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CONTENTS.

	PAGES.
MONDAY, 8TH FEBRUARY, 1926—	
Members Sworn	1—2
Bills passed by the Legislative Assembly—Laid on the Table ...	2
TUESDAY, 9TH FEBRUARY, 1926—	
Inauguration of the Second Council of State	3—8
WEDNESDAY, 10TH FEBRUARY, 1926—	
Member Sworn	9
Questions and Answers	10—29
Welcome to Members by the Honourable the President	29—30
Messages from His Excellency the Governor General <i>re—</i>	
(1) Panel of Chairmen	30
(2) Presentation and Discussion of the Railway Budget	30
Committee on Petitions	31
Appointment of the Honourable Mr. K. C. Roy to the Library Committee.	31
Governor General's Assent to Bills	31
Bills passed by the Legislative Assembly—Laid on the Table ...	32
Election of a Panel for the Standing Committee on Emigration ...	32
Resolution <i>re</i> Ratification of the Draft Convention of the International Labour Conference concerning Workmen's Compensation for Occupational Diseases—Adopted.	32—37
Resolution <i>re</i> Continuation of the Imposition of a Customs Duty on Lac—Adopted.	37—41
Statement of Business	41—42
MONDAY, 15TH FEBRUARY, 1926—	
Members Sworn	42
Questions and Answers	43—62
Election to the panel of the Standing Committee on Emigration ...	62
Bills passed by the Legislative Assembly—Laid on the Table ...	62
Resolution <i>re</i> the Royal Commission on Agriculture—Adopted ...	62—81
Resolution <i>re</i> Reduction of the travelling and daily allowances of the Members of the Council of State—Discussion postponed <i>sine die</i> .	81—90
Statement of Business	90
TUESDAY, 16TH FEBRUARY, 1926—	
Member Sworn	103
Messages from His Excellency the Governor General	103
Bill passed by the Legislative Assembly—Laid on the Table ...	104
Small Cause Courts (Attachment of Immoveable Property) Bill—Passed.	104—105
Code of Criminal Procedure (Amendment) Bill—Passed	105
Government Trading Taxation Bill—Passed	106
Guardians and Wards (Amendment) Bill—Passed	106—107
Indian Lunacy (Amendment) Bill—Passed	107—108
WEDNESDAY, 17TH FEBRUARY, 1926—	
Questions and Answers	109—111

	PAGES.
WEDNESDAY, 17TH FEBRUARY, 1926—contd.	
Private Notice Questions and Answers	111—113
Statement regarding Negotiations with the Union Government of South Africa.	113—115
Resolution <i>re</i> Leader of the Indian Delegation to the League of Nations—Adopted.	115—132
Resolution <i>re</i> Formation of a separate Kannada Province—Negatived	132—144
THURSDAY, 18TH FEBRUARY, 1926—	
Member Sworn	145
Bills passed by the Legislative Assembly—Laid on the Table ..	145
The Railway Budget for 1926-27	145—161
Elections to the Panel for the Standing Committees on Emigration ...	162
Resolution <i>re</i> Appointment of a Royal Commission to inquire into the working of the Indian Constitution—Negatived.	162—215
Election of Panels for Standing Committees	215
SATURDAY, 20TH FEBRUARY, 1926—	
Questions and Answers	217—249
Nominations to the Panels for Standing Committees	220
Bills passed by the Legislative Assembly—Laid on the Table ...	220
General discussion of the Railway Budget	220—254
Statement of Business	254
MONDAY, 22ND FEBRUARY, 1926—	
Members Sworn	255
Statement laid on the Table	255—257
Indian Medical Education Bill—Introduced	258
Election of a Panel for the Central Advisory Council for Railways ...	259
TUESDAY, 23RD FEBRUARY, 1926—	
Questions and Answers	261—262
Code of Civil Procedure (Amendment) Bill—Passed	262
Indian Naturalization Bill—Passed	263—265
Steel Industry (Amendment) Bill—Passed	265—268
Insolvency (Amendment) Bill—Passed	268—269
Code of Criminal Procedure (Second Amendment) Bill—Passed ...	269—284
Madras Civil Courts (Amendment) Bill—Passed as amended ...	285—286
Resolution <i>re</i> Grant of Supplementary Assistance to the Tin-plate Industry—Adopted.	286—290
Nominations to the Panel for the Central Advisory Council for Railways.	290—291
THURSDAY, 25TH FEBRUARY, 1926—	
Questions and Answers	293—296
Legal Practitioners (Amendment) Bill—Passed as amended ...	296—297
Promissory Notes Stamp Bill—Passed	297—298
Indian Trade Unions Bill—Passed as amended	298—304
Election of a Panel for the Central Advisory Council for Railways ...	305
Nominations to the Panels for Standing Advisory Committees ...	305—306
MONDAY, 1ST MARCH, 1926—	
Questions and Answers	307—316
Result of the Election to the Central Advisory Council for Railways ...	317

MONDAY, 1ST MARCH, 1926—*contd.*

Election to the Advisory Publicity Committee of Messrs. Ramadas Pantulu and Khaparde.	317
Elections to the Panels of Departmental Standing Committees	317
General Budget for 1926-27	317-327

