYS.

The HONOURABLE MR. SETHNA: Sir, I beg to move that:

'This Council recommends to the Governor General in Council (a) that notices be given to the East Indian and the Great Indian Peninsula Railway Companies to intimate that on expiry of their present contracts the same will not be renewed, and (b) that arrangements be taken in hand for the management of these Railways directly by the State after expiry of the existing contracts.'

In November 1920 the Secretary of State appointed a Committee to go into the question of Railways generally in this country, their management, their finances, the control of the Railway Board, and other questions germane thereto. This Committee, known as the Acworth Committee, published its report about four months back. It is, as we know, a very valuable document, and if all the recommendations made therein are given effect to, I am sure that the condition of railways in this country will very greatly improve. The Government of India, I am glad to find, has not been slow in the matter. They have already appointed a Committee to consider the recommendations made by the Acworth Committee in regard to finding funds for the rehabilitation of the railways. The report of this Committee was published some weeks ago, according to which Government are asked to find 30 crores a year for the next five years, for the purpose of the rehabilitation of the Indian Railways.

At the present moment there are in this country three Railways which are State-owned, as well as State-managed, namely, the North-Western, the Oudh and Rohilkhand, and the Eastern Bengal. Then we have eight

Railways which are practically State-owned but Company-managed. These are the East Indian, the Great Indian Peninsula, the Bengal Nagpur, the Bombay, Baroda and Central India Railway, the Madras and Southern Mahratta, the South Indian, the Assam Bengal, and the Burma Railway. Of the many references made to the Acworth Committee, the most important reference was in regard to the management of these eight railways; whether they should continue as at present, or whether the management of these railways should be taken over by Government. The great bulk of the Indian public have been clamouring for the management of these railways being transferred to the State. Five members of the Acworth Committee, not one of whom is connected with the management of any of these railways, and the Chairman amongst them, Sir William Acworth, recognised to be one of the greatest experts on railway questions in the world at present, have all favoured the Indian view. The other five, amongst whom a very large number (I believe four) are practically connected in one way or another with company management at the present moment, favour the continuance of company management.

Now, Sir, realising that private enterprises all the world over are always carried on better because of the personal interest the owners have therein, and because they employ their own moneys, than organisations managed by the State, it would strike a person as very strange that Indian public opinion is so much against Company-managed railways; but the reason, however, is evident to those who will give the matter some thought and consideration. Company management of Railways in India is very different from what it is in other countries, because the companies which manage these railways do not manage their own property; they have very little financial stake in them, and consequently it is a misnomer to call them Company-managed Railways and to expect that these concerns should be worked as private enterprises as we understand them. They are purely and simply State Railways, inasmuch as they are owned by them, but they are given to some companies to manage, and these companies, for the reasons I have explained, cannot take the same interest in them as if they were private enterprises in the sense that all the share capital was subscribed by them.

In India, railways at first were guaranteed Company-managed railways. They were in that sense private enterprises. The concessions which they got from Government were, first, in regard to the period for which they could carry on their work, and secondly, Government guaranteed a certain return on the share capital, provided that the income received from the railway earnings did not reach a minimum figure. When the concessions expired, Government acquired these railways or retained ownership, but, instead of working them themselves, they gave them to the same companies or to newly formed companies, who took over the management of these concerns. Therefore the companies now, as compared with the railway companies when first started, are companies which cannot by any means be considered as private enterprises, which the old companies really were. For example, the first contract of the East Indian Railway expired in the year 1879, and this company was bought out for 32½ millions sterling. Payment was not made in hard cash, but, in lieu of these 32½ millions sterling, one and a half millions roughly were given as an annuity from the 1st of January 1880 till the 14th of February 1953. The correct figure is £1,473,500 per annum, but out of this one-fifth was made deferred, and the holders of this portion were given stock to the value of 6½ millions sterling, and they constitute the present East Indian Railway.

[Mr. Sethna.]

The lock-up of money in these eight State-owned and company-managed railways amounts to 261½ millions sterling, of which only 24½ millions sterling or 9 per cent. is the share capital. The remainder is all loan capital or Government money lent out at fixed rates of interest or on the profit-sharing basis. Now I ask where else in the world will 91 per cent. of the shareholders delegate their rights to only 9 per cent. of the shareholders to carry on the management of these concerns? and this is exactly what the company-managed railways are doing at the present moment in this country. From the explanation I have given the Council will see that shareholders in these railway companies or the company-managed railways are neither shareholders nor private companies in the general and ordinary acceptance of the term. Even debenture holders of these railways are not debenture holders, as we understand the expression, for there are no trustees to look after the interests of the debenture holders with the right to foreclose in case of non-payment of principal or interest. Therefore the property which is entrusted to these companies is purely State property and, because they are practical strangers who are asked to look after these concerns, they have got to ask the consent of Government in every little thing they do, and it would be futile to expect them to carry out their work and their duties as if it were their own property.

The position in India, therefore, amounts to this. We have got to decide whether we are to have all our railways privately owned and managed or State-owned and State-managed. Now, Sir, the first alternative is ruled out of order for the good reason, as I have explained, that these railways are practically almost entirely owned by the State. I know that in other parts of the world it is either one way or the other. For example, in the United Kingdom as well as in the United States of America, all these railway enterprises are private enterprises and are managed by private corporations, of course under Government control. In Japan and Prussia it is otherwise. There, they are all State-owned and State-managed. Each system has its defects and its merits. The question with us, therefore, narrows down to one of management because our railways are practically all State-owned. As I have observed public opinion has been entirely in favour of these companies being taken over by the State on the due dates for management by the State.

The Indian public is definitely of opinion that these company-managed railways have carried on their concerns without much regard to Indian interests. If these company-managed railways are run by the State, then the Legislature, as it is now constituted, will be able to see that none of the injustices which have prevailed in the past will occur in the future. For example, the Acworth Committee Report points out in paragraph 182 that out of 1,749 higher appointments in the railway only 182 are held by Indians. If they are State-managed, the Legislature will see or will arrange that proper training is given to Indians so that by degrees they will qualify to fill not 182 appointments, but practically the bulk of these higher appointments. Another point in support of my contention is that, if they are State-managed, the Legislature will be able to exercise a greater control than it is doing to-day in the matter of railway stores in connection with these railways being purchased in this country, and, consequently, some crores of rupees being saved annually. In addition to this, there are many other advantages which the public could enforce by means of the Legislature if the State had the management of these railways, and I refer, in particular, to more comforts for third class passengers.

