

Tuesday, 28th 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.

*Tuesday, the 28th February, 1922.*

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

## QUESTIONS AND ANSWERS.

### REMOVAL OF RESTRICTION ON EXPORT OF FOOD-GRAINS.

96. The HONOURABLE KHAN BAHADUR AHMEDTHAMBY MARICAIR: With reference to the Resolution moved by the Honourable Sardar Jogendra Singh and adopted by the Council, regarding the removal of restriction on export of food-grains at a meeting held on the 9th March, 1921, will Government be pleased to state whether any action has as yet been taken thereon to remove the restriction: If not, why not?

The HONOURABLE MR. B. N. SARMA: Partial effect has been given to the Resolution by removing all restrictions on the export of rice from Burma, with effect from the 13th December, 1921. Shortly after the Resolution was passed the serious failure of the wheat and other spring crops became apparent and the Government of India decided to wait until the ultimate character of the next monsoon was known. Notwithstanding a satisfactory monsoon, however, a very serious and rapid rise took place in the prices of food-grains everywhere in August last, especially of wheat as a result of which it was decided to continue the embargo on exports, and it was announced on the 2nd September 1921 that the Government of India would maintain the embargo on the export of wheat, *atta* and flour in full force until at least the end of March 1922. This decision was confirmed by the Resolution which was passed in the Council of State on the 17th September 1921.

### QUANTITY OF PETROL EXPORTED FROM BURMA.

97. The HONOURABLE MR. SETHNA: Will Government be pleased to give in tabular form a statement showing what quantity of petrol has been exported during the last five years from Burma:

- (a) to the rest of India,
- (b) to Europe, and
- (c) to any other part of the world?

The HONOURABLE MR. H. A. F. LINDSAY: The figures are being obtained and will be communicated to the Honourable Member on receipt.

### DIFFERENCE IN PRICES OF No. 2 PETROL IN ENGLAND AND CALCUTTA.

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

- (1) if they are aware that the present price of No. 2 petrol exported from Burma is 2s. 3½d. in England and that the same quality petrol is sold in Calcutta at Rs. 1-14-0 per gallon, which is

more than 2 annas per gallon dearer than in England, in spite of—

- (a) the freight to England being higher, and
- (b) the rate of duty or tax in England being the same or more than in India?

- (2) If Government are not aware will they be pleased to make the necessary inquiries and give present comparative prices of the same quality of Burma petrol in India and England after allowing for duty or tax in either country?

The HONOURABLE MR. H. A. F. LINDSAY: The Government of India are not aware that any duty or tax is now collected in England on imports of motor spirit. If, at present rates of exchange, the difference in the prices per gallon of No. 2 petrol in England and in Calcutta is only 2 annas as stated, this difference is more than accounted for by the excise duty of 6 annas per gallon levied on motor spirit in India. In the circumstances they do not consider that any special inquiry is called for.

#### LICENCES AND MINING LEASES TO OIL COMPANIES IN BURMA.

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

- (i) if in the licenses given to the different oil companies in Burma there is any provision made to the effect—
  - (a) that there should not be any profiteering in regard to exports to the rest of India, and
  - (b) that preferential treatment be given to India, or
  - (c) any other provision to safeguard the interests of consumers in India?
- (ii) If so, will Government be pleased to place on the table copies of such licenses or extracts therefrom having reference to (i) (a), (b) and (c) above?

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

- (i) if in the terms of the licenses granted to the different oil companies in Burma they have provided that such companies should export petrol to India of only a certain quality or qualities, and
- (ii) if they have inquired whether the quality of petrol now arriving from Burma is according to such quality or qualities or that it is inferior to the quality of petrol that used to come here from Burma before the war and if such inquiry has not been made is Government prepared to make it?

The HONOURABLE MR. H. A. F. LINDSAY: Prospecting licenses and mining leases are granted by Local Governments. A reference has, therefore, been made to the Government of Burma, and the information required by the Honourable Member will be supplied to him in due course.

#### REVISION OF LAND-REVENUE ASSESSMENT.

101. The HONOURABLE LALA SUKHBIR SINHA: With reference to \* part (c) of my question asked in this Council on the 21st March 1921, will

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\*Vide page 518 of Vol. I of Council of State Debates.

the Honourable Revenue Member be pleased to state what action Provincial Governments have taken to have Legislation on the lines recommended by the Joint Parliamentary Committee on the revision of Land Revenue assessment?

The HONOURABLE MR. B. N. SARMA: The Punjab Government has decided to appoint a Committee to examine the present land-revenue assessment policy in the Punjab and to report what changes should be made. In the Madras Presidency a draft Bill regulating the assessment and revision of assessment of land-revenue has been drawn up by the Board of Revenue and submitted to a large and representative Committee consisting of both officers experienced in settlement matters and non-official members of the Legislative Council. Their Report has been received and is under consideration. The action taken in other Provinces has not yet been reported to the Government of India.

The HONOURABLE LALA SUKHBIR SINHA: Will the Government of India remind other Governments which have not taken action as yet to do so as soon as possible?

The HONOURABLE MR. B. N. SARMA: The Government does not think that any such action is needed.

#### DEFECTS AT THE HARDWAR RAILWAY STATION.

102. The HONOURABLE LALA SUKHBIR SINHA: Is the Government aware of the hardship caused by the following defects, at the Hardwar Railway Station:

- (i) That there is no booking-office in the town, on account of which pilgrims have to go to the railway station for hours before the departure of trains and find it very inconvenient to purchase tickets there?
- (ii) That the gradient on to the platform for 3rd class passengers is too steep and very inconvenient and sometimes dangerous for women and children?
- (iii) That there is no shade on the island platform and it is urgently required?
- (iv) That the entrance to the Railway platform is not kept opened and is locked up for first, second and intermediate class passengers?
- (v) That the carriages, motors and tongas are not admitted inside the gate and it is very inconvenient to get down at a distance from the Railway station, especially in the rains?
- (vi) That there is only one 1st and 2nd Class waiting room for Indians and none for Indian ladies?

The HONOURABLE MR. H. A. F. LINDSAY: The necessary inquiries are being made, and the result will be communicated to the Honourable Member.

#### MESSAGE FROM THE LEGISLATIVE ASSEMBLY.

The SECRETARY OF THE COUNCIL: Sir, a message has been received from the Legislative Assembly through the Secretary of that Chamber.

The HONOURABLE THE PRESIDENT: Let it be read.

The SECRETARY OF THE COUNCIL: Sir, the message runs as follows:—

*'Sir, in accordance with rule 36 (2) of the Indian Legislative Rules, I am directed to inform you that the amendments made by the Council of State in the Bill to consolidate and amend the law relating to income-tax and super-tax, as indicated in the attached statement, \* were taken into consideration by the Legislative Assembly, at their meeting to-day, the 27th February, 1922, and that the Assembly have agreed to these amendments, with the exception of the amendment to clause 15 (2) of the Bill substituting the words 'any adult male member' for the words 'any male member.'*

#### DESIRABILITY OF QUORUM AT COUNCIL MEETINGS.

The HONOURABLE THE PRESIDENT: Before we proceed to the business of the day, I should like to invite the attention of the Honourable the Leader of the House, whom I am pleased to see in his place to-day, to the fact that, when the House re-assembled after the luncheon interval, yesterday, I was forced to count it out as no quorum was present. I draw his attention to this fact for the reason that I saw that the Honourable Member of the Government in charge of the Bill on the paper was in his place and a very considerable number of non-official members were in their places; but the supporters of the Honourable gentleman were conspicuous by their absence. I think it is eminently desirable that, at any rate the commencement of a meeting, arrangements should be made to enable the House to be formed in so far as that lies within the power of the Government.

The HONOURABLE MIAN SIR MUHAMMAD SHAFI: Sir, I am sure it is hardly necessary for me to assure you and the House that no one regrets the unfortunate occurrence of yesterday more than I do. Owing to work elsewhere, I was absent from the House in the afternoon, and I was surprised, on coming to the House this morning, to learn of what had taken place yesterday. You, Sir, and the House may rest assured that steps will be taken to avoid such an unfortunate contingency in the future.

The HONOURABLE THE PRESIDENT: I am much obliged to the Honourable the Leader of the House for his assurance.

We will now resume the interrupted debate on the Bill to amend the law relating to emigration.

#### INDIAN EMIGRATION BILL—(contd.)

The HONOURABLE KHAN BAHADUR AHMEDTHAMBY MARICAIR: Sir, I beg to move an amendment that in clause 7 of the Bill after the words 'in any place' the words 'except the Straits Settlements and the Federated Malay States' be added.

Sir, my reason for moving this amendment is that in the latter part of the year 1916, I was appointed by the Government of India as one of the Special Officers to inquire into the methods of recruiting and conditions of Indian labour on the estates of Ceylon and Malay States along with Mr. N. E. Marjoribanks, I.C.S., and have submitted our report to

the Government of Madras after careful investigation on 18th February 1917.

On pages 28 and 29, paragraphs 14 and 15 of the report we have stated as follows:

' 14. In the interests of the development of the country, the Straits Government took up the question of the labour supply. The control and supervision of immigration was in 1907 vested in an Immigration Committee consisting of the Superintendent of Immigrants (now Controller of Labour) as Chairman, the Principal Medical Officer of the Federated Malay States, the Director of Public Works of the Federated Malay States and four or five non-official gentlemen, members of firms of estate agents or managers of estates. This committee after consulting the Planters Association of Malaya recommended that the cost of importation of Tamil labourers should be distributed amongst all those who employed them, and the Indian Immigration Fund Enactment (incorporated in the Federated Malay States Labour Code of 1912) was subsequently passed. Similar enactments or rules passed by the States concerned are in force in the non-federated Malay States. In the Colony, the law relating to Indian labourers has not yet been codified, but for practical purposes it may be taken to be identical with the provisions of the Federated Malay States Labour Code, 1912).

' 15. Under these laws, an assessment on the amount of work done by their labourers is levied upon all employers of labourers native to the Madras Presidency (described as 'Indian labour') and the proceeds are paid into a fund styled the Immigration Fund. Employers are required to send in to the Labour office, Penang, on printed forms which may be obtained free, certified returns of their Indian labour for every quarter. The returns must be sent within a month of the expiration of each quarter, i.e., in April, July, October and January and should be addressed to the Deputy Controller of Labour, Penang. These returns are assessed according to the rates published for each quarter in the Government gazette and each employer is duly sent a notice informing him of the amount of assessment he is required to pay. The amount each employer is assessed at should be forwarded to the Deputy Controller of Labour, Penang, within 21 days of the posting of the notice and for payments made after such period, the employer is charged interest at the rate of 8 per cent. per annum on the amount assessed.

All such payments are credited to the Immigration Fund, which forms no part of the general revenue of the Government, but is administered by the Controller of Labour under the authority of the Immigration Committee solely in the interests of importers of Indian labour. The Government is in fact the largest single contributor to the Fund through the assessments which it pays on all Indian labour employed in the Railways, Public Works Departments, Municipalities, Sanitary Boards and other departments.'

Again, in our confidential report dated the 21st February 1917 the concluding portion of paragraph 21 reads . . . . .

The HONOURABLE MR. B. N. SARMA: I rise to a point of order. Has the Honourable Member obtained permission to quote from his confidential report? If it was a confidential report submitted to Government, has the Honourable Member obtained the permission of Government to read from it?

The HONOURABLE KHAN BAHADUR AHMEDTHAMBY MARICAIR: As we are now dealing with the question . . . . .

The HONOURABLE THE PRESIDENT: If the report was confidential, the Honourable Member ought only to disclose its contents with the permission of the persons to whom it was addressed. I am not aware whether the report he is quoting from is confidential or not. If it is a confidential report, it is confidential and should be treated as such.