TUESDAY, 2ND MARCH, 1926—

Result of the Elections for the Panels of the Standing Departmental Committees.	329
Contempt of Courts Bill—Passed	330-341
Indian Medical Education Bill—Motion to circulate—Adopted	341-343
Photographic group of the Members of the Council of State	343

WEDNESDAY, 3RD MARCH, 1926—

Resolution <i>re</i> Import Duty on Artificial Ghee—Withdrawn	345-359
Indian Registration (Amendment) Bill—Passed	359

SATURDAY, 6TH MARCH, 1926—

Questions and Answers	361-373
General Discussion of the Budget (Part II)	373-422
Statement of Business	422

MONDAY, 8TH MARCH, 1926—

Questions and Answers	423-424
Resolution <i>re</i> Guarantee of Appointments on State Railways to qualified students of the Madagan Engineering College, Lahore, etc.—Negatived.	424-438
Resolution <i>re</i> Privileges and Status of Members of the Council of State—Adopted.	438-442

WEDNESDAY, 10TH MARCH, 1926—

Questions and Answers	443-450
Resolution <i>re</i> Qualifications of Assistant Commissioners of Income-tax—Withdrawn by leave of the Council.	451-458
Resolution <i>re</i> Banking Legislation—Discussion adjourned	458-466

MONDAY, 15TH MARCH, 1926—

Questions and Answers	467-471
Resolution <i>re</i> Salaries of the two Members of the Judicial Committee of the Privy Council with Indian Experience—Adopted as amended.	471-488
Resolution <i>re</i> Creation of a self-governing Tamil-speaking Province—Discussion adjourned.	489-505

TUESDAY, 16TH MARCH, 1926—

Statement laid on the Table	507-543
Bills passed by the Legislative Assembly—Laid on the Table	544
Resolution <i>re</i> Reduction of the Exports of Opium—Adopted	544-547
Resolution <i>re</i> Creation of a self-governing Tamil-speaking Province—Negatived.	548-562
Statement of Business	562

WEDNESDAY, 17TH MARCH, 1926—

Questions and Answers	563
Bill passed by the Legislative Assembly—Laid on the table	564
Indian Succession (Amendment) Bill—Introduced ✓	564-565
Message of Gratitude from the Council of State to Their Excellencies the Earl and Countess of Reading—Motion adopted	565-579

FRIDAY, 19TH MARCH, 1926—

Members Sworn ...	...	...	...	...	...	581
Message from His Excellency the Governor General ...	...	...	...	...	...	581
Bills passed by the Legislative Assembly—Laid on the Table ...	...	...	...	...	...	581—582
Message from the Legislative Assembly ...	...	...	...	...	...	582
Indian Tariff (Amendment) Bill—Passed ...	...	...	...	...	...	582—583
Madras Civil Courts (Second Amendment) Bill—Passed ...	...	...	...	...	...	583—584

MONDAY, 22ND MARCH, 1926—

Members Sworn ...	...	...	...	...	...	585
Question and Answer ...	...	...	...	...	...	585
Message from H. E. the Governor General ...	...	...	...	...	...	585—586
Indian Finance Bill—Passed ...	...	...	...	...	...	586—611
Cotton Industry (Statistics) Bill—Passed ...	...	...	...	...	...	611—612
Legal Practitioners (Fees) Bill—Passed ...	...	...	...	...	...	612—613
Code of Civil Procedure (Second Amendment) Bill—Passed ...	...	...	...	...	...	613
Delhi Joint Water Board Bill—Passed ...	...	...	...	...	...	613—614
Indian Income-tax (Amendment) Bill—Passed ...	...	...	...	...	...	614—630
Indian Divorce (Amendment) Bill—Passed ✓...	...	...	...	...	...	630—632
Indian Factories (Amendment) Bill—Passed ...	...	...	...	...	...	632
Transfer of Property (Amendment) Bill—Passed ...	...	...	...	...	...	632

TUESDAY, 23RD MARCH, 1926—

Questions and Answers ...	...	...	...	...	...	635—641
Resolution <i>re</i> Emigration of Indian Unskilled Labourers to British Guiana—Adopted.	...	...	...	...	...	641—643
Indian Succession (Amendment) Bill—Passed as amended ✓...	...	...	...	...	...	643—644

THURSDAY, 25TH MARCH, 1926—

Farewell speech delivered to the Council of State and the Legislative Assembly by His Excellency the Viceroy.	645—649
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COUNCIL OF STATE.

Monday, 15th March, 1926.

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

QUESTIONS AND ANSWERS.

171—181, standing in the name of the Honourable Lala Sukhbir Sinha, were neither put nor answered.

THE HONOURABLE THE PRESIDENT: I may point out to the Council with reference to the questions standing on the paper in the name of the Honourable Lala Sukhbir Sinha that they were put on the paper more or less at the Honourable Member's own request. By absenting himself to-day he has been the cause of a considerable amount of unnecessary labour, expense and inconvenience not only to the staff of the Council but to the Government.

NAMES OF THE PROVINCES TO WHICH THE CUTCHI MEMONS ACT, 1920, HAS BEEN APPLIED.