Now, Sir, the contracts of these eight railways expire on different dates. The first two expire in 1924 and 1925, respectively, and they are the East Indian and the Great Indian Peninsula Railways. The Council will be interested to know the dates when the contracts of the other railways expire. They are: Burma, 1928; Assam-Bengal, 1931; Madras and Southern Mahratta, 1937; Bombay, Baroda and Central India, 1941; the South Indian in 1945, and the Bengal-Nagpur in 1950. It is fortunate that the two contracts which expire the soonest are those of two very important lines, namely, the Great Indian Peninsula and the East Indian. I say they are important lines because, between them, they have a mileage of 6,000 miles, which is, roughly, one-third of the mileage of these eight companies. Besides, they run through most important parts of the country; they connect the two leading cities, namely, Bombay and Calcutta, and, consequently, the two biggest ports in the country, Calcutta and Bombay. Both these lines also run up to the capital in Delhi. The East Indian is, of course, the most important trunk line. It runs through the fertile Gangetic Valley; it passes through three provinces and serves a population as large as that of the United States. The East Indian has the largest share of the carrying of the coal trade in this country, and there is no reason why the East Indian, which perhaps is the best paying of all these railways, should any longer be worked by a company and not by the State. Its working contract expired on the 31st December 1919, and previous to that public opinion declared itself in favour of the State taking it over; but a five years' extension was given to it, which time expires in 1924, as I have already mentioned. Therefore, the time is now drawing nigh for the Legislature and for the Government to decide whether they are going to exercise their right of taking over the concern and managing it themselves, or allowing it again to be managed by the company. If there were any doubts in the past as to whether company management was superior or inferior to State management, I am sure there are no doubts now after the Report of the Acworth Committee which is so clear on the point. I may be told that the Committee are divided in their opinion almost equally, but I will repeat that we cannot overlook the fact that the opinion of those who favour company management is perhaps biassed, for the good reason that four out of the five members are themselves connected with company managements.

Now, Sir, in regard to the East Indian Railway, I will just quote a paragraph from the Acworth Committee's report which will prove interesting to the House. In referring to the East Indian Railway, it says:

'The entity known as the East Indian Railway Company is not, in the ordinary sense of the word, a railway Company at all. Not only does it not own a mile of railway nor a single engine, but it is not joint owner even to an infinitesimal extent of the East Indian Railway undertaking. The East Indian Railway belongs lock, stock and barrel to the Government of India. If, on the termination of the latest contract in 1924, the Secretary of State declines to renew the contract, the Company merely expires. It hardly seems to need to be wound up, for it will possess no assets. The *quasi*-shareholders, the deferred annuitants will revert to the position of ordinary annuitants. If the Company survives it will only continue to exist as a machine for the distribution to the annuitants of the annual payments due to them.'

Now let us examine the position in regard to the Great Indian Peninsula Railway. The situation in regard to this railway is that it was started in 1850 and had concessions for 50 years expiring in 1900, but with the option to Government of buying it out in 1875. Long before 1875 two Governors General one after the other—Lord Mayo and Lord Lawrence—in a series of Despatches pointed out to the then Secretary of State for India, the

[Mr. Sethna.]

Duke of Argyle, that it was absolutely necessary, as far as India was concerned, that the railway should be State-managed. That view was accepted by the Secretary of State, and yet the same Secretary of State—I mean the Duke of Argyle—without consulting the Government of India, without making any reference to them and in total disregard of the interests of the Indian tax-payer, secretly towards the end of 1869 entered into a fresh contract with the Great Indian Peninsula Railway giving it a fresh lease of life for the next 25 years. At the end of those 25 years—namely, in 1900—Government did not take over the Great Indian Peninsula Railway. Then the price was fixed at 34½ millions sterling which was not to be paid in hard cash but converted into annuities of 1½ millions sterling—the exact figure being £1,268,516, with the proviso that although the contract had been extended to 1950, Government could come in, if they chose, in 1925; and because 1925 is drawing very near, and for the reasons I have explained, I propose that similar notice be given to the Great Indian Peninsula Railway. The Great Indian Peninsula Railway in the year 1900 when the new arrangement was made brought in no new capital, but by the artificial system of capitalising a fraction of the annuity and the creation of capital, stock was issued to the amount of £1½ millions. This £1½ millions is the value of £67,047 which is a portion of the annuity, and although this amount is fixed at £1½ millions strange to say that, for the purposes of dividing surplus profits, the nominal share of the Great Indian Peninsula Railway was to be reckoned, not at £1½ millions, but at £2½ millions. It would be interesting to know how this figure was arrived at. It was not arrived at on the total outlay on the line or the actual value of the road, of which no proper computation was made or particulars given to the public. The old capital was only £20 millions and the Company was for a series of years working at a loss. Yet when the Government gave it a new lease of life, the purchase price was fixed to include a premium of £15 millions on the original value. Surely the Great Indian Peninsula Railway, as I have tried to show the Council, has been unduly favoured and unduly favoured at the expense of the Indian tax-payer.

The least, therefore, to my mind that the Government can do is not only to end the contracts, but to take in hand the question of how they are themselves to manage these railways. If Government, therefore, accept the first part of my Resolution, the second will follow as a natural consequence; and if the Government do so they know well enough they will be respecting Indian public sentiment in this matter.

The HONOURABLE MR. C. A. INNES: Sir, I am intervening at an early stage in this debate because I hope that by doing so I shall be able to save the time of the Council.

The Honourable Mr. Sethna's Resolution falls into two parts. In the first part he recommends that notice be given to the East Indian and Great Indian Peninsula Railway Companies that on the expiry of their present contracts the same will not be renewed. It is quite unnecessary for the Council to make any recommendation to this effect to the Government of India, for I am advised that the present contracts of these two railways terminate automatically at the end of December, 1924, and in January, 1925, respectively. There is no necessity for us to give any notice at all. At the same time, I admit that when these contracts do come to an end some change of management is probably inevitable. I think that everybody in this Council will agree that we must attach very great

importance to the unanimous recommendation of the Acworth Committee that the system at any rate of Home Boards must be discontinued. Presumably, therefore, there must be some change of management, whether that change of management takes the form of State management or management by companies domiciled in India; and if we are to have a change in management, it is obvious that we must make up our minds as quickly as possible, for it will take time, a long time, to work out the arrangements between the Government and the railways. I agree, therefore, with the Honourable Mr. Sethna that we must come to a decision in regard to the future management of these two railways with the least practicable delay. At the same time, I do not advise this Council to be induced by the arguments of the Honourable Mr. Sethna into committing itself hastily either to the system of State management or to management by a company domiciled in India. As the Honourable Mr. Sethna has told us, the Acworth Committee was sharply divided on this very question. Half the members favoured management by the State; half the members advocated some form of company management. But, Sir, it is important for this House to remember that that half of the Committee which recommended management by the State made their recommendation conditional upon the acceptance by the Government of certain other proposals. The proposals I am referring to are—first, that railway finance should be separated from general finance; secondly, that a separate Member of Communications should be appointed, and that the whole of the Railway Board should be reorganised on a much more liberal scale than at present. Now, the

Honourable Mr. Sethna was a Member, a very useful Member,

3 P.M.

if I may be permitted to say so, of the Railway Finance Committee; and that Railway Finance Committee has recommended that one of these important proposals made by the Acworth Committee should be postponed for the present, namely, the proposal that railway finance should be separated from the general finance; and as regards the other recommendations the Government of India have not yet been able to come to a decision. We have still to decide whether we are going to have a separate Member for Communications, or whether we are going to reorganise the Railway Board as proposed by the Acworth Committee. Therefore the time is not yet ripe for this Council to accept the recommendation of the Committee that we should commit ourselves to State management. We have to clear the ground by deciding these other preliminary proposals first. That is my first difficulty; and that is a reason why Government are not in a position to-day to commit themselves on the subject of the Honourable Mr. Sethna's Resolution; and that being so, I wish to make what I consider a very fair offer. The question we are discussing to-day is one of the most difficult questions. It has been discussed for years past, and as the Acworth Committee shows it is a question on which there is room for a fair difference of opinion. I am quite sure that there are many Members in this Council to-day who are entirely opposed on principle to State management; I am also sure that there are many Members on this Council who are entirely in favour of State management. Now, I suggest that when we have a difficult question of this kind which raises many intricate and complicated issues, the soundest plan is to discuss those questions, not across the floor of a House like this, but across a committee table. The Acworth Committee, as the Council knows, recommended as one method of bringing the railway administration into touch with public opinion that a system of local Advisory Councils should be established in connection with the different railways in India and that at the apex of the system there should be a Central Advisory Council at the headquarters