The HONOURABLE KHAN BAHADUR AHMEDTHAMBY MARICAIR: Very well, Sir. There was no special restriction to that effect.

As a matter of fact, the Government of Madras in their letter No. 1233, dated 25th April 1921, asked me to give my opinion on the provisions of the

[Khan Bahadur Ahmedthamby Maricair.]

Bill in question, and in my reply I invited their attention to the observations made by Mr. Marjoribanks and myself in the report sent by us. Under these circumstances, I consider the appointment of agents in the Straits Settlements and the Federated Malay States is unnecessary, inasmuch as the Government of the Straits Settlements have taken precautionary measures to protect the Indian emigrants. If necessary, the Government of India could depute occasionally a non-official from India to go to Malaya to examine and report the condition of Indian immigrants employed in that colony about which a reference has been made in paragraph 27 of our report. There should be reserved to the Government of India power to depute any person it may select, whether official or non-official, from India to examine and report on the condition of Indian immigrant labour employed in the colony and to which emigration is lawful. Such power is now given in the case of Malaya only under section 66 of the Labour Code. Under these circumstances, I consider the appointment of an agent in this colony as unnecessary and waste of money. With these few remarks I commend my amendment to the House.

The HONOURABLE MR. B. N. SARMA: I think here again the Honourable Member has misconceived the scope of this clause. This clause gives power to the Governor General in Council to appoint agents in the various countries in which Indians are generally settled as labourers. It does not compel the Government to appoint an agent. The Government give no pledge that they will appoint an agent; they are not under an obligation to appoint an agent. It only enables them to do so if they think such a course is desirable. I may also inform the Honourable Member that we cannot appoint an agent in a State or Possession the Government of which objects to it; and consequently an agent can be employed only with the consent of the Straits Settlements in the particular case the Honourable Member has in his mind, the Government of India aided by the Legislature always having it in their power to enforce their views by such means as may be at their disposal.

Now, with regard to the Straits Settlements the point of the Honourable Member is that due precautions are being taken in the Straits Settlements for protecting Indian labour and consequently, there is no necessity for the appointment of an agent there. Well, if the Government of India should consider that such an agent is unnecessary they will not appoint one. But power must be taken for the purpose, because there is very large emigration to these Straits Settlements in particular, and because we have got about 3,00,000 Indians in the Straits Settlements and Federated Malay States, and most of the persons who emigrate are unintelligent, ignorant persons belonging to the depressed classes mainly. Under clause 10 this House as well as the Legislative Assembly may, after consideration of the whole question, deem it necessary to impose a condition, namely, the appointment of an agent, in order to safeguard the interests of the Indians that are settled there. The object of the appointment of the agent is, in the words of Sir George Barnes, for the purpose of keeping the Government of India informed of all matters which affect the welfare or status of Indians under the Government to which he is accredited. The agent would further of course be at the service of any particular Indian who might wish to seek his advice. He is a *liaison* officer between the Government of India and the Government of the country in which he is serving. I do not see any objection that can be taken to the appointment of a person to help the Indians who are resident there, to interpret their wishes to the Government



and to be a first-hand source of information to the Government of India as to what is going on there. A good deal of agitation is due to the fact that there is a misconception as to what is going on in these various possessions, and the Government of India would be able to deal with such agitation in the very early stages if they only know what is the truth; and consequently it might be absolutely necessary even in the Straits Settlements, notwithstanding the fact that, as the Honourable Member points out, the conditions there are satisfactory, to appoint an agent. I, therefore, hope that after this explanation the Honourable Member will not press his amendment. This is after all a power taken by the Government for the purpose of appointing an agent. If the Government think it is a waste of money and that the conditions are so very good in the Straits Settlements as to render it unnecessary to appoint an agent there, they will not do so; but I think we must have the power to do it.

The HONOURABLE KHAN BAHADUR AHMEDTHAMBY MARICAIR: In view of the explanation I beg permission to withdraw my amendment.

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

Clauses 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23 were added to the Bill.

The HONOURABLE KHAN BAHADUR AHMEDTHAMBY MARICAIR: Sir, the next amendment I beg to move is that in clause 24 (2) (b) the word 'licensing' be deleted. This question should be left entirely in the hands of the employers. They will select their own reliable men to recruit coolies for them. The system now prevailing in Malaya is the same. In this connection I beg to refer to paragraphs 18 and 19 of the Report:

'When an estate manager or other employer wishes to recruit Indian labour, he selects his own recruiters from amongst his labour force and applies to the Indian Immigration Committee at Penang for a licence. Licence forms to recruit labourers in the Madras Presidency are then issued to these persons (kanganies so-called) on the authority of the Chairman of the Immigration Committee and are granted free of charge. Blank licence forms are sent to any employer on application to any of the Labour offices, and when the required details have been filled in, the licences should be sent to the Deputy Controller of Labour, Penang, for registration and signature. Such licences are not issued to persons under the age of 21 years. The Controller and Deputy Controller of Labour have full powers to refuse licences or to cancel licences.

At Madras and at Negapatam emigration offices have been established by the Colonial Government under the charge of their officers. The agent at Madras is an officer of the Colonial Civil Service, and the agent at Negapatam is an officer of the Straits Medical Service. There are also fourteen recruiting inspectors stationed at various places in the Madras Presidency, whose duty it is to assist kanganies, help in forwarding their recruits and to pay their train fares. The kangany on receipt of his licence proceeds to Madras or Negapatam and has his licence registered in the office of the emigration agent.

The licence is valid for six months only, but the emigration agent may renew it for further periods of three months at a time if he is satisfied that the kangany is likely to recruit the number specified in his licence if given more time. The number of recruits is limited in any licence to 50. After his licence has been registered, the kangany has to go to either Messrs. Binny and Company, Madras, or Messrs. the Madura Company, Negapatam. These firms are the British India Steam Navigation Company's agents, and generally act as financial agents in India for employers in the Straits. In addition there is the Malay Peninsula Agricultural Association Agency in Madras and Negapatam who also act as financial agents for certain estates in the Straits. The employer when sending his kangany to recruit therefore makes arrangements with such agents to finance the kangany, and according to the instructions received these agents make advances to the kanganies and pay commission for each labourer actually produced by the kanganies and shipped.'

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So, Sir, I say the question of issuing licences if kept in the hands of the Government will give an opportunity to professional recruiters to get licences, people in whom the employers will have no confidence whatever; the result will be that recruitment will not be successful; and so, I say this custom should be left entirely in the hands of the employers who have got confidence in their own kanganies who will behave properly in not recruiting against the conditions laid down in the Act. Therefore, I recommend that the question of issuing licences should be deleted from this Bill.

THE HONOURABLE MR. B. N. SARMA: I suggest to the Honourable Member that the reasoning he has given goes to show that the clause should remain as it stands. He does not object to any power being vested in any person whatsoever for licencing. All that he contends for is, that the licensing authority should be the agent of the country to which the emigrants go, and in the particular case he has cited the Colonial Office or the Straits Settlement Officer, who is the Agent here, who should have the power of licensing the persons to be recruited, and his fear is that recruitment may suffer if the power were entrusted to an officer of the British Indian Government. On this point, I may give him this assurance, that the Standing Committee which is to be appointed to assist the Government in framing rules under this clause can have and will have this matter placed before them as to who should have the authority to give licences, as to whether it should be the employer's agent or an officer of the Government of India. If after taking the Committee's advice the Government are to be of opinion that in any particular case and in the case of any particular possession the power might well be vested, having regard to the conditions of that possession, in the employer, it will be given to the employer, otherwise power will be given to the Government officers. So this is one of the questions on which the Government have a perfectly open mind, as to who should be the licensing authority, and the Honourable Mr. Maricair may place his views before the Standing Committee and press for them. The clause as it stands is perfectly correct. Each case depends upon its own merits, and the question can be threshed out in the Standing Committee, and the Government are willing to show every regard to the views of the Standing Committee. I, therefore, think that the Honourable Member would do well to drop this amendment also because it is absolutely unnecessary according to his own reasoning.

THE HONOURABLE KHAN BAHADUR AHMEDTHAMBY MARICAIR: I do not press the amendment, Sir.

THE HONOURABLE THE PRESIDENT: Is it the pleasure of this House that leave be given to the Honourable Mr. Maricair to withdraw his amendment?

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

Clauses 24, 25, 26, 27 and 28 were added to the Bill.

THE HONOURABLE KHAN BAHADUR AHMEDTHAMBY MARICAIR: Sir, the last amendment of which I have given notice reads thus:—

‘ That the following clause be substituted for clause 29 of the Bill, namely :

‘ 29. All the powers for the time being conferred by law on Port Officers for granting of certificates for carrying passengers by a steamer and the detention of vessels or otherwise be exercised by those officers for the prevention of offences against this Act.’

The Bill provides that power be given to the officers of the Sea Customs to deal with offences against this Act. I consider this will not be necessary. Such powers should not be exercised by such petty officers visiting steamers to search the smuggling of opium and other dutiable goods. In all the ports of passenger traffic, responsible and reliable European officers are appointed as Port Officers who have the right of inspecting the vessels prior to the shipment of passengers as to the suitability or otherwise of the vessel being fit to carry the passengers and various points such as airing space, accommodation, sanitary arrangements, etc. This officer also visits the steamer even after the embarking of passengers and emigrants and grants certificates. Therefore any power under this Act should only be exercised by that responsible officer and not by the Customs Officer whose duty is quite different from that of the Port Officer. With these remarks, Sir, I wish to place my amendment before this House.

The HONOURABLE MR. B. N. SARMA: Sir, the Government must oppose this amendment. The Honourable Member has not clearly grasped the scope of this clause as it is enacted. He has drawn a distinction between the functions of the Port Officers and those of the Sea Customs Officers. It is not the object of the Native Passenger Ships Act or of the Indian Ports Act to empower officers to detain a vessel except under particular conditions, and for particular objects, specified therein, the scope being entirely different. As whether a vessel is seaworthy, as to whether ample accommodation has been made for passengers, and as to whether the regulations in respect of long and short voyages are complied with, are the kind of matters that are referred to in those Acts, and it is the duty of the officers to see that those duties are properly discharged and those safeguards are properly observed. The Sea Customs Act enables an officer to inspect ships for preventing smuggling, empowers him to search in order to prevent smuggling of goods and so on, and the clause under consideration enacts that all the powers for the time being conferred by law on officers of Sea Customs with regard to the searching and detention of vessels or otherwise for the prevention of smuggling on board thereof, may be exercised by those officers for the prevention of offences against this Act. The object is to prevent persons who ought not to migrate except in accordance with the provisions of this Act, defeating the objects thereof. But inasmuch as human beings cannot be considered to be goods within the meaning of the Sea Customs Act, special provision has been made here to empower customs officers to search ships for the purpose of discovering as to whether any offence of the kind described here has been committed, as to whether any person has been smuggled on board the steamer, whether emigrants who ought not to go are there, and to see that the provisions of this Act are enforced. Therefore, I think that only the powers conferred by the Sea Customs Act ought to be utilised for the purpose of preventing unlawful emigration from this country.

I do take strong exception to the suggestion implied in the Honourable Member's remarks that our Sea Customs officers are underpaid or low paid or are not discharging their functions properly. I do not think there is any reason for a charge of that description being levelled against our functionaries carrying on so very efficiently and properly the duties which have been entrusted to them; and I think that officers who have been so efficiently discharging their functions would be, under the Sea Customs Act, the proper kind of officers to be entrusted with the functions specified in section 29 of this Act.

The HONOURABLE KHAN BAHADUR AHMEDTHAMBY MARICAIR: I press the amendment, Sir.

The Amendment was rejected.