182. THE HONOURABLE KHAN BAHADUR EBRAHIM HAROON JAFFER: (a) Will Government be pleased to state the names of the provinces to which the Cutchi Memons Act, 1920, has been applied?

(b) Has it been applied to the Madras and Bengal Presidencies?

(c) If not, do Government intend to ask the authorities concerned to take the necessary steps in the matter?

THE HONOURABLE MR. J. CHERAR: The Cutchi Memons Act, 1920, applies to all Cutchi Memons who have attained the age of majority and are resident in British India. I regret that I have no information as to which Local Governments apart from the Bombay Government have made rules under the Act. Local Governments have discretion under the Act as to whether they will make rules to carry into effect the purposes of the Act or not, and the Government of India do not propose to interfere.

FOUNDATION OF SCHOLARSHIPS FROM INTEREST ON GOVERNMENT SECURITIES HELD BY MUHAMMADANS.

183. THE HONOURABLE KHAN BAHADUR EBRAHIM HAROON JAFFER: (a) Will Government be pleased to state what action they have so far taken on my Resolution regarding scholarships from interest on Government Securities?

(b) Have they received replies from all the Local Governments?

(c) If so, will they be pleased to place them on the Council table?

THE HONOURABLE MR. A. C. McWATTERS: (a) Local Governments were consulted and asked to obtain the views of representative Muhammadan opinion.

(b) Replies have been received.

(c) Government do not propose to publish the correspondence.

THE HONOURABLE KHAN BAHADUR EBRAHIM HAROON JAFFER: May I have a summary of the replies?

THE HONOURABLE MR. A. C. McWATTERS: Yes, I shall be pleased to give the Honourable Member a summary of the correspondence.

LOANS RAISED BY THE GOVERNMENT OF INDIA IN INDIA AND ABROAD.

184. THE HONOURABLE MR. MANMOHANDAS RAMJI: Will the Government be pleased to lay on the table—

(a) a statement showing loans raised in India and abroad, separately, for Capital works, including Railways, for each year from 1907-08 to 1924-25; and

(b) a statement showing the amount of each loan and the purpose for which each loan was raised?

LOANS RAISED BY THE GOVERNMENT OF INDIA FOR THE USE OF PROVINCIAL GOVERNMENTS.

185. THE HONOURABLE MR. MANMOHANDAS RAMJI: Will the Government be pleased to state the amount of loans that were raised by the Central Government for the use of the Provincial Governments for each year, commencing from 1907-08 to 1924-25, giving the name of the province and the purpose for which such loans were raised?

THE HONOURABLE MR. A. C. McWATTERS: With your permission, Sir, I shall answer questions 184 and 185 together.

I regret it is not possible for me to comply with my Honourable friend's request. The loans of the Government of India are not ordinarily earmarked for any specific purpose. Both their own capital expenditure and the requirements of Provincial Governments are met from their general ways and means balances in which, as explained by the Finance Member in his budget speech, are included receipts from a variety of sources other than market loans.

REBATE GRANTED TO GOVERNMENT BY THE P. & O. STEAM NAVIGATION COMPANY ON PASSAGES ENGAGED FOR GOVERNMENT OFFICIALS.

186. THE HONOURABLE MR. MANMOHANDAS RAMJI: (a) Is it a fact that Government get a rebate from the P. and O. Steam Navigation Company of 20 per cent. on all passages engaged for military and naval officers by them?

(b) If so, what has been the total amount of such rebate in each year since it was first paid?

(c) What is the total amount of passage monies granted by the Government on account of the Lee recommendations since these came into force?

(d) Have Government arranged with the P. and O. Steam Navigation Company and with other companies for such a 20 per cent. rebate on passages of all officers who proceed to Europe on leave and are paid passage money by Government under the Lee recommendations; if not, why not?

THE HONOURABLE MR. D. T. CHADWICK: With your permission, Sir, I shall reply on behalf of His Excellency the Commander-in-Chief.

(a), (b) and (d). Government regret that they are unable to furnish the information desired by the Honourable Member. The arrangements, in which India participates, between His Majesty's Government and various shipping companies as to duty and leave passages at public expense are confidential and cannot be disclosed.

(c) This part of the question concerns the Finance Department, from whom I understand that the figures, for which the Honourable Member asks, could not be collected without an inordinate expenditure of time and trouble.

MUHAMMADAN GRIEVANCES IN RESPECT OF THE EDUCATIONAL ADMINISTRATION OF DELHI AND AJMER-MERWARA.

187. THE HONOURABLE SAIYAD MUHAMMAD PADSHAH SAHIB BAHADUR: Has the attention of Government been drawn to a series of articles in the *Muslim Herald* of Allahabad in its issues from 3rd to 8th January, 1926? If so, what action has been taken by Government to remove the grievances contained therein?

THE HONOURABLE SIR MUHAMMAD HABIBULLAH: The Government of India have seen an extract from the *Muslim Herald*. The Honourable Member may rest assured that the claims of the Muslim community will be sympathetically and equitably dealt with.

DUTIES OF THE SUPERINTENDENT OF EDUCATION, DELHI AND AJMER-MERWARA.