[Mr. C. A. Innes.]

of the Government of India. The Government of India entirely accept that recommendation as regards the Central Advisory Council; they also accept the proposals of the Commission in regard to the interests which should be represented on the Central Advisory Council. The only point on which we differ from the Acworth Committee is how exactly we should constitute the Central Advisory Council. We feel that in the two Houses of the Legislature those interests are sufficiently well represented and that by selection from these two Houses we can get a Central Advisory Council which will be of great value; and, therefore, the Government of India have decided to convert, provided that the members agree, the Railway Finance Committee, which has already submitted, I think, a very useful report, into this Central Advisory Council. My proposal is that, before asking this Council to come to a final decision upon what is a very difficult question, we should be allowed to discuss this question with our Central Advisory Council. When we have done that, then we shall be in a position to formulate our final conclusions; and I am quite prepared to say here and now that before we do definitely come to a decision we are prepared to give the Legislature an opportunity of expressing their opinion. I think the Council will agree with me that this is a fair offer and also that it is a wiser way of dealing with this difficult question than if we set to work now to come to a decision upon it.

The HONOURABLE MR. SETHNA: Sir, I am obliged to the Honourable Mr. Innes for the explanation which he has given in regard to the attitude of Government on the question which I have brought up. I find, and find with satisfaction, that Government are in a very conciliatory frame of mind in regard to this matter and that they are not prepared to commit themselves in favour of any existing vested interests. As they have declared an open mind on the subject, and also because they propose to refer it to a committee the personnel of which I know, I think it will be best for me to accept the suggestion made by the Honourable Member; but I hope that the deliberations of this Committee will start immediately, so that Government will be in a position to know long before the due dates as to what exactly they are going to do and that there is not going to be any loophole left at the last moment to say that, because the committee has not arrived at any practical results, consequently a further extension of the contracts be given to the one company or to the other. With this hope, Sir, I ask the permission of the House to allow me to withdraw the Resolution.

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

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#### RESOLUTION *RE* INCREASE IN NUMBER OF INDIANS IN STATE-MANAGED RAILWAYS.

The HONOURABLE MR. V. G. KALE: The Resolution which I have to move, Sir, is:—

‘This Council recommends to the Governor General in Council the necessity of taking early steps to increase the number of Indians in the higher grades of service of the State-managed Railways, and of devising means to secure the adoption of a similar policy by companies managing State Railways.’

Sir, I am afraid I shall be giving my Honourable Friend, Sir Edgar Holberton, a shock by adding to the series of Resolutions which have been

moved in this House and elsewhere in connection with the rapid Indianisation of services in this country. But I cannot help bringing this proposition before this House because I feel that it is entirely in consonance with the policy which has been accepted by Government in principle in other respects. The proposition only asks Government to apply the principle of Indianisation to the case of State railways managed by Government and to devise means of seeing that a similar policy comes to be adopted by State railways managed by companies. In the case of railways, as in the case of the other departments of the administration, the final goal that is to be attained has been admitted, namely, that a very large number of Indians who are capable of discharging their duties efficiently and satisfactorily, must come to be appointed in the course of the next few years, so that without making the administration suffer in efficiency, the aspirations of the Indian public will be entirely satisfied. I think in the case of the railways also there is no difficulty with regard to the acceptance of this general principle; and as a matter of fact, the Government of India itself laid down this principle so long ago as in the years 1878 and 1879. In one of the Resolutions issued by the Government of India in 1878, it was clearly enunciated—

‘The Secretary of State has frequently impressed on the Government of India the expediency of employing natives of India in posts of importance to a larger extent than it has hitherto been found practicable to do, and the Government of India has had the subject under serious consideration.’

The next year, namely, in 1879, in one of their Resolutions, the Government of India said:

‘It shall be clearly understood that all posts in the Revenue establishments of State Railways are open to Natives of India, and as men in every respect qualified for the superior grades are found, the Government of India will be glad to receive from local Administrations recommendations for their employment in suitable positions.’

Thus, 42 or 43 years ago, the general lines that were to be followed by Government in the matter of the appointment of Indians to the higher grades of service in the Indian Railways, were clearly laid down. But what do we find is the result? We find that the policy was not given effect to, and the attention of the Government has been drawn to that question from time to time. The injustice involved to Indians who do not get adequate opportunities of rising in railway service, has been exposed times out of number, and references to this will be found, for example, in the Report of the Public Services Commission and in the Report of the Industrial Commission. The Public Services Commission report drew attention to the fact that a disproportionately large number of Europeans and Anglo-Indians has come to be employed in the State railways, and that the number of Indians employed in the higher grades was exceedingly small. The Commission, therefore, made a recommendation that the number of those who are appointed or are recruited for in this country should, in the near future, be increased to 50 per cent. That was the recommendation of the Public Services Commission itself. This recommendation was made in the year 1913. Then the same question attracted the notice of the Industrial Commission, which in the course of its inquiries, found that in the Railway workshops and elsewhere the places of Foremen and others were exclusively held by non-Indians: in fact, Indians were nowhere in some of these appointments. It was also recommended by the Industrial Commission that early steps should be taken to facilitate the appointment of Indians in larger numbers to these positions.

I think it is not necessary for me to dwell upon the feeling of injustice which prevails in the public mind in the country over this question. I do

[Mr. V. G. Kale.]

not wish to refer to any of the strikes which have taken place on the Indian railways, because I am anxious to avoid all reference to such matters as are likely to complicate and intensify our difficulties at the present moment. However, I am bound to say that there is a great deal of dissatisfaction in the minds of Indians employed in the railways, both State and Company-managed, with reference to the treatment that is meted out to them in the matter of appointment, salaries, promotions and so forth.

Now it is absolutely necessary that all ground for dissatisfaction on this score should be removed at the earliest opportunity, and this can be done by Government laying down a policy as to how the number of Indians in the higher grades of the Railway services may be increased. The attention of the country was glaringly drawn to this fact also by the Report of the Acworth Committee. The Committee has published a statement showing how small, how absurdly small, is the number of Indians occupying what are called superior positions in the Railway service. I must frankly admit that in the matter of the appointment of Indians to higher posts, State Railways managed by the State itself, have been more liberal than railways managed by companies: in fact, out of a total number of officers of about 1,750—to be exact 1,745—the percentage of Indians is 10 on all railways, State Railways managed by the State and managed by companies. In the case of railways managed by the State, the percentage of Indians in higher posts is 14·60, so that the position of Indians in State-managed railways is certainly better than their position in Company-managed railways. Some of the companies are also liberal in this respect, but I am very sorry to find that others, like the Great Indian Peninsula Railway, are most niggardly. Taking the Great Indian Peninsula Railway we find that the percentage of Indians in higher posts is only 4·98, and this after we have had railways in the country which have been the property of the State, for over two generations.