Clauses 29, 30, 31, 32, 33 and the Preamble were added to the Bill.

The HONOURABLE MR. B. N. SARMA: Sir, I beg to move that the Bill, as passed by the Legislative Assembly, be passed.

The HONOURABLE MR. LALUBHAI SAMALDAS: While congratulating the Honourable Member for carrying this very important Bill through the Council, may I take the opportunity of congratulating the former Member of the Commerce and Industry Department, Sir George Barnes, who introduced this Bill into the Legislative Assembly last year. It was he, Sir, who took all the trouble from the very beginning, and I believe my Honourable Friend will agree with me in saying that the greater portion of the credit is due to him for having brought this Bill before the Council.

With these words, I support the motion.

The motion was adopted.

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### INDIAN MERCHANT SHIPPING BILL.

The HONOURABLE SIR ALEXANDER MUDDIMAN: The next motion on the paper stands in my name. I beg to move for leave to introduce a Bill to consolidate certain enactments relating to Merchant Shipping.

Honourable Members may perhaps feel some surprise that a substantive motion stands in my name on the paper for to-day. I can assure them, however, that it does not mean that I have any intention of embarking on a discussion of the attractive if controversial subjects which are so often and so ably discussed by other Members. Fortunately or unfortunately, for me, that is prohibited. The Bill I ask for leave to introduce deals with form and not with substance. Indeed, if that were not the case, I could not be making the motion I have now made. The Bill is a modest attempt to provide the groundwork for what I venture to think is a legal reform of some importance. The Chamber may perhaps be aware that the Government of India at the commencement of last autumn appointed a Statute Law Revision Committee of which I am the Chairman. The functions of that Committee are not to alter the law, not to bring forward any substantive amendments, but, as far as may be, to improve its form. Our aim is to remove dead matter from the Statute-book, to bring together in the form of a connected enactment provisions of the law which are scattered over the Statute-book, and generally to clarify and make more accessible the provisions of our Acts. This work may seem a humble, and it certainly is a tedious, task, but I venture to submit that it is one of some importance. All those who have any experience of drafting work are aware that to consolidate provisions of the law enacted at different times and drawn by different hands and to harmonize them into a connected whole is a work of some nicety and delicacy. In a House composed as this Chamber is, I need hardly explain that consolidation is not a work of paste and scissors, as those who have never tried to do it sometimes imagine. Some people seem to think that if you have got three Acts to consolidate, you can cut them up and paste them together, and that by

this process you have got the work of consolidation done. That is not so. Consolidation properly carried out is also, I would suggest to the Council, a work of real utility both for those who have to administer and for those who have to obey the law. When the Committee to which I have referred was appointed, the Governor General in Council directed our attention to the importance of an early examination of the law relating to Merchant Shipping. We have made that examination, and the conclusion we have arrived at is that some measure of consolidation is a condition precedent to the revision of the law. The Bill which is in the hands of Members is an attempt to give effect to that conclusion. I hope to be able to show to the Council that the case for consolidation as regards this branch of the law is very clearly established. Our Indian Statute-book, in so far as it deals with merchant shipping, is, and must continue to be, contained in two classes of enactments, (1) the Acts of the British Parliament, and (2) those of our own Legislature. This consolidation will not avoid the fact that the law must be contained in enactments of two Legislatures, but I hope it will to some extent diminish the inconvenience. I fear I must detain the Council for a few minutes while I refer very briefly and very generally to the Statutes of the English Parliament and the Indian Acts which deal with this subject. The earliest Act of Parliament, one not of very much importance at the present day, but a portion of which is still on the Statute-book, is the Lascars Act of 1823. Thus Honourable Members will see that we have to go back nearly a hundred years to find the earliest Statute law on the subject. Between the year 1823 and the year 1894 many Acts of Parliament were passed which dealt with the Merchant Shipping law. Nearly all of these have been repealed by the important Merchant Shipping Act of 1894, which I shall deal with later on. One, however, though repealed, is still important. I refer to the Statute 3 & 4 Vict. cap. 56. It was under this Statute that the Indian Registration of Ships Act, 1841, and its amending Acts were passed, and, when I come to deal with the question of registration, I shall have to draw the attention of the Council to the provisions of that Act a little more closely. It will be sufficient for me now to point out that, although this Statute itself is repealed by the Statute Law Revision Act, No. II of 1874, the Indian Act which was passed under its provisions is saved by the repeal. The Act of Parliament itself having gone however, we have now no power to re-enact the provisions of our Indian Act. As I said, in 1894 the important Act which consolidated the English Statute law, and which is known as the Merchant Shipping Act, 1894, was passed. It has been said that the main object of Parliament was 'the establishment of a system of national identification of shipping', and I think Honourable Members will grasp the fact that this lies at the root of all Merchant Shipping law, as the identity of the ship is of essential importance. Unless you can identify your ship all the rest of your labour is in vain. Portions of the Act of 1894 extend throughout the Dominions of the Crown and provide a law of universal application therein. The Act, however, conceded to the Legislature of British possessions definite and specified powers to deal with certain branches of the shipping law, and further provided that, subject to the conditions specified in the Act, the enactments of such British possessions should in certain cases have operation, not only in the British possessions in which they were enacted, but also throughout the whole of the Dominions of the Crown. The Act of 1894, therefore, at the same time limits and extends the sphere of the Indian Legislature in regard to merchant shipping. It limits it because of section 65 (2) of the Government of India Act, the relevant part of which I will

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read to the Council. I may explain that section 65 of the Government of India Act is the section which confers our powers of legislation on us, and one of the provisos to that section runs as follows:—

‘ Provided that the Indian Legislature has not, unless expressly so authorised by Act of Parliament, power to make any law repealing or affecting :

(i) any Act of Parliament passed after the year one thousand eight hundred and sixty and extending to British India.....’

The Act of 1894 is an Act so passed and, in so far as it applies to British India, we cannot modify it unless there is express Parliamentary provision to do so. The Act extends the sphere of our legislative powers, because, speaking generally, as all the lawyers in this Council will appreciate, an Act of the Indian Legislature cannot operate *in rem* outside British India and the territorial waters of that country. In certain cases provided for in the Act of 1894, however, the Indian Legislature can enact provisions which have operation throughout the Empire, and that is why I say that that Act extends our powers. Since the great Act of 1894 there have been very many Acts dealing with merchant shipping, but they all fit into the general scheme of codification effected in 1894, and I need not at this stage detain the Council by mentioning them specifically.

I must explain to the Council that a part, indeed the greater part, of our existing shipping law was enacted before the Act of 1894. The importance therefore of a careful examination of our law with reference to the provisions of that Act will be obvious to Honourable Members.

I now turn to the consideration of Indian law. The Indian Statute-book has large number of Acts which deal with the subject of merchant shipping. I think Bombay Members will be interested to know that the first Act which is still on the Statute-book is the Bombay Act of 1838—the Bombay Coasting Ships Act, XIX of 1838. The last Act to appear on the Statute-book is the recently enacted Indian Wireless Telegraphy Shipping Act (XLI of 1920). There are in all some 21 Acts dealing with this subject specifically, and they have been enacted at different times spreading over nearly three-quarters of a century. If this fact stood alone I think I should have no difficulty in convincing you that a *prima facie* case for consolidation is at once made out. I will not harrow your feelings by drawing a picture of the master of a vessel trying to find out what his rights and duties are and feverishly calling on his chief officer, saying :

‘ Bring me the 21 Acts and we will go through them to see what we have to do in this particular case.’

He would indeed be a very well qualified sea lawyer if he were able to find out what the law was—at any rate, without considerable reflection and delay. Apart from that, however, the great Act of 1894 has to be assimilated with our Indian law, and we have to bring our law on the subject within the scope of that Act. As the matter stands at present, the extent to which the Indian law applies can only be determined after a careful consideration of the English law. At one unfortunate period of my life it was my duty to apply my mind to that task, and those who now fill the office I then held will agree with me when I say that it was by no means an easy task.

There are one or two points, however, which I must deal with. If any Honourable Member has read the Statement of Objects and Reasons which accompanies the Bill, he will have seen that the present consolidation is an

imperfect one, in that it leaves the existing Indian law regarding the registration of ships untouched. Those of you who are familiar with shipping law know that there is no more important question than the question of registration. To leave it out is rather like presenting 'Hamlet' without the Prince of Denmark! Therefore, I feel I must give you some reasons why my Committee considered it would not be possible to deal with registration under the present Act. The law in British India regarding the registration of ships is contained in three places—in Part I of the Merchant Shipping Act, 1894; in the Indian Registration of Ships Act, X of 1841, and its amending Acts; and lastly, we have the Bombay Act, XIX of 1838.

As regards Part I of the Act of 1894, I must ask the Council to bear with me for a minute or two while I read one or two of its more important provisions. Section 2 of that Act lays down that:

'Every British ship shall, unless exempted from registration, be registered under this Act.'

Section 3 contains the exemptions, the only one of which applicable to us in India is as follows:

'Ships not exceeding 15 tons burden employed solely in navigation on the rivers or coasts of the United Kingdom or on the rivers or coasts of some British possession within which the managing owners of the ships are resident.'

And, finally, there is an exceedingly important section which declares the application of Act IV. It is section 21 and runs as follows:

'This part of this Act shall apply to the whole of Her Majesty's Dominions and to all places where Her Majesty has jurisdiction.'

I think it is at once clear from a consideration of these three provisions which I have read to the Council that the only means of obtaining registration as a British ship which will be recognised throughout the Dominions of the Crown is by registration under Part I of this Act.

Act X of 1841 and its amending Acts deal with the case of ships built within the limits of the Charter of the East India Company and of ships belonging to Native Princes or States in subordinate alliance with the East India Company and with ships owned by subjects of such Princes or States. Registration under these Acts is optional and confers the privileges of a British ship only within the limits of the East India Company's charter,—that is, roughly the sea between India and the Cape of Good Hope. As I have said, the Act of Parliament in virtue of which these Acts were passed has been repealed, and though the Acts themselves are saved by the Repealing Act there is now no power to re-enact them. We were therefore confronted with the position that if in our Bill we repealed these Acts we should be changing the law in a manner quite beyond the scope of a consolidating Act. On the other hand, if we did not do so we should be left with an imperfect consolidation. We preferred to adopt the latter course, and I trust the Council will consider what I have said a sufficient justification.

Act XIX of 1838 which is a local Act makes compulsory the registration of—

'vessels belonging to any of Her Majesty's subjects residing within the Presidency of Bombay and employed on the coasts of the territories subject to the Government of Bombay or in trading coastwise' and 'fishing vessels and harbour craft belonging to any of Her Majesty's subjects.'

As regards this Act, it merely requires registration as a matter of municipal law. In any event when the question of merchant shipping law was previously under consideration, there were administrative objections to its repeal, and its repeal or embodiment in our Bill was in our

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judgment beyond the scope of a consolidating Bill. I may add that it will be a problem, possibly of some interest, for the Government of India to know how to deal with this Act. There are—  
 12 NOON. I will not inflict them on the Council—some legal difficulties in re-enacting it in the form in which it now appears on the Statute-book.

There is one further point. I think the Council might reasonably ask me why, since you have admitted it that amendment is necessary, you neglected the generally sound rule, which all draftsmen know, that amendment should precede consolidation? That is a general rule; but like all general rules has some exceptions; and I hope to show to the Council that this is a case where an exception should be made. You will see not only from what I have said on the subject of registration, but also from the Notes on Clauses to the Bill—which I am glad to learn Honourable Members have read—that we have drawn attention to amendments which we did not think ought to be made in a consolidation Bill, but which we considered it to be probably desirable from considerations of symmetry and in order to harmonise our law with the English law. Those considerations, I venture to suggest, are really of great importance when you deal with a subject like merchant shipping law for British ships, wherever registered and to whatever possession they belong, may and often do go over the whole world. Apart from these considerations I am aware that Government on administrative grounds have also amendments which they consider necessary. I have made out a strong case, therefore, for a large number of amendments and yet I have first proposed consolidation. You may say:

‘Why don’t you defer consolidation till the amending Bill has passed the Legislature?’