188. THE HONOURABLE SAIYAD MUHAMMAD PADSHAH SAHIB BAHADUR: Is it a fact that the Superintendent of Education has other multifarious duties to perform in the Government of India Secretariat?

THE HONOURABLE SIR MUHAMMAD HABIBULLAH: The Educational Commissioner with the Government of India holds charge of the post of Superintendent of Education, Delhi and Ajmer-Merwara, in addition to his own duties.

MUHAMMADAN GRIEVANCES IN RESPECT OF THE EDUCATIONAL ADMINISTRATION OF DELHI AND AJMER-MERWARA.

189. THE HONOURABLE SAIYAD MUHAMMAD PADSHAH SAHIB BAHADUR: (a) Is it a fact that the Assistant Superintendent of Education, District Inspector of Schools and Head Clerk, all belong to Delhi city proper, and have family connections there?

(b) Is it a fact that inter-relations exist between the officers referred to in (a)?

THE HONOURABLE SIR MUHAMMAD HABIBULLAH: (a) Yes.

(b) No.

MUHAMMADAN GRIEVANCES IN RESPECT OF THE EDUCATIONAL ADMINISTRATION OF DELHI AND AJMER-MERWARA.

190. THE HONOURABLE SAYYAD MUHAMMAD PADSHAH SAHIB BAHADUR: Is it the usual practice in other provinces to appoint officers in the inspecting line in charge of the offices of the Director of Public Instruction or of those of Divisional Educational Inspectors and to appoint a Headmaster in the teaching line to be in charge of an administrative and inspecting office? If so, will Government kindly give any instance? If not, will Government give reasons for the departure from the usual established practice?

THE HONOURABLE SIR MUHAMMAD HABIBULLAH: The employment of a college principal or a high school headmaster on administrative and inspecting duties is by no means uncommon, *e.g.*, in Baluchistan the Superintendent of Education is Principal of the Sandeman High School, Quetta.

INSPECTIONS OF LOCAL HIGH SCHOOLS BY THE ASSISTANT SUPERINTENDENT OF EDUCATION, DELHI AND AJMER-MERWARA.

191. THE HONOURABLE SAYYAD MUHAMMAD PADSHAH SAHIB BAHADUR: Is it a fact that the Assistant Superintendent of Education now makes all inspections of the local High Schools with the District Inspector of Schools?

THE HONOURABLE SIR MUHAMMAD HABIBULLAH: No.

PAUCITY OF MUSLIMS IN THE OFFICE OF THE SUPERINTENDENT OF EDUCATION, DELHI AND AJMER-MERWARA.

192. THE HONOURABLE SAYYAD MUHAMMAD PADSHAH SAHIB BAHADUR: Is it a fact that the number of Muslims in the office of the Superintendent of Education is very small, and that a Muhammadan clerk was discharged from the service, and a non-Muslim appointed in his place? Had the Muhammadan clerk in question been well reported on?

THE HONOURABLE SIR MUHAMMAD HABIBULLAH: In December 1924, the staff consisted of six Hindus and one Muhammadan. It now consists of three Hindus, two Muhammadans and one Indian Christian, one post having been reduced. The services of a young Muhammadan clerk, who was temporarily employed, were dispensed with in order to make room for a qualified accountant. He was given a recommendation which has secured him employment elsewhere.

NUMBER OF MUHAMMADAN AND HINDU TEACHERS, CLERKS AND PEONS IN THE SCHOOLS IN THE DELHI PROVINCE AND AJMER-MERWARA.

193. THE HONOURABLE SAYYAD MUHAMMAD PADSHAH SAHIB BAHADUR: Will Government kindly state the actual number of Muhammadan and Hindu teachers, clerks and peons, both in the Delhi Province and in Ajmer-Merwara schools, and the dates of their appointments?

THE HONOURABLE SIR MUHAMMAD HABIBULLAH: This question is not clear. If it refers to teachers in aided schools and Board schools, the collection of the information would involve an expenditure of time and trouble which would in the circumstances, not be justified.

PAUCITY OF MUHAMMADANS IN THE EDUCATION DEPARTMENT, AJMER.

194. THE HONOURABLE SAIYAD MUHAMMAD PADSHAH SAHIB BAHADUR: Is it a fact that in the Ajmer Education Department, all the inspecting officers and clerks, with the exception of one, are Hindus?

THE HONOURABLE SIR MUHAMMAD HABIBULLAH: Yes.

ARTICLE IN THE *MUSLIM OUTLOOK*, DATED THE 22ND DECEMBER 1925.

195. THE HONOURABLE SAIYAD MUHAMMAD PADSHAH SAHIB BAHADUR: Has the attention of Government been drawn to an article in the *Muslim Outlook* of Lahore, dated the 22nd December, 1925? If so, are the figures given therein correct? If not, will Government kindly give correct figures?

THE HONOURABLE SIR MUHAMMAD HABIBULLAH: The article in question has not been seen by the Government. An endeavour is being made to obtain the issue of the paper referred to.

RESOLUTION *RE* SALARIES OF THE TWO MEMBERS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL WITH INDIAN EXPERIENCE.