Now, it is said that it has not been possible to appoint more Indians to these higher posts, because qualified candidates are not forthcoming. Indian candidates, it is argued, do not possess the necessary fitness that is required for certain positions; and in fact I find from the Classified List of the State Railway Establishments and other returns that some of the Departments of the Railways are absolutely closed to Indians. 'No Indians admitted' seems to be the motto written on the doors of those Railway departments. The Carriage and Wagon and other departments which are supposed to require technical knowledge, are absolutely closed to Indians; but what can be said with regard to other departments where such training or expert knowledge cannot be urged to be absolutely essential? Are not Indians qualified even for these posts?

It will be interesting to notice that in the case of the Mysore State Railway, out of about 28 superior posts almost 23 or 24 are occupied by Indians. The most responsible positions are occupied by Indians there, and I find that they are doing efficient and satisfactory work. I do not see why, under these circumstances, similar satisfactory work cannot be done by Indians on other railways. The Railway Committee has itself had a good deal to say with regard to this point. It was also struck by the contrast between the appointment of Indians and the appointment of non-Indians, and it has made important recommendations as to what should be done in order to facilitate the admission of more Indians into the railway service.

(At this stage the Honourable Sir Dinshaw Wacha took the Chair.)

I will not read out to you any lengthy extracts from this report, but it will be sufficient if I draw the attention of the Council to one or two paragraphs of the report. The Committee's Report, at one place, says:

'We hold that the appointment of Indians to high administrative posts, and the promotion of specially meritorious Indians from subordinate to higher places will be further secured under the scheme than on State-managed Railways. The proposal will afford the educated Indians the best possible opportunity and facilities for learning the management and control of large commercial and public undertakings, and give them an opportunity of becoming equally competent with trained Europeans in direction and management.'

This extract I have read out to you is from the opinion that has been expressed by some of the members of the Committee, and I am interested to find that those members of the Committee who wished that railways should be managed by companies and not by the State have, as it were, been throwing this bait before the Indian public. They, in effect, say:

'If you leave the management of these railways in our hands, then what we propose to do is to give you, Indians, greater facilities and greater opportunities of training and of rising high in the service in the railways.'

That is an admission which shows that the companies have not done what they should have done, in the past, because they say:

'If you allow us to manage the railways, we are going to do this for you.'

I ask them, 'What prevented you from following the same policy in the past?' That is a pertinent question that has got to be asked, and certainly it may be stated that they have neglected their duty in this behalf. And the majority of the Railway Committee has made a very reasonable and a strong recommendation in this regard. It says:

'That they have not been advanced to higher posts, that even in the subordinate posts of the official staff there are not more of them, has been a standing subject of complaint before us. With so natural a grievance we fully sympathise. And we agree with the Railway Board in desiring that the grounds for it should be as far as possible removed. Still, facts are stubborn things. The appointment of Europeans to the superior posts in the railway service is unavoidable unless and until Indians qualified by training and experience are available to fill them . . . . Until recently, opportunities for the technical training of Indians were lacking. And in the absence of opportunities, naturally few Indians were able to reach the standard required for the superior posts. Certain opportunities are now being provided.'

Lastly, the Committee says:

'We are also of opinion that the system of selection and training of the young men appointed as probationers in the Traffic Department in Indian railways needs reconsideration. The whole subject is one which in our view should be in the special charge of the Railway Commission', and so forth.

Now, I want to inquire from Government as to what they have actually done to give effect to the principle which they have themselves laid down. If you scan the pages of the Classified List of the State Railways establishment, you will turn over page after page, and sometimes you may stumble upon an Indian name. This is the case in many of the departments of the Railways where superior posts are concerned; but, even in the matter of the subordinate posts, the upper subordinates as they are called, the percentage of Indians is not very high. The percentage would work out, say at something like 20, 25 or 30 per cent. in the case of different railways. The position might vary from railway to railway, but I think I am justified in making the statement that, even in the case of upper subordinates, the policy of Government has not been very just to Indians. The request I am making to Government is a very moderate one, namely, that they should

[Mr. V. G. Kale.]

take early steps to increase the number of Indians in the higher grades of service in the State-managed railways. I am not laying down a time-limit or any percentage—30 per cent., 40 per cent. or 50 per cent. All I want is that immediate steps should be taken to initiate a policy of allowing the admission of more Indians into the higher grades of the services, and it may be necessary for this purpose to provide facilities for training. I am told that such facilities are being provided on certain railways, but, at the same time, I find that those facilities are not as attractive as they should be to the type of Indian who is expected to be attracted to the railway service career.

Then, with regard to the other railways belonging to the State but managed by companies, it may be argued that the Government of India can do nothing, that the companies are their own masters and they alone can decide whom they will employ and whom they will not employ. It may be stated that under the contracts with them, the Government cannot interfere in the internal management of the companies. To a certain extent it may be true, though I am not inclined to accept the proposition as a whole, because I am told that the Government of India does exercise some control in this respect and that the appointments made by these railway companies have got to receive the assent, the confirmation, of the Government of India. That being so, and the Government of India themselves having laid down a policy for their own railways, they can bring pressure to bear upon companies managing their railways to follow the same policy. They can say to the companies :

‘ Well, we have laid down this policy for ourselves; we have been pursuing this policy for a very long time and, inasmuch as there is a very general demand and a very reasonable demand in the country, a demand which has been further strengthened recently by the recommendations of the Railway Committee, inasmuch as there is such a demand in the country, we also expect you to follow a just and generous policy with regard to the appointment of Indians to the higher grades, not only to what are called superior posts, but also to what are called the posts of upper subordinates.’

I do not, therefore, feel that it will be difficult for Government to devise means for securing the adoption of a similar policy by companies managing State railways.

I will not take more time, because I believe that the principle I have discussed is a principle which will be found acceptable by Government and, if they really make a serious effort to remove the dissatisfaction which, I believe, legitimately exists, then the policy of the Indianisation of the railway services will be satisfactorily carried out. I recognise that there will be certain posts to which it may not be possible to appoint Indians forthwith and that for certain posts the officers may have to be imported from abroad. I am not claiming that Indians should be appointed forthwith to all these posts, but it is a reasonable proposition to say that, where qualified Indians are to be found, there, such appointments in larger numbers should be made. But there is the danger of our arguing in a vicious circle. The position is this, no appointments are made of Indians to the higher posts, because qualified men are not forthcoming, but qualified men are not forthcoming because Indians do not know whether the appointments will be made. No young man would care to go in for a particular training unless he has the prospect of being appointed to positions for which he may be qualifying. I know from personal experience that that is a difficulty of many young men in this country. They would be prepared to undergo all the trouble and labour that is involved in receiving training in a railway workshop. Educated people will

be willing to go in for all that, provided there is a definite prospect that they will be appointed to higher and responsible posts in the railways; but in the absence of a reasonable certainty of such a prospect of a very great proportion of them being appointed to these posts, naturally there is no encouragement to Indians to go in for the kind of training that is necessary. Therefore, the Government has got to do two things. They have to decide to appoint more Indians and at the same time they have to provide facilities and place prospects before young men in this country which will attract them to the education and training,—workshop training—that will be necessary to qualify them for responsible posts on the railways.