Well, gentlemen, I think that would be an excellent criticism but for two factors; the first is, that the preparation of an amending Bill dealing with the various Acts scattered over our Statute-book would be a work of very great labour and would very largely be labour thrown away. Drafting is a trade just as much as shoe-making; and just as the cobbler who has got an old boot to patch has to find a piece of leather which in texture and colour resembles as closely as possible the boot he is going to patch and when he sews it on as far as possible to assimilate his method of stitching to that employed by the original maker of the boot, so the draftsman when he comes to an amendment of an Act has to proceed very much in the same way. That is to say, he must try and pick up the general style and drafting of the Act which he is amending. If you had to do that with some twenty or so old Acts, it would involve a good deal of labour, and when you have done it you will not have facilitated consolidation. In fact you will have made it rather more difficult because you will have to alter the whole language so carefully assimilated to the old Acts.

The second point is this, that we are dealing with a very large number of Acts which interlock and refer to one another. If Honourable Members will turn to the Schedule at the end of the Bill at page 98 they will see a very long list of enactments which are set down to be repealed. If Government brought in a Bill or anybody brought in a Bill amending those Acts individually, it would not only be a difficult Bill to prepare, but I submit also that it would be an exceedingly difficult Bill for this Council or any Assembly to understand. You will have to have in your hands—if you can hold them—every one of the Acts repealed, and I think you will find it very difficult to follow. These are the reasons, therefore, which induced us to recommend a preliminary consolidation. Honourable Members will



have seen that we do not contemplate that the Bill should come into law in its present form. We regard this Bill as a basis for amending legislation. What the exact procedure is to be is obviously a matter for Government to consider; and it is possible that the Honourable Member in charge of the Department concerned may tell the House what he does propose to-day. However, I may be excused for making one suggestion. One method has occurred to me. I see that since the Bill left my hands a clause has been inserted in it suspending its operation till it is brought into force by the Governor General. That being so, it might be possible to provide that this Bill should be dealt with as a pure consolidation Bill and passed into law, at the same time not bringing it into operation till amendment has been made. That is, that the Bill would be an Act; it would be law, but it would not be in force. That is one way of doing it. I have no doubt that Honourable Members will see that there are other ways of doing it. The important thing I wish now to insist upon is not the particular course to be adopted. Whatever that course may be, I do sincerely hope that amendment and consolidation will be kept separate till all controversial matters have been disposed of. It is common knowledge that many useful and harmless measures of consolidation have been wrecked by attempts to combine the processes of amendment and consolidation. That is a rule which has few exceptions, and certainly when we have to deal with a large mass of law such as this Bill contains, I do not think this is a case where the risk should be run. Honourable Members are probably aware that in the early days of consolidation in the Houses of Parliament at Home it was extremely difficult to prevent Members from mixing up amendment with consolidation. Many Members of Parliament thought that if you brought in a Bill for consolidation, that was a chance for them to move amendments giving effect to reforms which they were anxious to bring about. While they did not bring about any such reforms—that was never the result—the result was that they wrecked the Bill. Moreover the history of the branch of the law we are now considering is itself an object lesson. In the Statement of Objects and Reasons we have pointed out that in the past there have been many attempts to deal with the ‘ungodly jumble’ into which our Statute-book has fallen in so far as it deals with merchant shipping. These attempts have always failed, and I believe that they failed mainly because they endeavoured to combine consolidation and amendment at too early a stage. I had occasion to read in connection with this Bill many papers relating to the attempt to put things straight, notably in the years 1893 to 1896. A most gallant attempt was made in those years and it failed largely because I believe too much was attempted, and I trust on the present occasion that mistake may be avoided. In connection with my perusal of those papers I think I ought to tell the Council that I was struck by the painstaking industry which was shown by two officers of Government whose names are probably not very familiar to us to-day. I knew one of them well; they were both officers, I believe, who rose from the ranks; but they must have been men of great merit indeed; one was Mr. Wigley of the Legislative Department and the other was Mr. O’Connor, who was then Assistant Secretary in the Department of Finance and Commerce. The work they did was of the greatest possible value and has greatly facilitated the preparation of the present Bill; and I should be extremely ungrateful if I did not mention their names and take this opportunity of bearing testimony to their work.

Well, gentlemen, I have detained you long enough over what many might consider a very dry subject. To me it is a matter of considerable interest.

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During the years I was in the Legislative Department, the amendment of the Merchant Shipping Act was a task we all knew to be necessary. It stood on our register when I came in, and it stood on our register when I left the Department some 12 years later. If the labours of the Committee over which I have the honour to preside result in some slight improvement in the law on this subject, it will be a great satisfaction to me personally; for I believe that the present state of the law is in marked contrast with the generally good condition of our Statute-book. Speaking generally our Statute-book is in excellent condition; but in this particular branch of the law I think no one will contend that improvement is not only possible but desirable. I could have wished that some other Member of this Chamber who was also a Member of the Statute Law Revision Committee had taken upon himself the task of introducing this Bill. Unfortunately, the only other Member here (with the exception of that distinguished pluralist, the Honourable Mr. Moncrieff Smith), the Honourable Mr. Khaparde was not a Member of the Committee when we dealt with the Merchant Shipping Law, and the other two Members have not attended during the present Session. I should like to say that the Committee do not commend this Bill to this Council as a final product, as a perfect piece of consolidation, but they commend it as a useful and a necessary piece of spade work which may help those whose duty it is to deal with the substance of the law. The Bill, in my judgment, makes no intentional alteration in the substance of the law save in the very minor respects which are specified in the Notes on Clauses and which are an almost necessary result of a consolidation. Before I conclude, I must thank the officers of the Legislative Department who helped us in getting the Bill into final shape, and more particularly Mr. Wright, who was of the greatest assistance to us. I now leave the fate of the motion which stands in my name to the decision of the Council.

The HONOURABLE MR. C. A. INNES: Sir, I see a certain reluctance on the part of the Members of the Council of State to embark upon this extremely difficult subject, and that indicates to me, Sir, that I too must walk very warily. In fact, I have risen to speak merely for two reasons. You, Sir, have stated in your speech that I may perhaps be able to indicate to the Council what procedure the Government of India propose to adopt in regard to this measure. I am unable at this stage finally to commit the Government of India. The question will have to be discussed and decided in consultation with the Legislative Department. But I may say that our provisional ideas are as follows. We propose either that this Bill, which, as you have explained, Sir, is purely a consolidation measure, should be passed through the Indian Legislature, but not actually put into operation, or that it should be pushed through to its final stage, but not actually passed. Then, Sir, we propose to place before the Legislature, as soon as possible, an amending Bill. We propose to take that Bill through to its final stage without actually passing it into law, and finally, Sir, our idea is that we should refer both the Consolidation Bill or Act, as the case may be, and the Amending Bill to a further Committee in order that a final Consolidation and Amending Bill may be placed before the Legislature. As I have said, the House will understand that these ideas at present are purely provisional.

Now, Sir, I do not propose in any way to comment at this stage upon the merits of this Bill. In fact, I do not feel competent to do so. But, before I sit down, I should like, on behalf of the Government of India in

general and of the Commerce Department in particular, to express our very great obligations to you, Sir, and to the Statute Law Revision Committee for the work of which we see the fruition to-day in this Consolidation Bill. As Member of the Commerce Department, I can speak feelingly on this subject. You have drawn, Sir, a very harrowing picture of the mercantile sea captain trying to ascertain his rights and duties and obligations under our Merchant Shipping law. You have drawn a picture of him calling for our 21 Acts, and searching feverishly through them for the particular provisions which bear upon his particular problem. I can claim the sympathy of the Council for the Commerce Department and for the Maritime Local Governments. All questions connected with Merchant shipping and with Navigation are in my experience extremely difficult and extremely complicated, and their difficulties and complications are doubled and trebled when, in order to find the relevant law, one has to search through 21 different Acts. Some of these Acts are almost obsolete, most of them overlapping one another. This Consolidation Bill gives us a clear picture of our law as it stands at present. The various provisions are arranged in an orderly and connected manner, and now we know where we are in regard to our law. In the Commerce Department we have long recognised that our Merchant Shipping law is in great need of revision. We have an Amendment Register in which numerous amendments have already been noted for consideration, and I think this Consolidation Bill will be of very great service to us because it simplifies and makes easier the very difficult task which lies before us of amending the law. We propose, as soon as possible, to take up this question. In the meantime, Sir, I must again thank you and your committee for giving us a basis upon which to work. I am quite sure that the Council will agree with me that your Committee have laid not only the Government of India but also the Maritime Local Governments and all those connected with shipping in India under a great obligation in having prepared this Consolidation Bill. (Hear, hear).

The HONOURABLE SIR ARTHUR FROOM: Sir, in a few words I should like to congratulate you on the introduction of this Bill which seeks to consolidate the several enactments relating to Merchant Shipping. I do not profess to be a special authority on the Merchant Shipping Acts, but at times I have had to dive into them, and as the Honourable Member for Commerce has pointed out, that diving has frequently led to very unsatisfactory results; sometimes I have been unable to find what I want, at others I have found conflicting instructions.

It must be obvious to the Members of this Council, from what I might describe as the fatness of this Bill, that your work, Sir, and the work of your Committee must have been one of considerable labour, and from my slight knowledge of the various Merchant Shipping Acts and their intricacies, with the inconsistencies of some of the various sections, I cannot think that that labour was altogether one of love. Well, Sir, it must have been very hard work. I congratulate you on introducing this important measure.

The motion was adopted.

The HONOURABLE SIR ALEXANDER MUDDIMAN: I beg to introduce the Bill.

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#### DELHI UNIVERSITY BILL.

The HONOURABLE MIAN SIR MUHAMMAD SHAFI: Sir, I have the honour to move that the Bill to establish and incorporate a unitary teaching and

[Mian Sir Muhammad Shafi.]

residential University at Delhi, as passed by the Legislative Assembly, be taken into consideration. Sir, on the motion for reference of this Bill to a Joint Committee of the two Houses, I gave this House a brief account of the genesis of the scheme for the foundation of a unitary and residential teaching University at Delhi. Even a casual glance at the Bill as originally introduced must have made it clear to Honourable Members that, while the framework of the new University was modelled upon the Dacca Act, certain modifications, necessitated by local conditions, had been introduced in the original Bill and at the same time certain other modifications were also introduced in order to make the proposed University more autonomous and its governing bodies, namely, the Court, the Executive Council and the Academic Council, more popularly constituted. The various provisions of the Bill have been very carefully and indeed exhaustively examined in the Joint Committee, and have subsequently been carefully considered by the other House. It is obviously out of place for me to sing the praises of this legislation. Nevertheless, from the fact that local opinion, particularly in the quarters which will be directly interested in the working of this University, is thoroughly satisfied with the Bill as it is now before the Council, and from the fact that the Bill has been very favourably received by the Indian Press in general, it is self-evident that the measure, as it has emerged from the crucibles of the Joint Committee of the two Houses and of the Legislative Assembly, satisfies public opinion.

I therefore have much pleasure in commending it to the favourable consideration of the House.

The HONOURABLE MR. LALUBHAI SAMALDAS: Sir, I welcome this Bill, because the Imperial City of Delhi wants a University and Government are prepared to give a University to this city. So far, there is no difference of opinion, but, when we come to the detailed provisions in the Bill, there are some differences of opinion, some of which I have stated in my Minute of Dissent, and which I will not repeat now.