THE HONOURABLE THE PRESIDENT: I understand that the Honourable Mr. Roy, in whose name the Resolution regarding the Privy Council stands, desires to give way to the Honourable Mr. Khaparde, who also has given notice of the same Resolution.

THE HONOURABLE MR. K. C. ROY: Yes, Sir.

THE HONOURABLE THE PRESIDENT: In that event I think I should point out—I think I should rule—that the amendments to the Resolution which are on the paper in the names of the Honourable Sardar Charanjit Singh and the Honourable Mr. Desika Chari, though technically they are amendments to Mr. Roy's Resolution, must be treated as amendments to Mr. Khaparde's Resolution, and I shall admit them as such.

The Honourable Mr. Khaparde.

THE HONOURABLE MR. G. S. KHAPARDE (Berar: Nominated Non-Official): Sir, the Resolution which I propose to move reads as follows:

"This Council recommends to the Governor General in Council to take steps to secure:

- (1) in the case of future appointments the enhancement of the salaries paid to the two members of His Majesty's Privy Council with Indian experience who sit on the Judicial Committee under the provisions of the Judicial Committee Act of 1833 to hear Indian appeals;
- (2) that they shall be persons possessed of recent knowledge of Indian law and practice and shall be of Indian domicile;
- (3) that their salary shall be £4,000 per annum each, half of which shall be paid from Indian revenues; and
- (4) that during any period when this salary is enjoyed, any pension payable to either of them from Indian revenues shall lapse."

Sir, Honourable Members probably know that a Resolution very similar to this was moved in another place by the Honourable the Home Member and I have brought it here with a little addition of my own. Both these

[Mr. G. S. Khaparde.]

things require explanation, which I shall give presently. I brought it here because I believe that it is a gesture. This word has come into existence after the war; during the war camouflage came into existence and after the war this word "gesture" has come in—and it is gesture made both by the Government of India and the Government of India in England. The Government of India made proposals some time ago, I believe, for this change being made in the Privy Council and the Home Government have agreed to it after some lengthy negotiations and it means that the services of one of the two judges proposed are to be paid by the British Government. Briefly put, that is the position. This gesture, it appears to me, was not understood or at any rate it did not attract the attention which it deserved. Discussion took place in another House. I do not propose to refer to it at any length, but I will only refer to it merely to show that they thought at least at one stage that this would interfere with the establishment of a Supreme Court here. At another moment they appeared to think that it was unnecessary to do so; if a Supreme Court came into existence the Privy Council would be of no use, and so on. Both these things are wrong from my point of view. The existence of a Supreme Court is in no way antagonistic to the jurisdiction of the Privy Council. In fact the Privy Council acquired jurisdiction as early as 1726, exactly 200 years ago, and now in 1926, we are seeking to improve it a little bit. Even if a Supreme Court came into existence, appeal to the Privy Council would still remain as it remains in the case of Australia and other Colonies. So, the proposition that the improvement of this Court would interfere with the establishment of a Supreme Court does not appear to hold water; it is not correct. Secondly, there is a distinct advantage politically. If there is a Supreme Court in India and the Privy Council has its jurisdiction, the litigant will have the choice either to bring his case here or to take it to England. The litigant in fact will choose his forum as it is called and that would be a distinct advantage. Some of the matters that go before the Privy Council are better decided in England. There are other matters, which have a considerable local colour, and they are better decided here. In that case, we stand distinctly to gain. But the greatest gain comes further on. It is like this. The first charter of the Act of 1726, never mentioned anything about Indians; still we know that the words were general and advantage was taken of it; and in 1833, it was more liberally interpreted and Mr. Justice Amir Ali was appointed to the Privy Council. The same thing will happen again and I believe there are distinct indications made in the speech of the Honourable the Home Member in another place which clearly point to the fact that it is an Indian that they have in view, though they do not mention it in so many words. The Honourable the Home Member pointed out that the salaries were fixed at £4,000 because it is contemplated that some people will go from here to England and stay there to do this work. It is also contemplated that after spending the afternoon of their days there they will come back to India and live here. That means only Indians and nobody else. Similarly, it is also pointed out that it would not be a job for a retired person, because I know from personal experience that the work in the Privy Council is very heavy, involves very difficult questions, consideration of strong arguments, and so on. Further, there is the consideration that a retired person trying to take this up would have to lose his pension during the time that he derives further pay. So the Honourable the Home Member argued that this is a distinct argument

in favour of the Indian Bar. Those are the persons who stand to profit by it; and I think it is not a question purely of profits but the question of prestige. The Privy Council has already a great prestige and it is likely to be enhanced. In this world it is not enough to be right; one should also appear to be right. People recognize that the Privy Council understand Indian law and they apply it with as much care as possible, but still people here sometimes imagine that Indian law is not understood there and circumstances are not properly appreciated. With an Indian sitting there that misapprehension will go; and in that way it will not only contribute to efficiency, but also infuse more confidence; people have already a great deal of confidence, and that will be heightened. Whichever way we look at it, it is a proposal which is distinctly more favourable to the Indian Bar than to anybody else. I do not want to repeat the arguments which were put forward in the lower House, but the trend of the arguments there was that it is more favourable to the Indian Bar than to anybody else. It is a matter for regret that though this door was opened there it has not been taken advantage of. I should like to take advantage of it, and that is one of the reasons why I have brought forward this Resolution here. It is a distinct gain as I have already pointed out.