With these words, Sir, I commend this Resolution to the acceptance of the Council.

The HONOURABLE MR. C. A. INNES: Sir, I have not very much to say on the Resolution which has been moved by the Honourable Mr. Kale. I take it that he wishes this Council to recommend to the Government of India to lay down a policy of Indianising the gazetted staffs of the Indian railways. As far as the State Railways are concerned, there is no necessity for the Government of India to lay down any such policy. That is our policy already. We have adopted the policy of gradually Indianising all the public services of India, and that policy will naturally be applied to the railways, wherever possible. The whole question is one of how best to give effect to that policy. We have already made a beginning. I have the figures here. In the Engineering department of State Railways, 20 per cent. of the officers are now Indians; in the superior Traffic Departments 25 per cent., in the superior Stores Department 8 per cent. In the Locomotive and the Carriage and Wagon Departments to which the Honourable Mr. Kale referred as Departments in which no Indian officers had yet been appointed, an Indian Assistant Locomotive Superintendent was appointed in 1919, and another is coming out in April next on the completion of his training. The whole reason why we have no Indians at present in those two Departments is simply the lack of facilities for training Indians in this country. Now the Acworth Committee has drawn very prominent attention to this subject in paragraphs 182, 183 and 184 of its report.

(The Honourable the President here resumed the Chair.)

I am personally entirely at one with the spirit of those recommendations, and I propose, as soon as I have time, to go most carefully into the whole question. I think the position in this matter is perfectly plain. Everybody in this House, I am sure, will agree with me that our first principle in railway management must be this—the railways must be run on strict business lines and in strict accord with business principles. Efficiency must be our paramount consideration. I think that is a self-evident proposition, not only in the interests of commerce and industry, but of the country itself. But subject to that primary consideration I entirely agree that it is up to us to do all we can to qualify Indians for positions in the superior grades of the railways, and that it is up to us to do all we can to get the company-managed railways to follow suit. But I was rather amused when the Honourable Mr. Kale quoted from the Railway Committee's Report on this subject. He read as far as this:—

'The whole subject is one which in our view should be in special charge of Railway Committees' . . . .

The passage runs on:

'We think substantial grants of money should be made for the purposes of developing such instruction.'

[Mr. C. A. Innes.]

That is one of our difficulties. There is another difficulty. The Honourable Mr. Kale, I do not think, realises how difficult it is to work out proper schemes of technical instruction for appointments of this kind and to provide the machinery for that instruction. It is not only difficult to work out schemes, but it is a very expensive matter, and all I can say at the present moment is that, subject to what I have said earlier regarding the necessity of making efficiency our paramount consideration in railway matters, I readily accept the spirit in which the Honourable Mr. Kale has brought forward this Resolution, and that I am quite prepared, as soon as I have the time, to see what we have done in this matter and what we can do in it. Also it is a question in which I hope to have the advice of the Central Advisory Council. With these few words I have much pleasure in accepting the Resolution.

The HONOURABLE MR. V. G. KALE: Sir, I am very thankful to the Honourable Mr. Innes for the sympathetic speech he has made and for his acceptance of the Resolution which I have moved. If the Government of India does all that the Honourable Mr. Innes has told us it proposes to do, I think that this Council will have no complaint to make with regard to this important question.

The Resolution was adopted.

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#### RESOLUTION RE 7 PER CENT. STERLING LOAN.

The HONOURABLE MR. LALUBHAI SAMALDAS: Sir, I beg to move the following Resolution:

'This Council recommends to the Governor General in Council that he may be pleased to convey to the Secretary of State for India in Council the following expression of its opinion:—

- (a) that the conversion rights offered with the last 7 per cent. sterling loan were unnecessary, and that they needlessly increase the permanent debt of this country;
- (b) that in all future loan issues the Secretary of State should consult and act up to the advice and recommendations of the Government of India; and
- (c) that all such issues should be simultaneously offered for subscription in this country on the same terms.'

Sir, I feel like flogging a dead horse in moving this Resolution. The horse was half dead some months back and I believe is quite dead by this time. It was half dead when the Resolution was sent in in September last, and I believe the horse is quite dead now. Yet I have to go through with the process as the Resolution is there.

I will give, as shortly as possible, the history of the genesis of my Resolution. When the last 7 per cent. sterling loan was issued in England, we in Bombay felt that the terms were very exorbitant. We thought that 7 per cent. was a very high percentage. We also felt that the conversion terms were quite unnecessary, and we thought that those terms would not have been offered if the Government of India had been consulted. We had no definite information whether the Government of India was consulted by the Secretary of State or not; but the Bombay Chamber of Commerce in one of its reports said that the Government of India were not consulted. They had information in their possession to that

effect. It was after the receipt of that report that I added to my Resolution the clause that:

'in all future loan issues the Secretary of State should consult and act up to the advice and recommendations of the Government of India.'

I daresay the Government have now been consulted because the recent issues have been on quite fair commercial lines. We do not find in them either the conversion rights or the high percentage of interest. So when I said that the horse was half dead I referred to this, that the Government of India is consulted now. However, I should like to have an assurance from the Honourable Mr. Cook that hereafter the Secretary of State and his advisers will not gamble with our money in the way in which they have done in the past.

Sir, the third point I have to make is this, that such issues should be simultaneously offered for issue in this country. That also has now been done. Sir, I need not ask the Honourable Mr. Cook to assure me that it will be done, because it has been done in the last issue and I am quite sure it will be done in future issues. The only question that now remains is, whether the conversion rights offered were unnecessary. Sir, I believe that the 7 per cent. offered was too high, and I have reasons for saying

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so. When soon after our Government of India loan was put in the market in England, various other loans were issued, their terms were much lower than 7 per cent. I will refer to a few only. Australia 6 per cent. was issued at 95 which works out to  $6\frac{1}{2}$  per cent. : 6 per cent. Loans by four Corporations were issued at 95; then I come to the Birmingham and Liverpool Loan which cannot be said by any means to have the same credit as the Government of India, and that loan—a  $5\frac{1}{2}$  per cent. loan—was issued at 90—it works out to a little more than  $6\frac{1}{4}$ ; the City of Auckland Loan is a  $6\frac{1}{4}$  per cent. loan issued at par. It cannot therefore be said that the Secretary of State and his advisers thought that unless they offered 7 per cent. they would not be able to get the money subscribed. As a matter of fact, Sir, it is common knowledge that the loan was oversubscribed, I believe, within an hour or perhaps less the very same day. We received cablegrams from England that the loan was quoted then at a premium. That shows, Sir, that the Secretary of State and his advisers either did not care for the heavy burden they were putting on India or they were not quite in touch with the market. I would not like to put the first supposition as I believe that the Honourable Mr. Montagu would be the last person consciously to offer a higher rate to the English investors; but I believe he was not well advised by his financial advisers, and I believe they did take advantage of his other activities and got him to issue a loan at a very high rate. Even if 7 per cent. was considered necessary, no conversion rights should have been offered. As I have shown just now 7 per cent. itself was too high. That conversion rights means a permanent burden of 6 per cent. on the country is a thing which I do not think my Honourable Friend, Mr. Cook, will deny. It means that the holder of a £100 note of the 7 per cent. sterling loan can within five years convert it into a £200 loan of 3 per cent.; that means practically 6 per cent. for ever. It may be argued—though I hope my Honourable Friend, Mr. Cook, will not use that argument—that instead of 7 per cent. we are reducing the old loans to 6 per cent. I do not think that argument can ever hold water. In the first place, the permanent debt of the country will be increased by giving the investor the option of converting it to double the loan at 3 per cent.; it gives them the option of making 6 per cent. for ever. If the conversion had to be exercised just then, I would not have minded so