The Honourable the Member for Education said that local opinion was thoroughly satisfied. It may be argued, if local opinion is satisfied, what right have you people coming from distant Bombay or perhaps from distant United Provinces to criticise an action which meets with the approval of the local people? What I would say in reply is this. This Bill is not the only one of its kind which has been introduced to establish teaching, residential and unitary Universities in this country. The Council will bear with me if I go a few years back, when the first University Acts were passed for establishing Universities in this country. At that time the precedent adopted in the case of my University was that of the London University. The University was to be both an affiliating and examining body; it was neither a residential nor a teaching University. Later on, especially in Bengal—I am sorry there is no representative of Bengal here, excepting the Maharaja Sahib—it was found that a large number of secondary Colleges as well as full Colleges were established in the mofussil which did not come up to the standard of University requirements. As a result, the University Commission was appointed, and Lord Curzon's University Act was passed which was opposed in this Council very ably by my late lamented friend, Gopal Krishna Gokhale, who said that it was officialising the Universities. However, that measure was passed and is now the basis on which the older Universities have been working. Later on, a demand was made for residential and teaching Universities, and in Calcutta we had a Commission

appointed under one of the ablest educationists England has produced, namely, Sir Michael Sadler, to consider the whole question; and the new Universities that are now being started are based mainly on the recommendations of the Sadler Commission. Sir, as I have said, there is no doubt that on that Commission we had, not only Sir Michael Sadler, but we had the eminent Vice-Chancellor of the Calcutta University as a Member, and any report emanating from a Commission which had as President, Sir Michael Sadler, and as a Member, Sir Ashutosh Mookerjee, must be received with respect by all who take an interest in the educational activities of this country. Well, Sir, this Commission had no opportunities of studying the difficulties or the problems in various parts of the country. They naturally based their recommendations on the requirements of the Bengal Presidency, and I do not think that those recommendations, unless they are tested by the local people and are found to be suitable, should be adopted in other Presidencies. Sir, a few months back one of the Members of that Commission, Sir Ashutosh Mookerjee, was asked by the Punjab University to deliver an address at the Convocation of that University. In the course of that address he said:

‘The University should be in a position to satisfy the requirements of all students who would eagerly flock to her gates actuated by various kinds of needs and desires.’

That is the principle that he lays down. Writing on that principle, the Editor of the *Times of India*, who has been a Fellow of the Senate of my University for a number of years, goes on to say:

‘Here then is a warning to those who think too lightly of the difficult task of creating a new University and seem to urge the wholesale multiplication of new Universities. A University which teaches only a few subjects, and those only indifferently, is not worthy of the name of a University.’

Sir, we were told that the Central Government's finances were not in a very good condition and that it is possible that all the money that will be required for the new University may not be found for some years to come. In that case this University will not be a real University, but will be a conglomeration of the various existing Colleges under the exaggerated name of a University.

If the Honourable the Education Member can assure us that this unitary teaching and residential University will provide all educational needs and will meet the requirements of all the students in Delhi and within the area of 10 miles which is the limit of that University, we will not have much to object to, though I fear that it will not be for years to come, as I do not think Government will be able to find the funds. That is one assurance I require from the Honourable the Education Member.

Then, Sir, the other point is about the University being unitary. Let this University be unitary by all means, because the Province of Delhi is a small one, and we have no objection to having this University as unitary; but I ask the Honourable Member in charge of Education kindly to bear this in mind, that no new Universities should be started unless you have a sufficient number of men to be members of the Court, a sufficient number of men to be members of the Executive Council and there is a real public demand for a University. Sir, in one of the Provinces there will be, if I mistake not, in a year or so five Universities. I need not name the Province. I think everybody has understood me. Now in that Province is it possible that in each University you will have the right type of men either as members of the Court or to use the old phraseology as Fellows of the Senate, or as members of the Executive Council—or to use the old

[Mr. Lalubhai Samaldas.]

phraseology, as members of the Syndicate? If you have not the right type of men as teachers or members of the Executive Council, is it wise to go on starting any number of Universities merely because a few Colleges want to combine and say 'we want to style ourselves a University'? Therefore I wanted the word 'unitary' dropped, but it was no use sending any amendments as I fear it would not be possible to carry any amendments in this Council, when in the Legislative Assembly, with the Democratic Party there, the Honourable Member for Education and his Secretary were not only able to carry this Bill through but able to introduce an amendment which in another form the Select Committee had dropped,—namely, the appointment of a Rector. The Select Committee had discussed the question at the suggestion of my friend the Honourable Raja Sir Harnam Singh, that a pro-Vice-Chancellor should be appointed. That was discussed and found to be impracticable, hence the idea was dropped, and now under another name a similar idea is introduced in the Assembly and carried. If my Honourable friend the Education Minister could carry that proposal there, we have no chance of carrying anything in this Council, and therefore I have not sent in any amendments; but I thought it right to place on record our strong opinion on this subject.

One more point of a general nature. In the older Universities the Syndicates are merely the managing committees of the Senate and are subordinate to the Senate. An attempt is now being made to transfer some part of the Court's work—the old Senate's work to the new Executive Council, and transferring another part to the Governor General in Council. That takes away the autonomy—as my Honourable friend called it—of the University. It takes away the independence of the University. I refer again, Sir, to Sir Ashutosh Mukherji's words. Sir Ashutosh said at the Punjab University:

'The University must have the fullest independence and the amplest powers in working out its intellectual salvation.'

Sir Stanley Reed again writing on the same subject says:

'Here is a warning to those who think that a University should be under the control of Government in the various details of its administration.'

And yet what does this new Bill do? The new Bill provides that when the Executive Council and the Court do not agree, or when the Court turns down the recommendations of the Executive Council, the Executive Council has the power to go direct to the Governor General in Council. That takes away the power of the Senate altogether. But there is another objection. His Excellency the Viceroy is to be Chancellor of this University. Any appeal from the rulings and orders of the Court of which His Excellency is the President is to go to the Governor General in Council—practically himself and his Executive Council. Is it dignified, is it right, or is it not against the dignity of His Excellency the Viceroy that such an appeal should lie from a body of which he is the President to himself and the Members of his Executive Council?

These are the two main objections to the Bill. Barring these and excepting a few details on which I will speak when we consider the Bill clause by clause, there is nothing more to be said about the Bill, and I welcome the Bill, because the local people wanted it and are in favour of it. What I want is only an assurance that this fashion of officialising Universities is not going to extend either to the older Universities or to any new Universities hereafter.

The HONOURABLE DR. GANGANATH JHA: Sir, I rise to welcome the Bill and also to allay the apprehensions of my Honourable Friend, Mr. Lalubhai Samaldas. I have the misfortune of coming from a Province which has with commendable zeal thrown itself into the work of carrying out the recommendations of the Sadler Commission. I may assure my friend that we are not—either in the United Provinces or, I am glad to say, here in the Delhi University Bill,—blindly following the recommendations of that Commission. We take every care to consider how far those recommendations are adaptable to our Province. As regards the criterion that has been set up by the previous speaker, that the University should be able to satisfy all the needs of all the students flocking to its portals, I think if this criterion were insisted upon, there would not be a single University in the land. There is no University—to say nothing of India—even in go-ahead countries like England and America,—there is not a single University I presume that can satisfy all the needs of all the students.

As far as the introduction of the office of the Rector is concerned, all that I have to say is, that not only is that the recommendation of the Sadler Commission, but the opinion of many people now is that in a University—especially in a residential and teaching University—the executive head should be a man who would be expected to be at the University all the time—that is to say, the executive head should be a whole-time officer of the University. The natural corollary to this was that the executive head should be the Vice-Chancellor and the Vice-Chancellor should be the executive head, and that the executive head should be a whole-time officer. This would certainly have been the best arrangement. But there is a feeling abroad, Sir, that the Vice-Chancellor's post is too dignified to be associated with payment and that that dignitary must remain an honorary officer. It is, I believe, in deference to that general feeling that this make-shift of a Rector has been introduced. I believe, indeed I hope, that this officer who is now called Rector will be a whole-time officer of the University. I am glad to have the assurance. I think, therefore, Sir, that the introduction of the office of Rector is a very wholesome departure. We shall have him to all intents and purposes as the executive head, because under the old system the Vice-Chancellor will remain more or less the ornamental head only. I think the work of the University will go on in a much better way. There is no doubt that, if the Vice-Chancellor could be a whole-time officer, that would be the best arrangement; but as for certain reasons that best arrangement is not possible or available, we must be satisfied with the second best arrangement. As for Government control, I can fully understand the feelings of my Honourable friend from Bombay. In an advanced province like Bombay or Calcutta, it is possible to relax Government control to a very great extent; but even my friends from Bombay will admit that the condition of things in the province of Delhi is very far behind that obtaining in their more fortunate provinces; so that I do not think the Government control provided for in this Bill is more than what is necessary under the circumstances; in fact it is less than what it is in every other new University that has been brought into existence. But even if it were more, there would be justification for it. Then the Honourable Mr. Lalubhai Samaldas' objection was with regard to finance. There are so many demands cropping up on the funds of the Government of India and the proportion and nature of those demands will go on increasing, that if we had waited for better financial conditions we would have waited till doomsday; so that the need of this province and the need of this capital city of the Empire would have had to be postponed for a very long time; I think it is with commendable courage that this step has now been taken. Even if only

[Dr. Ganganath Jha.]

a small beginning has been made it is a step in the right direction. With these words I support the Bill.

The HONOURABLE MR. V. G. KALE: Sir, after the exhaustive remarks which have been made by the Honourable Mr. Lalubhai Samaldas, I do not think it necessary to detain the Council for any length of time with my own observations. So far as I am concerned, I felt it my duty when the Bill came for the first time before this Council, to pass certain remarks upon the general principles and the broad aspects of the scheme of the Delhi University Bill; but I must admit that, in the course of the discussions which have taken place in the Joint Committee and of the discussions in the other House, some of the features of the Bill to which I thought it necessary to take objection, have been removed. The Honourable Mr. Lalubhai Samaldas referred to the opinion of the local people in Delhi and the satisfaction which this Bill is calculated to give to those people. I think the opinion of the local people is of some value with regard to the Delhi University Bill; because in Delhi there are a number of Colleges which will become the nucleus of the new University, and consequently if those institutions had not been satisfied, it would have been impossible for the Legislature to undertake any enactment in connection with this University. No doubt, as it will be a University in the Imperial Capital, the people of the different provinces will have naturally their say in the formulation of the whole scheme; but the consent and satisfaction of the local people were matters of some importance.

In the Bill as it now stands before us, there are certain things to which certainly I object. I will not go into the question of the appointment of the Rector which has just now been discussed, because when we come to that clause the question will be considered more fully. I must further state that any one going through the clauses of the Bill will assuredly feel that more power and control than were necessary have been conceded to the Governor General in Council. Constant references to the Governor General in Council will be found from clause to clause, and one may be pardoned if one thought that the University was, as it were, going to be a Department of the Government of India. The Delhi University, I contend, must be an independent entity. The Chancellor may reserve to himself the power of vetoing certain proposals made and resolutions passed by the Court. The power of veto may be necessary and may be provided for in the Bill. But I see no reason why the Governor General in Council should be so often imported into the University Bill, and when we come to consider the clauses I shall have something to say about this. At the present moment I must content myself with the general observation that I do not feel it necessary that these references to the Governor General in Council and his power of control should have been inserted. With these remarks, Sir, I welcome the improvements which have been made in the Bill as it has emerged from the Joint Committee and the other House.