A further point is that the Indian Bar is not wanting in talent. I could mention names that are honoured, I may say, all over the legal world. Dr Rash Behari Ghose's books are used as texts in America. There are other lawyers who are also in a similar position in that respect. I could give a long string of names generally of people that have gone. That makes no invidious distinction. There is Muthuswami Iyer of Madras, Sir Dwarkanath Mitter of Calcutta, Justice Mahmood of Allahabad, Justices Mahadev Gobind Ranade and Teling of Bombay. There is such a galaxy of men who were noted for their legal talent. Coming to the present, the speech of the Honourable the Home Member in the other House distinctly points out and contemplates that the pay is proposed to be raised to £4,000, because some people living here would go there in their mature age and would require larger comforts; they would have to meet additional expenses and will again look forward to coming back to India to end their days. That distinctly points to India and Indians. That is why I have introduced the words "of Indian domicile." What the Honourable the Home Member has done by implication I have done specifically. There is no communal or racial consideration in it. Justice is a very pure thing and nothing can be purer. It is like our Ganges which flows everywhere. Wherever it flows it is the Ganges and the water is sacred everywhere. You cannot make any distinction between the Ganges flowing here and that flowing there. The simile of the Ganges occurred to me at the first stage, but it is much greater; because the Jumna gets into it and East and West meet. Then it falls into the Bay of Bengal, mixes with the volume of water that covers nearly three-fourths of the globe. That is to say justice is one of those things which, though it may arise in one place and flow through many places, all the same it retains its pure character. There is no communal consideration introduced into it. All that I have done is to indicate rather in a distant way that it may be an Indian, that is to say, giving the chance as a general tip. No communal or any distinction is attempted and I hope no misunderstandings will arise on account of that.

A further point about this is that this is a gesture made by the Indian Government with the concurrence of the British Government and is a

[Mr. G. S. Khaparde.]

gesture which has been looked for for a long time in another place and by a different set of people. I am sorry they did not recognise it as such. It reminds me of the story of a peasant who used to sit in a small field and pray to the God Moon for rain. He asked for rain from the Moon. In Hindu mythology the moon is not a woman. The moon is a man. In Western mythology the moon is represented by a woman. Whatever it may be, the moon is a man with us and he rides a stag. When this peasant was sitting there, the moon came there riding his stag. As soon as the peasant saw the stag coming he thought it would eat up his crops. So he took his dogs out and hounded the moon out of his place. Afterwards he discovered that it was the moon that came on the stag, and he was very sorry. He acted in haste and repented at leisure. Similarly, in the other House they hounded this Resolution out and probably they were all sorry for it. The Home Member said it was a golden opportunity. I quote his very words. The Privy Council has already gained prestige and respect and it will gain these all the more if persons of Indian domicile are appointed. Everybody would have confidence in it. There are two communities here which are at a disadvantage. One is the Hindu and the other is the Muhammadan community. Their laws of inheritance, etc., are based on texts and these texts have to be interpreted and they can only be interpreted by those who are familiar with the books in which they are recorded. People like Christians, Parsis, Brahmans have their law of inheritance reduced to Statute and Statutes can be interpreted by one judge as much as by another. These two communities, the largest communities of India, the Hindus and the Muhammadans, require somebody trained in their traditions, somebody who is well versed in the books. They ought also to be persons naturally familiar with the whole of western jurisprudence and these qualifications are now possessed by Justice Ameer Ali and others who have been doing this work. So I thought of making the matter explicit instead of implying it. We know the history of it. The Indian Government had to negotiate with the Home Government and they have necessarily to use the language of diplomacy. One merit of diplomacy is that it mentions a thing without naming it and names it without mentioning it, so that it may always be possible for you to keep it or avoid it. That is why the Home Member in making his speech referred to those points, and his speech distinctly indicated that Indians will be appointed. He did not mention it specifically because if anybody took objection he might say later on "Look here, I never mentioned it at all". If they are appointed he will say, "I mentioned to you that Indians will be appointed". It is therefore only a diplomatic way of saying things. I myself think that the Home Member distinctly meant this for the benefit of the Indian Bar. That is how this domicile matter has come out.

There is a further thing which recommends itself to me, and it is this. Apart from the advantage that the litigant public will gain and the further advantage for our countrymen to make their name, there is a further consideration, and that is that this Privy Council strengthens the old link between India and England. India is an Empire and His Majesty is the Emperor. Our connection with the Emperor is closer than that merely between a King and his subjects. This may sound new or something strange but it is a fact. When the title of Emperor first began to be used, it was distinctly mentioned that His Majesty would have a closer touch with

Indians than with the English people. For the English people there is the Parliament and other conventions, whereas we have a direct touch in the sense of his being Emperor. This move is very well designed, it is meant for the good of India, it is intended for the good of the Indian Bar. It is also good for the people who are specially wanted there. It is a further link that will bind England and the Indian Empire together. As I said, it is the moon on the stag and we should not be afraid of the stag. For these reasons I have brought forward this Resolution, and I commend it to this Honourable Council.