[Mr. Lalubhai Samaldas.]

much; but the conversion rights have been given for five years; that means that an investor, when he finds that all other securities are coming down, will have the chance of converting the new 7 per cent. sterling loan. It is giving him the option of making money at the expense of the Government of India, while it does not in any way protect the interests of the Government of India. Therefore, I say that the conversion rights for the 7 per cent. sterling loan were quite unnecessary. When this loan was issued the Indian Merchants' Chamber and Bureau protested against the issue of that loan, and on behalf of the Government of India the Honourable Mr. Cook sent a reply which I can only term diplomatic. He threw all the burden on the non-co-operators and the political agitators. He said that the political agitation had affected the credit of the Government of India in England and that, unless these liberal terms were offered, we could not have our loan subscribed. In reply to that I will only quote a few figures to show that the credit of the Government of India had not gone down. The Indian stock quotation of the  $3\frac{1}{2}$  per cent. sterling loan in September 1920 was 52. In April 1921, that is, just about the time when this loan was issued, it was  $55\frac{1}{2}$ ; that shows that the Government of India's securities were going up; they had gone up by  $3\frac{1}{2}$ . So the argument that the Government of India's credit was going down in England on account of political agitation here cannot now be justified. I may mention that during that period consols had gone up by  $2\frac{1}{2}$  points, so that the Government of India's securities had gone up by 1 point more than what the consols had done. If we go a little further and come to 31st May 1921 the Government of India stock went up by  $5\frac{1}{2}$  points, while consols had gone up by only 1 point. That will show to the House that the Government of India securities had not gone down in the public estimation. Hence it was quite unnecessary to offer 7 per cent. in the first place. But after offering 7 per cent. and after giving 2 per cent. brokerage *plus* normal contingent expenses—we do not know what that means, it may mean anything and perhaps it was quite unnecessary—but granted that the 7 per cent. interest was necessary and the 2 per cent. under-writing and normal contingent charges were necessary, where was the necessity for giving conversion rights? My Resolution asks the Council to state that they consider that the conversion rights were unnecessary. I am not in my Resolution asking the House to pass any opinion as to the 7 per cent. being very high, though personally I think so and the feeling in my part of the country is that 7 per cent. is very high; but the Resolution does not ask for any expression of opinion on that. What it asks for, is an expression of opinion that the conversion rights were quite unnecessary. I think the Honourable Mr. Cook will acknowledge that the conversion rights were unnecessary and if this opinion, backed up by this Honourable House, goes to the Secretary of State, his advisers will take very great care before issuing loans with any conversion rights or with any high interest. With these words I commend the Resolution to the acceptance of the Council.

The HONOURABLE MR. E. M. COOK: Sir, I appear for the defendant, who, being a considerable distance away, is not being able to defend himself. I think it is usual, Mr. President, when a crime has been committed to endeavour to bring the offender to trial within a measurable period after the commission of the offence. In the present case slightly over ten months have elapsed. . . .

The HONOURABLE MR. LALUBHAI SAMALDAS: The crime is there.

The HONOURABLE MR. E. M. COOK: But there is usually in civilized countries some period within which it is customary to bring the offender to justice. However, I do not grumble at the delay after which my Honourable Friend has brought forward this motion, because I think the events of the last few months have made the Secretary of State's action considerably easier to defend, and have indeed, I submit, taken a great deal of the sting out of the criticism which was so vocal and so articulate last May.

I don't propose to follow my Honourable Friend throughout the figures and details he has given. I will merely assume, for the sake of argument, that much of what my Honourable Friend has said regarding the general character of the terms of this and other contemporary issues is accurate. I said that I appeared for the defendant, but in point of fact I am not in the least conscious of appearing in the rôle of a hired advocate on this occasion, because I certainly can, with a clear conscience, and very sincerely, oppose this Resolution on its merits; and I strongly advise the Council, for reasons which I will give as briefly as I can, not to commit itself to what is, in effect, a vote of censure upon the Secretary of State.

Now what are the facts? Could we have got this money more cheaply? (*A voice*: "Yes".) Of course we could; that is tolerably clear from the fact that the loan at once went to a premium. Every time that one of my Honourable Friend's companies makes a debenture issue, and that debenture issue goes to a premium do his shareholders immediately call an extraordinary meeting and pass a vote of censure upon him? (*A voice*: "They do".) What my Honourable Friend's Resolution really boils down to is that the Secretary of State was not omniscient. I should like to ask the Council to consider what was the position with which the Secretary of State was faced. I think probably most Honourable Members are aware that in 1921 there had been no issue of any Indian sterling loan since 1912, and since that time I need hardly say that monetary and political conditions, both in the United Kingdom and in India, had undergone great and fundamental changes. The London market had been practically closed to the Dominion Governments all through the war; and in the case of India we had not raised a sterling loan since 1912. I wish the Council to think for a moment of the Secretary of State's responsibilities when he made that issue. As I have said, it was the first large issue by any Colonial Government for at least six or seven years—in the case of India itself it was the first issue for nine years. No one could possibly say what view the money market in London was going to take of such an issue. Since then there have been a large number of such issues, and now we know where we are, but I don't think any person in the City of London could then have felt any definite confidence as to the exact terms on which the London money market was going to lend its money to Colonial Governments. Further, a second point that the Secretary of State had to consider was this:—he knew perfectly well that India must for many years be a large borrower in sterling; how large a borrower she will have to be I am not sure; I will only say this, that if anything happens to seriously impair India's credit at Home, any apprehension as regards the maintenance of law and order in this country, or any doubt as to India's financial soundness, then I say that that will be a very serious thing for this country. When I consider the amount of our capital liabilities; when I consider the enormous demands there are on us for new capital expenditure, I don't think it is an exaggeration to say that the commercial and industrial future of this country is in a large measure dependent upon the amount of money that it can raise in London. Now my Honourable

[Mr. E. M. Cook.]

Friend's contention is that the Secretary of State misjudged the position; that is an easy thing for him to say, especially with this premium staring him in the face. But I ask the Council to consider what would have happened if the Secretary of State had misjudged the position in the other direction. The whole outlook was obscure, no issues had been made for many years; it was only the actual testing of the market which brought out the fact that the London money market is still by far the greatest centre in the world for issues of this sort. I say, what would have happened if that loan had been a frost? I wish to impress upon Honourable Members that it is difficult to overestimate the damage to India's credit that would have occurred if the loan had gone wrong, if the underwriters had been saddled with a large portion of it, or if it had gone to a discount. I think the result would have been worse than the temporary blow that was given to India's credit a fortnight or three weeks ago by reports in the London papers of the activities of the anti-constitutional party here.