The HONOURABLE SIR DINSHAW WACHA: The University in India is after all an imported plant. The first Universities were established in 1857. India was at that time steeped in darkness and ignorance. From 1857 to now we have made exceedingly good progress; but after all India is a very big Continent and the torch of education is not all that could be wished for. In some places, of course, the torch of knowledge has gone forth illumining the whole horizon; in other places it still burns dimly shedding little light. I consider, Sir, that the Delhi province and the



surrounding provinces are very backward. In fact they have been backward in politics and economics and backward in education. It is only within the last few years that they have attempted to come into line with the others; and even thus they are not in the same front line as Bombay, Madras and Bengal are. Therefore, taking into consideration all these facts and all these drawbacks which, of course, are manifest in the upper provinces, I am of opinion that any number of Universities from the Punjab to Delhi or even further eastward are necessary. That being so, I think that the Government are right and the people are right in going into University education cautiously. It is not the case as in Bombay or Calcutta or Madras that there are so many educated men who can become teachers in Universities to be able make a rapid progress. Therefore, in the beginning, I do think that outside assistance by way of qualified teachers or professors will be necessary. It is also necessary that during the initial or threshold stage the Government should have some control and power over the University itself. I dare say, my Honourable Friend, Professor Kale, and my Honourable Friend, Mr. Lalubhai Samaldas, know that in Germany and on the Continent almost all the Universities even to-day are officialised Universities, there are certain conditions under which they work and the Governments there consider that control on University education is necessary. How far it is necessary in Delhi I cannot say. Considering the disturbed condition of politics and many other things, I believe it is wise on the part of the Government to hold some reasonable sort of control over this new University. That is my belief. Of course, I remember very well that some years ago Professor Max Muller said that a University should be a free and unfettered University. The late Mr. Gladstone also said that a University should have ample freedom; and I do recognise that broad principle. But I should say that, taking local conditions into consideration, it is necessary that that full freedom of the Universities which we all recognise should be granted needs to be withheld at the very outset as far as the Delhi Province is concerned. In any case I cordially welcome the establishment of the Delhi University, and I have no doubt that all the little limitations and control regarding power, finances and other affairs which are objected to by a few here will, as time goes on and as experience is gained, be removed, and I believe that, in future, if the professors and teachers are of the right character, they will give such a tone and temper to the University as will enable them to bring this University into line with the older Universities which have and enjoy so much freedom.

As for finances, I should say this, that even to-day in London, in Oxford, and in Cambridge better finances for the Universities are really one of those cries going on every day. The London and other Universities are constantly appealing for more donations. The older Universities in England have been almost all founded and endowed by private enterprise. There have been rich foundations, and in spite of those many rich foundations and many extensions of those Universities, there, too, finances have been at the bottom of a great deal of drawbacks, specially in the case of Birmingham, Leeds, Manchester and other younger Universities. Those Universities are not able to make that progress which they ought to do for want of the eternal pence. Lord Curzon the other day, as Chancellor of the Oxford University, appealed to the public for large subscriptions of something like a million sterling. That being the case, even in England, where there are old Universities with such rich foundations, they are crying out for more funds. What funds then may one expect at this very threshold

[Sir Dinshaw Wacha.]

from this tiny little University in Delhi which requires financial aid from Government and without which it cannot go on? In a province which is so backward in the matter of education, I think it is absolutely necessary that Government should help it as much as possible. For this purpose finances are a first necessity, and Government should willingly supply them. Where are the people in Delhi who will endow rich foundations as there are in Bombay and other places? But it will be a question of time. For, I do not think there are any, who would offer substantial foundations till University education makes satisfactory progress during the next 20 or 25 years. I do not think many people, even the richer people in Delhi, will come forward to appreciate University education and offer new foundations till the University is tried and tested. Therefore, I think, Sir, that in the beginning when the University is taking its first step, finances, of course, are necessary, and Government should provide them. I take it as the first duty of the Government to find the necessary funds. If Delhi is to go forward and become a really strong educational centre and temple of higher learning just like Bombay or Calcutta or Madras, I think Government will be doing the wisest thing in helping this University in the matter of its finances. Taking a broad vision of the future Universities in India—there will have to be founded many Universities in different provinces as years roll on, but we must for the present rest content with such as can be established with the kind of provisions which are made for this Delhi University. As I said, as we gain experience and as people take more and more interest in the University, and as it grows in freedom like Oxford or Cambridge, Bombay or Calcutta or Madras, all drawbacks will be removed. Meanwhile, we should be quite content to see that the step we are taking to-day is a right, proper and wise step, and I for one heartily congratulate those who have brought about this Bill.

The HONOURABLE MIAN SIR MUHAMMAD SHAFI: Sir, from the fact that my Honourable Friend, Mr. Lalubhai Samaldas, did not follow up his Minute of Dissent by sending in amendments calculated to bring about the changes which he advocates, it seems to me to be clear that in his heart of hearts he really was not very sure of his own ground, and that the criticism which he expressed in his Minute of Dissent was more in the nature of pious wishes than of serious mistakes in the Bill which necessitated any amendment. My Honourable friend spoke of wholesale multiplication of Universities, basing that observation upon what has been stated in a certain article in the 'Times of India.' I may remind him of what I said when I placed before this House the motion for reference of this Bill to a Joint Committee of the two Houses. In the existing conditions there is but one University at Lahore catering for the educational needs of the provinces of Delhi, the Punjab, the North-West Frontier Province, and I believe also of Baluchistan. In other words, there is, at present, only one University in existence in the North-Western part of India catering for the needs of over 40 millions of our Indian population. Can it be said that by establishing a University at Delhi, the Government is guilty of what is characterised as wholesale multiplication of Universities? Indeed, I am surprised that a remark of that kind should have fallen from the lips of my Honourable Friend, Mr. Lalubhai Samaldas, who is in other respects such a sincere well-wisher of progress in this country.

The next observation made by my Honourable Friend, of which it is necessary for me to take notice, is that, as a matter of fact, according to

him this University is not as autonomous as I have claimed it to be. In fact, he says that the Governor General in Council has been given in the various provisions embodied in this Bill far more power than is justified by the circumstances of the case, and in support of that observation he cited the authority of the Honourable Sir Ashutosh Mukerjee. Now, Sir may I be permitted to point out that the provisions embodied in this Bill do not go an inch further than the recommendations of the Sadler Commission, of which Sir Ashutosh was himself a Member and a signatory to the Report with which we are all familiar? On the contrary, if my Honourable friend will compare the provisions of this Bill with the provisions contained in the Dacca, Lucknow and Aligarh Acts, he will find that the control which this Bill seeks to vest in the Governor General in Council is not nearly so great as the control which is vested in the Chancellor, meaning the heads of the Local Governments in those provinces, under those Acts. Of course, it was essential in the case of the Delhi University to substitute the Governor General in Council in the place of the Chancellor in those Acts, because of the position which the Governor General in Council will occupy *qua* this University in the Imperial Capital of India as compared with the position which the Governors of the provinces in which those Universities are situate occupy *qua* those Universities. This criticism put forward by my Honourable friend, it seems to me, has really no basis whatever and is entirely, if I may venture to say so with all respect to him, misconceived.

Then my Honourable friend wanted an assurance from me that this University will satisfy all the needs not only of the Delhi town, but also of the area surrounding Delhi within which the jurisdiction of this University will extend. Well, I fancy it is rather difficult for any human being or for any Government to give such an assurance as that. We hope that this University will satisfy, if not all, most of the educational needs of the people of this province. Beyond that, I am sure this House will recognise it is extremely difficult, if not impossible, for me to go.

Then, my Honourable friend wanted me to remember that no University should be started until you have a sufficient number of the right type of men for membership of the Court, the Executive Council and the Academic Council of the University. That is a proposition, the soundness of which, I believe, everyone will recognise. So far as our knowledge goes, we believe, and we have good reasons for that belief, that here, in Delhi, a sufficient number of well qualified educationists and others does exist to enable us to constitute the Court, the Executive Council and the Academic Council of this University on the right lines. As was pointed out by the Honourable Dr. Ganganath Jha, there are in the Imperial city of Delhi already three Arts Colleges and one Medical College. You have the professorial staffs of these Colleges and you have also the educational authorities of the province. You have further public-spirited citizens of Delhi, some of whom have received education in Europe and others who have received education up to the highest standards in our local Universities. So that we have ample material in the Imperial city of Delhi from which to constitute the various governing bodies of the proposed University.

My Honourable friend further criticised the amendment which has been introduced in the other House providing for a Rector as one of the officers of the University. As was mentioned by the Honourable Dr. Ganganath Jha, the main idea underlying that provision is this. There is a consensus of opinion not only in Delhi, but also in the other House that, if possible,

[Mian Sir Muhammad Shafi.]

the Vice-Chancellor of this University should be an honorary office-bearer and that he need not necessarily be a permanent resident of Delhi. That being so, it is obvious that there should be an officer here on the spot, in Delhi, who will be able, whenever the Vice-Chancellor of the University is not on the spot, to look after the working of the University, and, in consequence, satisfy the aims and objects which we have in view. It is because of that demand, because of that feeling, which we found was general, that this provision was introduced. And I respectfully submit to this House that the provision is an entirely sound one.

I am grateful to my friend, the Honourable Mr. Kale, for the recognition which he has given to the Bill as it has now been placed before this Council, in that he acknowledged that the Bill in its present form is vastly improved and that the deliberations of the Joint Committee of the two Houses have resulted in the removal of all the defects which he had in his mind, with the single exception of powers vested in the Governor General in Council with which I have already dealt in connection with the observations made by my Honourable Friend, Mr. Lalubhai Samaldas. The Bill, as it has emerged from the deliberations of the Joint Committee and of the Legislative Assembly, has his obvious approval, and I trust that it will have the approval of this House as well.

The HONOURABLE THE PRESIDENT: The question is:

'That the Bill to establish and incorporate a unitary teaching and residential University at Delhi, as passed by the Legislative Assembly, be taken into consideration.'

The motion was adopted.

Clauses 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 were added to the Bill.

The HONOURABLE MR. V. G. KALE: In connection with clause 12 I want to make a few remarks.

I recognise that, in cases of emergency, the Vice-Chancellor must be clothed with certain powers to take necessary action. The action that the Vice-Chancellor may take will have reference either to certain persons connected with the University or to certain bodies. So far as persons who may feel aggrieved by the action of the Vice-Chancellor are concerned, they are being given the right of appeal, but, so far as the action of the Vice-Chancellor in other matters is concerned, there is no provision made. Is his action to be quietly submitted to and can it not be revised? I think, Sir, if such action has been taken by the Vice-Chancellor in a case of emergency, it should be subject to the confirmation of some higher authority. In the case of an individual who feels aggrieved there is an opportunity for appeal; in the case of bodies within the University, there is no such opportunity given, and the action of the Vice-Chancellor is not subject to confirmation. I feel that some reference to confirmation of the action of the Vice-Chancellor was necessary. I should like to know whether this point has been thought of.

The HONOURABLE MIAN SIR MUHAMMAD SHAFI: Sir, a glance at the wording of clause 4 (a) will make it clear to my Honourable friend that the fears which he has expressed are really not well founded. This is how clause 4 (a) runs:

'In any emergency which in the opinion of the Vice-Chancellor requires that immediate action should be taken, the Vice-Chancellor shall take such action as he deems necessary and shall have the earliest opportunity hereafter to report his action to the officer, authority or other body who or which in the ordinary course would have dealt with the matter.'

It is obvious that the action taken by an officer in cases of emergency is required to be reported to the authority which would, in the absence of such emergency, have taken action and is subject *ipso facto*, without any express provision, to confirmation by that authority. If the authority considers that the action ought not to have been taken, or ought to have been taken in a different form, or approves of that action, it can, on receipt of the report, express its views accordingly.