THE HONOURABLE SARDAR CHARANJIT SINGH (Punjab: Nominated Non-Official): Sir, I beg to move that in clause 2 the words "and shall be of Indian domicile" be omitted.

I have listened with great attention to the speech of my Honourable and learned friend, the Mover of the Resolution. While I am in entire agreement with him as regards the desirability of the rest of the Resolution, I cannot help observing that the insertion of the words, which my amendment seeks to omit, would be an innovation. It would prescribe a restriction which does not exist in any Statute. Where, for instance, does the Government of India Act lay down that any members of the Governor General's or the Governor's Executive Council shall be Indians? Where does it lay down that Ministers shall be Indians? And yet, Honourable Members need no reminder that Indians have been appointed to these posts. Moreover, Sir, the insertion of these words would be diametrically opposed to the emphatic declaration of 1883 that fitness is to be the criterion of eligibility. It would also be against the letter and the spirit of Queen Victoria's Proclamation of 1858.

Although the inclusion of these words does not on the face of it raise a racial question, still no one can deny that by implication it is not capable of any other interpretation. Now, Sir, responsible Indians and leaders of political thought in India have all along been asking and quite rightly too that in filling high posts selection should not be made on racial grounds nor should it be made on a communal basis. The real test should be that of efficiency. It would not therefore look consistent at all to ask that this sound principle should not be followed when dealing with the highest judicial authority of the Empire. I am sure this House will agree with me that the selection of Judges should not be influenced by racial considerations nor complicated by communal prejudices. Secondly, Sir, the Judges of the Privy Council act as advisers to His Majesty and as such make recommendations to the Crown on appeals preferred before them. It appears to me that it would be nothing short of interfering with the Royal prerogative, and consequently beyond the scope of this House to lay down that His Majesty should appoint such and such persons as his legal advisers and no other. Such an action is not at all tenable and certainly beyond the jurisdiction of this House. It is for His Majesty to appoint as his advisers those whom His Majesty considers, on the advice of his responsible Ministers, most capable and against whose eminence in the realm of law no one can raise any question. Thirdly, comes the question of Hindu and Muslim law. Can any one say that only a Hindu Judge can administer Hindu law and that only a Muslim Judge can administer Muslim law? The experience of the past not only of the Privy Council but also of the High Courts in India is sufficient to refute such an allegation. We have had in the past and we have at the present moment eminent Judges sitting on the Privy

[Sardar Charanjit Singh.]

Council as well as on the Benches of the High Courts who have been administering Hindu and Muslim law to the entire satisfaction of the legal world, and against whose judgments there cannot be even a whisper of doubt on the score of racial or communal considerations. To mention only a few, take for instance, Sir Lawrence Jenkins, Sir Shadi Lal, Sir Bhashan Iyengar, Sir Ashutosh Mukherji, Justice Mahmood and Justice Ranade. Surely no one can say, whether he be a Christian, a Hindu or a Muslim, that these eminent Judges, of whom any country in the world would be proud, were competent to try the cases of their co-religionists only and of no other. Supposing for one moment that we accept such a proposition that each community and each creed must have its own Judge, then I do not know where it would land us. For one thing it would be a totally unjustifiable aspersion against the Judges both English and Indian. Besides there would be no end to the list and instead of two as proposed by this Resolution even 20 would not be a sufficient number. Lastly in case there be any doubt that without the words "of Indian domicile," no Indian is eligible under the provisions of this Resolution, one has only to read the Resolution to dispel such a doubt. There is no bar, there is no restriction, either explicit or implied, that Indians cannot and will not be appointed. The Crown has unfettered choice and there is no justification to think that the responsible Ministers of the Crown will not advise the selection of the best men available simply because they happen to be Indians. The only reason why only one Indian Judge has up to this been selected, is the mere fact that no Indian legal luminary would go and settle down in England even for a few years on £400 a year. By fixing £4,000 you would be making it attractive for them to go to England. When that is done I am sure many of my countrymen who are otherwise qualified and get selected would be prepared to go for a few years. I hope, Sir, I have made it perfectly clear that the omission of the words "and shall be of Indian domicile" is only right and proper, and I have no doubt that this House and also my Honourable and learned friend the Mover of the Resolution will accept my amendment.

THE HONOURABLE MR. J. CRERAR (Home Secretary): Sir, I should like to be permitted, if it is in order, to address the few remarks which I have to make jointly to the Resolution and to the amendment which has just been moved by the Honourable Sardar.

THE HONOURABLE THE PRESIDENT: I see no reason why the debate should not proceed both on the Resolution and on the amendment. I do not think that the Council will be embarrassed in any way by that, for it will be a simple matter for any Honourable Member to indicate in his speech whether he supports the Resolution as it stands, or whether he supports it as the Honourable Sardar Charanjit Singh would amend it, or whether he opposes both. It may suit the Council to know that the Honourable Mr. Desika Chari has informed me that he does not propose to move the amendments standing in his name.