Now what has been the result of the Secretary of State's caution? The result has been that, in the first place, an immense enhancement of India's credit has occurred in London. India has been able to go into the market again and buy on cheaper terms. Next week I hope to give the Council some figures indicating what India has to do next year, if she is to keep up her railway capital programme. I go so far as to say that, instead of sending Home this vote of censure, if we look back calmly over the last twelve months and consider the anxious care which the Secretary of State and his advisers on that occasion took to preserve India's credit, then I am not sure that we should not send Home a vote of appreciation. No doubt the money could have been got at a fraction cheaper; every loan which goes at once to a premium shows that you could have got your money slightly cheaper; but I ask the Council whether it was worth at the time incurring the risk of failure.

Finally, I have to repeat that this is a vote of censure. My Honourable Friend endeavoured to dissociate the Secretary of State from his financial advisers, but that is not possible. This is a vote of censure upon the Secretary of State, and strictly speaking it ought to have been moved in the House of Commons. (*A Voice*: "*They don't suffer: we suffer*".) I suggest to the Council that it ought to pause before it passes it. I must, therefore, oppose the Resolution.

THE HONOURABLE MR. SETHNA: My Honourable Friend opposite said that he was speaking for the defendant. He was really speaking for the accused, because in his own language he said 'the crime' was committed ten months back. He takes us to task for not bringing up the matter before. Now my Honourable Friend forgets that there was only the Simla Sessions since the issue of the loan and the Honourable Mr. Lalubhai Samaldas had given notice of this Resolution, but it was not reached. I do not think, Sir, that my Honourable Friend has justified the very high rate that was paid by the Secretary of State. But the main point is that he has not replied to the question put by the Honourable Mr. Lalubhai Samaldas as to whether the Secretary of State issued this loan at this exorbitant rate of interest with or without the consent of the Government of India . . . .

THE HONOURABLE MR. E. M. COOK: I did not intend to reply to that.

THE HONOURABLE MR. SETHNA: The Honourable Member says he did not intend to reply to that, from which the only inference I can

draw is, that perhaps the Government of India were not consulted. If they were not, then I do not suppose this Council is wrong in passing this Resolution, even if it be considered as a vote of censure.

The Honourable Mr. Lalubhai Samaldas said that we in Bombay thought it was an exorbitant rate. I believe he also said that the Bombay Chamber of Commerce said so. The Honourable Mr. Cook just now observed that no business man in the City—meaning of course London—could have said how this loan would go. May I be permitted to relate a personal incident in this connection. By a singular coincidence I happened to be in London at the time with a retired English merchant at his house when a message came to him on the telephone to say that this loan was to issue, the percentage of underwriting commission being what Mr. Cook has stated, and inquiring if my friend would apply for a portion of it. My friend within my hearing said 'Apply for the whole amount'. The man asked 'Are you serious?'. My friend replied 'I am'. 'Why?' asked the other, to which my friend replied 'for the good reason that this loan in a week must touch 2 or 3 per cent. premium.' I ask my Honourable Friend whether this was the case or not. I am not prepared to disclose the name of this retired English merchant publicly, but, if my Honourable Friend desires to know it, I shall be pleased to do so after the meeting. Therefore, Sir, I say that there were merchants in the City of London as well as retired Anglo-Indian merchants who considered that the Government of India, or certainly the Secretary of State, was making a mistake. Does my Honourable Friend want any further proof that 7 per cent. was an excessive rate?

Another point, Sir. The Honourable Mr. Cook makes out that the position just then was such that we came into the market after five or six years and, consequently, it would have been a mistake to shake the credit of India. My answer to that is, why apply for the whole  $7\frac{1}{2}$  millions sterling? As a feeler apply only for one million pounds at 6 or  $6\frac{1}{2}$  per cent. If you get it, well and good; if not, offer a half per cent. more. Have we not done so in this country in the past? I am certain the Secretary of State has entirely failed in his duty to India in this particular matter, and I, therefore, think the Council will be very wise in passing this Resolution.

The HONOURABLE MR. LALUBHAI SAMALDAS: Sir, I am very thankful to my Honourable Friend, Mr. Pheroze Sethna, for having replied to one point raised by the Finance Secretary which might have appeared strong to some of the other Members who are not financiers. My Honourable Friend, Mr. Cook said 'supposing the loan had not been floated; if the Secretary of State was found to have erred on the other side, what would have been the result?' My Honourable Friend, Mr. Sethna has given a reply to the effect that the whole amount need not have been floated. A smaller amount might have been floated and then the rate of interest might have been raised if it was absolutely necessary.

The Honourable Mr. Cook said:

'Supposing a company issued debentures and the shareholders found afterwards that the debentures went to a premium. Would they have passed a vote of censure on their directors?'

I would quote to him a specific instance where the debentures were underwritten by a syndicate. They were not debentures, but preference shares underwritten by a syndicate who were only given 4 per cent as underwriting commission. I believe about 56 per cent. of the total issue had to be taken up by the underwriters and yet at the next ordinary general meeting, the shareholders raised such a hue and cry about it that it took us as directors a lot of time to persuade them to withdraw a Resolution which

[Mr. Lalubhai Samaldas.]

was tantamount to a vote of censure. It will interest the Honourable Mr. Cook and other Members of this House to know that shareholders on the Bombay side will not allow anything that has the appearance of not being quite straight being done by their directors. Here we, being in the position of shareholders, must also see that the Secretary of State or his advisers—I am not going to attack the Right Honourable Mr. Montagu personally—do not commit the same mistake again.

My Honourable Friend said that the only charge that can be brought against the Secretary of State or his advisers is that they were not omniscient. That is not the charge. The charge is that they did not make sufficient inquiries and that they did not look into the interests of this country as they ought to have done. It may be that the Right Honourable Mr. Montagu may have other work to do, but his financial advisers ought to have been more careful. We all hope that with the acquisition of Mr. Dalal, an Indian of the Bombay Presidency, in the Secretary of State's Council, whom I might, with your permission, here congratulate on behalf of this Council, we will not see such a mistake repeated.

Even, if it was doubtful whether the loan could be issued to the fullest extent at a lower rate of interest than 7 per cent. and even, if for that purpose it was necessary to offer 7 per cent., the conversion question still remains, and my Honourable Friend, Mr. Cook, has not yet defended the conversion terms, not even in the reply sent to the Indian Merchants Chamber and Bureau, and I take it, therefore, that the silence means that the conversion terms were quite unnecessary.

As regards the Government of India being consulted, my Resolution asks that they should be consulted. The Honourable Mr. Cook said that he did not want to reply to the question whether they were consulted or not. Why then did he not issue a Press Communiqué to say the Bombay Chamber of Commerce was wrong in saying that the Government of India were not consulted? That was a public statement made by the Bombay Chamber of Commerce. . . .

THE HONOURABLE MR. E. M. COOK: Was that correct?

THE HONOURABLE SIR ARTHUR FROMM: I do not remember the wording of the monthly report.

THE HONOURABLE THE PRESIDENT: Questions must be addressed through the Chair.