The HONOURABLE THE PRESIDENT: The question is:

'That clause 12 stand part of the Bill.'

The motion was adopted.

Clause 12 was added to the Bill.

The HONOURABLE MR. V. G. KALE: A good deal of discussion has already taken place on the introduction of clause 13 relating to the Rector. The position, so far as I understand it, is this. In the Bill as it originally stood, the Vice-Chancellor was expected to be, as he has been made in clause 12 to be, an executive officer of the University; and inasmuch as he must be the chief executive and academic authority, naturally certain powers were vested in him. It has just now been explained that it may be that a person might be appointed as Vice-Chancellor who would not be able to discharge the functions which are attached to the position of Vice-Chancellor in clause 12. It will, therefore, be necessary to appoint some other officer who would perform the duties which would ordinarily be performed by the Vice-Chancellor, and therefore the introduction of the officer called the Rector. What I think in this matter is that we are confusing two things. If in the case of a University like the Delhi University, it is found necessary to vest in the Vice-Chancellor large powers—disciplinary and executive—by all means do so; but what has happened now is this—that there will be a Vice-Chancellor who will be more or less ornamental and most of his important functions will be transferred to the Rector. Consequently there will be a division of authority and executive functions. The performance of his duties by the Vice-Chancellor is likely on this account to suffer. I do not want duties and responsibilities to be divided in this manner. It would be like the Consuls of the ancient Roman Republic. I do not want functions to be divided. If you want to have an executive authority, you can have it in the Vice-Chancellor; but it is very difficult to see how the duties can be divided. Some of the functions of the Vice-Chancellor will fall upon the Rector, because in clause 13 we are told that the Chancellor may appoint a Rector who shall hold office for such term and subject to such conditions and perform such duties of the Vice-Chancellor as the Chancellor after consultation with the Vice-Chancellor may direct. It is all very vague and indefinite, and we shall have two persons intended to perform, as it were, the same functions, but one will be ornamental, while the duties and responsibilities will fall on the shoulders of the other. I consequently do not want that a Rector should be appointed. I object to the whole of clause 13. I wish the arrangement as originally proposed should stand, and certainly it will be open to the Chancellor to appoint as Vice-Chancellor a person who is thoroughly qualified for performing the duties of Vice-Chancellor. Certainly a non-official possessing these qualifications can be found. If this clause has been inserted for facilitating the appointment of a non-official, certainly such a non-official can be found. The primary object is that if such an executive authority as the Vice-Chancellor has got to be created and endowed with powers, then the person must be thoroughly competent to perform those duties. So I object

[Mr. V. G. Kale.]

to any ornamental Vice-Chancellor being placed side by side with a real Vice-Chancellor performing the duties of the first Vice-Chancellor. This sort of combination appears to me to be rather unnecessarily confusing and inefficient. For these reasons I oppose clause 13.

The HONOURABLE MIAN SIR MUHAMMAD SHAFI: Sir, I am afraid that here again the fears entertained by my Honourable friend are not well founded. The circumstances which have necessitated the introduction of this provision in the Bill have already been fully explained by me. The case is not, strictly speaking, one of division of authority, as my Honourable friend understands it, but one of delegation of powers and authority, and there can be no concurrent exercise of the same authority by two persons at the same time, as my Honourable friend fears, for the simple reason that the Rector will exercise such powers of the Vice-Chancellor as the Chancellor may, after consultation with the Vice-Chancellor, delegate to him while the Vice-Chancellor is away from Delhi. It is necessary that during the absence of the Vice-Chancellor, there should be some one on the spot capable of exercising and of having authority to exercise such powers, the exercise of which is essential for carrying on the work. When the Vice-Chancellor is himself on the spot, he will of course exercise his authority in full. The arrangement is such as exists in some offices where there is an additional Secretary or a Joint Secretary who divide the work among themselves. There will be no confusion in the sense in which my Honourable friend fears that there will be confusion under this section. The House need have no misgivings about it, and I trust that the clause, which has met with the approval of the other House and also satisfies the wishes of the local people, will be allowed to stand as it is.

The HONOURABLE THE PRESIDENT: The question is:

‘That clause 13 stand part of the Bill.’

The motion was adopted.

Clause 13 was added to the Bill.

The HONOURABLE THE PRESIDENT: The question is:

‘That clauses 14 to 17 stand part of the Bill.’

The motion was adopted.

Clauses 14, 15, 16 and 17 were added to the Bill.

The HONOURABLE KHAN BAHADUR AHMEDTHAMBY MARICAIR: Sir, my amendment to this Bill runs as follows:

‘That after clause 18 (2) the following be added:

‘due regard being had to Muhammadan representation in the electing and appointment of members in all the governing bodies of the University in proportion to the population.’

This is a question, Sir, which affects the interests of the Muhammadan community in particular. I understand that the Bill, before it was introduced in the Legislative Assembly, contained a provision to that effect, but unfortunately that clause was removed when submitting the Bill to the Assembly. I also understand that a notice of amendment on the same point signed by several Muhammadan members was disallowed by the President of the Assembly owing to the fact that notice was not given within the prescribed time. On going through the committee appointed

I find only one Muhammadan Member was appointed, who, I understand, has noted a Minute of Dissent on the same subject, stating—

‘that the Muslim community and the public interested should have a voice in the selection of the Mussalman members of the Court; and I, therefore, suggest that provision should be made in these Statutes to the effect that one-third of the members elected by the different electorates should be Mussalmans.’

While the question of communal representation has been respected since the introduction of the Morley-Minto reforms in all Provincial Councils and in both Chambers of the Indian Legislature in all Bills introduced under the Reforms, it is a great pity that the Government of India could not see their way to give due regard to Muhammadan representation in this Bill. As a matter of fact I have had the honour of serving in various committees to amend several Bills passed by the Government of Madras, such as the District Municipalities Bill, the Local Boards Bill, the Elementary Education Bill, etc., and I was able to persuade the committee to insert a special clause in all those Bills for safeguarding the Muhammadan interests. I beg to appeal to the Honourable Members of this House that they should give due regard and due consideration to this admitted fact, namely, that Delhi had always been the old capital of Muhammadan Empires. That being the case, if Muhammadan communal rights are not respected, it will give an impression that Honourable Members have been prejudiced against the Muhammadans in promoting their educational interests. With these words I beg to move the amendment.

The HONOURABLE CHAUDHURI MUHAMMAD ISMAIL KHAN: Sir, I would support the amendment of my Honourable Friend, Mr. Maricair. I quite realise the fact that conditions at Dacca and Delhi are not the same, and that arguments brought forward for Muhammadan representation in Dacca University will not hold good for Delhi; but considering the importance of the community I would support the amendment.

The HONOURABLE MIAN SIR MUHAMMAD SHAFI: Sir, although the amendment put forward by my Honourable Friend, Mr. Maricair, does not satisfy the requirements of Standing Order 45, inasmuch as three days' notice of the amendment has not been given, nevertheless I have no desire to choke off the amendment on that ground. Honourable Members will have noticed that in the amendment my Honourable friend seeks to provide for proportional representation of Muhammadans both in the matter of nomination and of selection; and it is not only with regard to the constitution of the Court—which is provided for by clause 18 (2)—that he wishes to provide for this representation, but with reference to all the governing bodies of the University. How then this amendment is an amendment to clause 18 (2) I for one am unable to understand? Of course if my Honourable friend had proposed the introduction of a new provision in this Bill at the end of the clauses dealing with the constitution of the various bodies, the Court, the Executive Council and the Academic Council, that would have been an entirely different matter. But he proposes with reference to clause 18 (2) an amendment dealing with the constitution of all the governing bodies, which is obviously open to objection. In so far as the merits of this amendment are concerned the Government of India leave the decision entirely in the hands of the Council. Official Members will have full liberty to vote as they like, and the Members of the Executive Council will not vote one way or the other.

The HONOURABLE LALA SUKHBIR SINHA: I rise, Sir, to oppose this amendment as a matter of principle. This question has been a very

[Lala Sukhbir Sinha.]

controversial one for a very long time; and so far as I can remember, this communal representation was first of all decided by the Congress at Lucknow. At that time the question was only to be taken into consideration as regards elections to the Legislative Councils; and the Congress decided to fix some percentage for Muhammadans in those elections with the consent of other communities present. At that time also there were some murmurs outside the Congress from others about this percentage; but anyhow they agreed upon it. Then, Sir, an attempt was made to have this principle adopted in municipal elections also, and so far as I remember this was adopted in some Municipal Acts in the United Provinces and in the Punjab. But now an attempt is made to introduce this principle in educational institutions also. Sir, as a matter of principle I demur very strongly to this amendment. The Honourable the Secretary of State, Mr. Montagu, expressed in the Montagu-Chelmsford Report that he was not in favour of this principle of communal representation to be given to any community in India when the good of the country was taken into consideration, and many people agreed with him; but he left it to the Hindu and Mussalman gentlemen to decide this question among themselves. He did not say that anything should be done against their wishes, but he was strongly of opinion that Mussalman Members should not press this question any longer or any further. Sir, so far as good administration is concerned, I think this communal representation either to Muhammadans or Sikhs or to Parsis will be very dangerous; and I appeal to my Muhammadan friends here, as well as outside, not to press this question any more. The appointment should rest on merit and qualification of the persons to be appointed; and no communal representation should be allowed anywhere. Therefore, I strongly oppose this amendment and I appeal to my Honourable friend not to press it.

The HONOURABLE MR. V. G. KALE: Sir, the wording of this amendment has puzzled me a great deal. In the first place, this amendment, as has already been pointed out, cannot be an amendment to clause 18 (2); but leaving aside that question, the amendment says that due regard be given to Muhammadan representation in electing and appointing members in all the governing bodies of the University. Now, so far as the Court is concerned, for example, there are graduates of the University elected by the registered graduates from among their own body. Is the proposed proportion between Hindus and Muhammadans to apply even to the election of graduates? Similarly, with regard to persons elected from their own body by teachers and persons, elected by associations and other bodies; so that if this amendment is to apply to the whole clause I do not see how it can be worked. Then again, with reference to the words 'in electing and appointing Members in all the governing bodies of the University in proportion to 'their' population,' I do not understand to what 'their' relates. Does it relate to governing bodies or does it relate to Members? If 'their' relates to members, then certainly Hindus, Muhammadans, Christians, Parsis, all will have to be considered and they will have to be elected according to their proportion in the population. This is one difficulty. If the word applies to bodies, then 'in proportion to their population' has no meaning. Sir, looked at from any point of view, I find that this amendment is very puzzling; and so far as the principles which have been referred to by my Honourable Friend, Lala Sukhbir Sinha, are concerned, I do not think that in a body like the University the question of representing a particular community in a particular ratio should be introduced at all. If the question of Muhammadan



representation is to be introduced, I ask why should not the question of the representation of Hindus be also introduced? What guarantee is there that the Hindus and other communities will have their proper proportion? In the case of the Delhi University, the population of Delhi being composed very largely of Muhammadans, it may happen that the Hindus may be in a minority. Let there be a provision introduced into this Bill that both Hindus and Muhammadans will have representation in a particular ratio. It is just likely that Muhammadans will be in larger numbers in this University than Hindus. Why not include them in the provision, so that the interests of Hindus also may be safeguarded? Then what about the other communities, Christians and Sikhs? Are not those poor communities to come in for anything at all? No reference has been made to them. Now, my Honourable friend will see how many difficulties creep in as soon as we introduce this question of communal representation. I would, therefore, advise him not to press his amendment.

The HONOURABLE DR. GANGANATH JHA: Sir, if there is any institution where these petty considerations of communal representation should not come in, it is the University. Whatever justification in the shape of diverse interests there may be in regard to representation in other bodies, I do not think in the matter of University education there is any diversity of interests at all. The interests of all communities in the land are precisely identical. I say, therefore, that in the matter of University education, there is absolutely no need for the safeguarding of the interests of any particular community; the interests being identical they will be safeguarded by the members, whoever they may be. The Mover has made a point of Delhi being the seat of the Muhammadan Empire. We all know that Delhi has been the seat of so many Empires that that argument has no force at all.

The HONOURABLE MR. G. S. KHAPARDE: Sir, when the Dacca University Bill was being considered in the old Council, I expressed very nearly what my Honourable Friend, Dr. Ganga Nath Jha said, that in educational matters we should not talk of communal interests. But there is a little humour about this matter. Everybody wants representation. One party wants representation because it is in a minority; another party says they are in a majority and therefore they should have adequate representation, while the third party says: 'we are neither in the majority nor in the minority; we are non-existent, and so we want representation.' How is this to be settled and where is it going to end? This is rather peculiar, I think, and I do not quite understand this.

Then it was suggested that elections should be in proportion to the population. There will be a census of Muhammadan population, I suppose; but what is the criterion as to what the elector should be? Nobody quite knows what it should be, whether he should be a Muhammadan, or he should be a person with some education or with some property or with some status or with nothing at all. Is anybody who chooses to call himself a Muhammadan to be elected? This is an impossible proposition. So for both these reasons, I strongly oppose the amendment which has been put forward.

The HONOURABLE THE PRESIDENT: The question is:

'That after clause 18 (2), the following be added:

'due regard being had to Muhammadan representation in the electing and appointment of members in all the governing bodies of the University in proportion to the population.'

The Amendment was rejected.

The HONOURABLE KHAN BAHADUR AHMEDTHAMBY MARICAIR: I want a Division, Sir, to see the Hindu Muhammadan unity.

The HONOURABLE THE PRESIDENT: The motion was again put and the Council divided as follows:—

#### AYES—5.

Amin-ul-Islam, Khan Bahadur.  
Jaffer, Khan Bahadur E. H.  
Maricair, Khan Bahadur A.

Mohammad Ismail Khan, Haji Chowdhuri.  
Zahir-ud-din, Khan Bahadur S.

#### NOES—16.

Acharyya Chaudhuri, Maharaja S. K.  
Barron, Mr. C. A.  
Edwards, Sir William.  
Ganga Nath Jha, Mahamahopadhyaya Dr.  
Harnam Singh, Raja Sir.  
Kale, Mr. V. G.  
Keshava Prasad Singh, Maharaja Bahadur.  
Khaparde, Mr. G. S.

Lalubhai Samaldas, Mr.  
Lloyd, Mr. E. S.  
Mayhew, Mr. A. I.  
Naidu, Diwan Bahadur V. R.  
Rampal Singh, Raja Sir.  
Smith, Mr. H. Moncrieff.  
Sukhbir Sinha, Lala.  
Wacha, Sir, Dinshaw.

The motion was negatived.

Clause 18 was added to the Bill.

The HONOURABLE THE PRESIDENT: The question is:

‘That clauses 19 to 28 do stand part of the Bill.’

The motion was adopted.

Clauses 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28 were added to the Bill.

The HONOURABLE MR. V. G. KALE: In clause 29 (4), you have the question of a disagreement between the Executive Council and the Court, and, when there is such a disagreement, the Governor General in Council is interposed as a Court of arbitration and the decision of the Governor General in Council shall be final. Now, in a matter like this, when there is a disagreement between the Executive Council and the Court, I think that the Court ought to be the final deciding authority, and there is absolutely no reason why the authority of the Governor General in Council should be introduced into this matter at all. In the University these are the two governing bodies. The Court is a higher authority than the Executive Council, and, consequently, if there is a disagreement, the Court should be the final authority. I, therefore, object to this sub-clause (4), and I oppose it.

The HONOURABLE MIAN SIR MUHAMMAD SHAFI: Sir, in the preliminary discussion I have already explained the reason why the Governor General in Council has been vested with certain powers. In this case it must be obvious to all Honourable Members that, when there is a difference of opinion between the Executive Council, which will be, comparatively speaking, an expert body, and the Court, which will be a heterogenous body consisting of all classes and types of persons, there must be a provision making an outside authority the final arbitrator between these two bodies; and, in the case of Delhi, as I have already pointed out, the Governor General in Council is the best outside authority.

I hope, therefore, that the Council will accept the clause as it stands.

The HONOURABLE THE PRESIDENT: The question is:

‘That clause 29 stand part of the Bill.’

The motion was adopted.

Clauses 29, 30, 31, 32, 33, 34, 35, 36, 37 and 38 were added to the Bill.

The HONOURABLE MR. V. G. KALE: In clause 39 also there is a provision which is subject to the same objection as I raised in the case of previous clauses. The clause says:

'The annual accounts and balance-sheet of the University shall be prepared under the direction of the Executive Council, and shall be submitted to the Governor General in Council for the purposes of audit.'

I do not know whence the Governor General in Council has become an expert body of auditors. I do not see the object of this clause. The accounts and the balance-sheet may be referred to an expert body. I could understand chartered accountants and auditors being expected to audit the accounts of the University. It will be necessary that the accounts of a body like the University should be gone into very carefully, scrutinised and certified to. Here I see the Governor General in Council has acquired a new qualification, namely, that of chartered accountants and auditors, and the accounts and balance-sheet of the University are to be placed for purposes of audit before the Governor General in Council. I cannot imagine what justification there can be for this sub-clause, and I very strongly oppose it.

The HONOURABLE MIAN SIR MUHAMMAD SHAFI: Sir, it is obvious that the funds for the maintenance of this University will, in the main, be provided by the Government of India, and it is clear, therefore, that accounts must be submitted to the Governor General in Council, both for purposes of information and audit. My Honourable friend does not appear to know how the Governor General in Council will get these accounts audited. He ought to be aware that there is some such officer in the Government of India as the Comptroller and Auditor General, who audits all the accounts of the Government of India itself. Surely it would be quite easy for the Government of India to satisfy itself of the correctness of the accounts of the University by having them audited in the proper Department.

The HONOURABLE THE PRESIDENT: The question is:

'That clause 29 stand part of the Bill.'

The motion was adopted.

Clauses 39, 40, 41, 42, 43, 44, 45, 46, 47 and 48 were added to the Bill.

The HONOURABLE MR. V. G. KALE: Sir, I have certain remarks to make with regard to the Schedule. In clause 5 of the Schedule (page 19) 'Class II—Other Members—' sub-clause (v) is worded like this:

'Persons, if any, not exceeding three in number and not being teachers, appointed by the Chancellor on account of their possessing expert knowledge in such subjects of study as may be selected by the *ex-officio* members of the Academic Council.'

Now the clause, as it stands, is to me, at any rate, rather confusing. 'Persons, if any, not exceeding three in number and not being teachers, appointed by the Chancellor.' So far it is clear. It goes on:

'on account of their possessing expert knowledge in such subjects of study as may be selected by the *ex-officio* members of the Academic Council.'

Are the persons or the subjects to be selected by the *ex-officio* members of the Academic Council?

The HONOURABLE MIAN SIR MUHAMMAD SHAFI: The subjects of study, it is quite obvious.

The HONOURABLE THE PRESIDENT: Is the Honourable Member satisfied?

The HONOURABLE MR. V. G. KALE: Then I come to clause 17 of the Schedule. There, provision is made for the appointment of a committee of selection of teachers in the University. The constitution of the committee is satisfactory. But in sub-clause (2) of clause 17 it is provided that committees of selection appointed under sub-clause (1) shall report to the Executive Council which shall, if it accepts the nomination of the committee, make the appointment or confer the recognition as the case may be. So far so good; but if the Executive Council does not accept the nomination of the committee, it shall refer the case to the Chancellor who shall appoint or recognise such person as he thinks fit. Once again we have the interference of the Chancellor in such a small matter as this. The committee is a very strong committee and certainly is a body which ought to be relied upon. The Executive Council and the committee of selection are to be expected to manage these matters efficiently, and I do not see, so far as I am concerned, any necessity for endowing the Chancellor with this authority of making nominations himself.

The HONOURABLE MIAN SIR MUHAMMAD SHAFI: Sir, the Chancellor is the head of the University. I thought the objection was that an outside authority like the Governor General in Council should not be brought in. Surely in the case of a difference between two such bodies as these the Chancellor is the best person to intervene?

The HONOURABLE THE PRESIDENT: The question is:

‘That the Schedule stand part of the Bill.’

The motion was adopted.

The Schedule was added to the Bill.

The HONOURABLE THE PRESIDENT: The question is:

‘That the Preamble stand part of the Bill.’

The motion was adopted.

The Preamble was added to the Bill.

The HONOURABLE MIAN SIR MUHAMMAD SHAFI: Sir, I beg to move that the Bill, as passed by the Legislative Assembly, be passed.

The HONOURABLE MR. G. S. KHAPARDE: Sir, I submit a few observations at this stage of the Bill. The educational activities of the Government of India up to this time may be divided into four periods, roughly speaking. The first period ended in 1910 at the end of which you find that in India there were only five Universities. Then the next period begins with 1911 and ends with 1916, when Sir Harcourt Butler took charge of education, and during that period there was one University added. Then the next period begins in 1916 and ends with 1919, when Sir Sankaran Nair retired from the position of Education Member, and he added one University—that is, the Patna University. Then begins the period from 1919 when our present Education Member took charge of the portfolio up to the present, and in that time five Universities—Dacca, Lucknow, Rangoon, Aligarh and last of all Delhi—came into existence. The first period may be regarded as a sort of preliminary period. The next period is one of vacillation when things mostly remained as they were; and then we enter upon the third period when within three years you get one University added; and the present period which may be called a period of full activity during which within two years five Universities have been given to the Empire. Now I

think the more Universities we can have the better. I should like to see Universities multiply; and they ought also to specialise. One University should teach some one thing for which the whole of India would go there, and another University should teach another thing for which the rest of India would go to it. A student would thus have a number of Universities to choose from. Whatever the subject he wished to be proficient in he could go to that particular University and be recognised all over India—and I dare say all over the world—as having a unique reputation for that subject.

I congratulate the Government of India on this increased activity within the last two years. I congratulate the Government of India generally, and in particular the Honourable the Education Member who since he took charge has been able to launch five new Universities. I congratulate him on this greatly increased educational activity, and I hope it will be carried into the sphere not only of higher education, but also of secondary education and most certainly in the direction of primary education.

The HONOURABLE LALA SUKHBIR SINHA: Sir, I rise to give my full support to this Bill and to welcome it as a very useful measure, not only for the people of the Delhi Province, but for other districts adjacent to Delhi. I am not a resident of Delhi myself as yet, but I have a number of friends here who welcome this measure whole-heartedly, and so far as I know there are three Colleges here all the professors and principals of which have welcomed this Bill. In my division of the United Provinces—the Meerut Division—there is no University, and I think the Delhi University will be the nearest to them. Aligarh and Agra are too far away, and as Delhi University will be an Imperial University, most of us would like to be attached to it. There will be no lack of persons to work for it in different forms—such as Courts, Executive Councils, Boards, Syndicate and so on. People from all provinces will come up to work for and help the institution and there will be no lack of students. I congratulate the Honourable Member for Education on having this measure passed by both Houses, and I hope he will be able to make the University a fit institution for the Imperial town of Delhi.

The HONOURABLE THE PRESIDENT: The question is:

‘That the Bill to establish and incorporate a unitary teaching and residential University at Delhi, as passed by the Legislative Assembly, be passed.’

The motion was adopted.

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#### ADJOURNMENT OF COUNCIL.

The Council then adjourned till Wednesday, the 1st March, 1922, at Eleven of the Clock.