THE HONOURABLE MR. LALUBHAI SAMALDAS: Was it not up to the Finance Department to say plainly that they were consulted. But the very fact that they allowed this statement to go unchallenged up till now shows that they were not consulted. We want to give them more power, because we think that we can influence them. We can in this House, if the Finance Department makes any mistake, easily pass—I hope we will be able to do so—a vote of censure on them, if it were necessary; but, when the Secretary of State manages at the other end, the Finance Department itself is in a rather difficult position. They cannot, as the agents, as Lord Morley once said, of the Secretary of State, repudiate what the Secretary of State has done and, as they cannot do so, they themselves do not know what to do. They cannot defend the Secretary of State; they cannot honestly say he has done the right thing; at the same time they cannot join us in passing a vote of censure on him. We, in this House, even if it is a vote of censure, must express our opinions freely, frankly and honestly.

On the Honourable Sir Arthur Fromm rising to speak, the Honourable the President said:

Does the Honourable Member wish to make a personal statement? There is no opportunity now for a speech; he can only make a personal statement.

**THE HONOURABLE SIR ARTHUR FROOM:** Sir, I wish to make a personal statement as the Bombay Chamber of Commerce has been quoted. I am afraid I cannot remember the wording of the monthly report, but what I think must have appeared was a copy of the correspondence we had with Government. If the Honourable the Finance Secretary has it, he will be able to refresh my memory.

**THE HONOURABLE MR. E. M. COOK:** Sir, when I said, or rather, when I interjected across the House, that I did not intend to reply to my Honourable friend on the point, as to whether the Government of India had or had not been consulted, I did not mean to say that I intended to keep it secret. All I meant was that in my original speech I did deal specifically with that matter as I did not regard it as an important point in issue. Now, however, that my Honourable Friend has raised it, and particularly as the name of a third party—the Bombay Chamber of Commerce has been introduced—I should like to make a few remarks on it.

The Bombay Chamber of Commerce did write to the Government on the subject, inquiring among other matters, whether the Government of India had been consulted. In reply we told them—‘The answer to your Committee’s question is in the negative’—(and then we referred to a letter which had been sent to the Indian Merchants Chamber and Bureau which has been published.)

We said:—

‘Your Committee will obtain from that letter a general idea of the conditions which have existed recently in the London money market. Those conditions did not on this occasion admit of previous consultation with the Government of India, as the precise moment of issue and the final settlement of the terms had to be deferred until the exact moment when conditions appeared to make flotation possible, and it would have been undesirable to let that favourable moment pass by, as might have been the case if the matter had been delayed to refer it to India. It is, however, the intention of the Secretary of State to consult the Government of India, so far as is practicable, before taking any final decision in such matters, but similar obstacles to effective consultation are always liable to occur.’

I had no intention whatever of concealing the position, and I merely read that out because I was directly challenged on the subject.

The only other observation, Sir, I have to make is in reply to what my Honourable Friend, Mr. Sethna, said about the feeling in London. I should be very sorry if the Council were to vote on this Resolution under the impression that the general business public in London had been sniggering at the nice, easy, favourable terms that the jobbers, etc., had got out of India. I should like to read, if I may, a letter received from a gentleman in London in an exceptionally good position for obtaining the general feeling in London about Indian issues. This letter was written a few days after the issue took place:

‘Its terms have been criticised as over generous, but from what I can hear in the City, from circles not directly connected with India, it seems fairly certain that its immediate and rapid success has done Indian credit good. The day before its issue, whilst the underwriting was in progress, some of the stock-brokers endeavoured to interest their clients in it. In several cases I have been told that they got the reply that they were not going in for anything Indian, as there seemed to be a feeling of uncertainty about the future of India. But when news came next day that the loan was simply booming, as no issue in recent months has done, many of these people took heart and wanted to get in but were too late. What supports this view is the fact that instead of Indian 3 per cent. stock being depressed by the issue of this loan, it immediately rose, and there is little doubt that the success of this loan attracted attention to other Indian securities, both Government and Railways.’

I claim that the anticipations made in that letter, written within a few days after the issue, has been amply borne out by the events of

[Mr. E. M. Cook.]

subsequent months, and I claim that India's credit is on the whole in all the better state to bear the very heavy sterling issues we shall have to make because of the care and caution which the Secretary of State took over this loan.

The HONOURABLE THE PRESIDENT: I shall put the Resolution in three parts.

The question is that the following Resolution be adopted:—

'This Council recommends to the Governor General in Council that he may be pleased to convey to the Secretary of State for India in Council the following expression of its opinion:—

- (a) that the conversion rights offered with the last 7 per cent. sterling loan were unnecessary, and that they needlessly increase the permanent debt of this country.'

The Resolution was pressed to a division. The Council divided as follows:—

#### AYES—14.

Acharyya Chaudhuri, Maharaja S. K.  
Harnam Singh, Raja Sir.  
Kale, Mr. V. G.  
Keshava Prasad Singh, Maharaja Bahadur.  
Khaparde, Mr. G. S.  
Lalubhai Samaldas, Mr.  
Maricair, Khan Bahadur A.

Mohammad Ismail Khan, Haji Chowdhuri.  
Naidu, Diwan Bahadur V. R.  
Rampal Singh, Raja Sir.  
Ram Saran Das, Rai Bahadur Lala.  
Roy, Raja P. N., of Dighapatia.  
Sethna, Mr. P. C.  
Umar Hayat Khan, Colonel Sir.

#### NOES—13.

Amin-ul-Islam, Khan Bahadur.  
Baker, Mr. C. M.  
Cook, Mr. E. M.  
Edwards, Major-General Sir W.  
Forrest, Mr. H. S.  
Ganga Nath Jha, Mahamahopadhyaya Dr.  
Lindsay, Mr. H. A. F.

Lloyd, Mr. E. S.  
Mayhew, Mr. A. I.  
Sarma, Mr. B. N.  
Smith, Mr. H. Moncrieff.  
Tek Chand, Diwan.  
Zahir-ud-din, Khan Bahadur S.

The first part of the Resolution was adopted.

Parts (b) and (c)\* of the Resolution were then separately put and adopted.

The HONOURABLE THE PRESIDENT: The question is that the following Resolution, which runs as follows:

'This Council recommends to the Governor General in Council that he may be pleased to convey to the Secretary of State for India in Council the following expression of its opinion:

- (a) That the conversion rights offered with the last 7 per cent. sterling loan were unnecessary, and that they needlessly increase the permanent debt of this country.  
(b) that in all future loan issues, the Secretary of State should consult and act up to the advice and recommendations of the Government of India; and  
(c) that all such issues should be simultaneously offered for subscription in this country on the same terms.'

be accepted.

The Resolution was, therefore, adopted.

The HONOURABLE THE PRESIDENT: The Honourable Mr. Kale's Resolution † does not arise as it is covered by the previous Resolution.

The Council stands adjourned till to-morrow at Eleven of the Clock.

\* (b) that in all future loan issues, the Secretary of State should consult and act up to the advice and recommendations of the Government of India; and

(c) that all such issues should be simultaneously offered for subscription in this country on the same terms.'

† 'This Council recommends to the Governor General in Council that a Committee consisting of Members of the two Houses of the Legislature be appointed to consider and report upon the question of the management of the East Indian and Great Indian Peninsula Railways on the termination of the State's existing contracts with the Railway Companies concerned.'