THE HONOURABLE MR. J. CRERAR: Sir, I am indebted to you for your ruling which will greatly facilitate my task in the few words I have to say explaining the position of Government with regard to the Resolution as it will stand, if the amendment moved by the Honourable Sardar is

accepted by the House. The attitude of Government towards the Resolution is naturally one of benevolence. It may perhaps be of some value to the lay Members of the House—lawyers are very familiar with the Privy Council and its functions—if I explain very briefly, as briefly as possible in dealing with so large a subject, what is the position of the Privy Council, and more particularly the position of the Judicial Committee of the Privy Council. The Privy Council is the modern representative of one of the most ancient institutions of the English State. It reaches back into the mists of antiquity, though it was only from the time of the Tudor Kings that it became a definite body with a separate secretariat of its own. Nowadays people are apt to think that the Privy Council by reason of its antiquity is a somewhat obsolete institution. That is very far from being the truth. Even in modern times the volume and the importance of the administrative work transacted by the Privy Council would be very surprising to those who have not examined it. We are however concerned with the judicial functions of the Privy Council. It was, as I have said, for many years the chief executive body of the realm. It also had from the beginning very large judicial functions. Many of those functions, particularly in its original jurisdiction, were swept away during the course of the troubles of the 18th century. Much of its executive jurisdiction naturally fell away with the rise of responsible Parliamentary Government in England. But the appellate jurisdiction of the Privy Council remained more or less intact. Towards the end of the 17th century it had become too unwieldy to meet with any regularity in a full session for judicial business, and a small Committee acting in the name of the whole Council discharged these duties. That was the origin of the Judicial Committee. This somewhat makeshift arrangement continued till 1833, when by a Statute of that year the Judicial Committee substantially as it now exists was set up. That Statute is of particular interest to us, because, among its other provisions, was a provision for the appointment of two Judges who had held office as Judges of a High Court in India to the Committee. Its constitution has been slightly altered—in 1895, 1907 and 1913,—and it now consists of such Members of the Privy Council as have held high judicial office—the Lord Chancellor, the Lords of Appeal in ordinary, the two former Judges of a High Court in India to whom I have already referred who were appointed under the Act of 1833 and seven Judges or *ex-Judges* of superior courts of His Majesty's Dominions appointed under the Act of 1895 as subsequently amended. I might mention that one of these seven Judges is a Judge who was formerly a Chief Justice of a High Court in India. The Committee is often divided up into special boards, but—and this is a matter of some importance—not less than three of its members are present at a hearing of an appeal. It does not give judgments like other courts, nor like the House of Lords in its appellate jurisdiction by a majority of votes. Its decisions are unanimous and in the form of advice tendered to His Majesty in Council; and they are accordingly promulgated as Orders in Council. It is the highest court of appeal for causes arising in any part of His Majesty's Dominions and Possessions beyond the seas. It is to this ancient and authoritative tribunal, to India's special concern in it, that the Resolution moved by the Honourable Mr. Khaparde refers. And India's concern is undoubtedly very great. As the Honourable Member pointed out, in constitutional law it forms one of the most important links binding India to the Crown. And, moreover, the greater part of the business it transacts is Indian business. About 60 per cent. of the appeals

[Mr. J. Crerar.]

heard and decided by the Judicial Committee of the Privy Council are appeals from India. No other proof is needed. I think of the high value which is attached by litigants in India to the privilege of recourse to this tribunal, by means of which the learning and ability of the most eminent Judges, whose names are household words in the wide realm of law, are placed at their disposal. It will not, I think, be contested that adequate provision should be made for collaboration with the great jurisconsults of England, of Judges specially versed in, and having recent experience of, the recondite questions of principle and practice arising in Indian law. Still less would it be contested that such Judges should be properly remunerated. That states very concisely the issue which is before the House. The Government will be very glad to receive the sense of the House on this Resolution, particularly in view of what occurred in another place when this matter was under discussion. I think that, from the comments which have been made since that decision was arrived at in another place, I should not be impertinent in supposing that some of the opposition which was then raised to the Resolution has been reconsidered, perhaps I might almost say repented; and I am grateful to the Honourable Member for giving me an opportunity of restating the position of Government in the matter. In view of what has happened elsewhere, it may not perhaps be possible for the Government of India to take immediate action upon this Resolution if it is passed by this Council. But they will be gratified to receive the considered judgment of the Council upon this matter, and they would certainly take the earliest steps to convey the views of this Council to His Majesty's Government. I will only add a few words more specifically on the amendment. Little really remains for me to say because I understand from the Honourable Mover himself that he did not intend that the words standing in his original Resolution relating to Indian domicile should have the effect, which they might possibly have, if they were rigidly construed. The grounds which show the undesirability of retaining these words have been amply demonstrated by the Honourable Sardar Charanjit Singh, and I need not therefore detain the House any longer on that point. Government will be very glad to accept this Resolution subject to the amendment proposed by the Honourable Sardar Charanjit Singh.

THE HONOURABLE SIR C. SANKARAN NAIR (Madras: Non-Muhammadan): May I ask the Honourable Member whether he understands these words, "possessed of recent knowledge of Indian law and practice", to exclude or to be intended to exclude men like Mr. Ameer Ali and Sir Lawrence Jenkins?

THE HONOURABLE MR. J. CRERAR: They are not intended to exclude anyone with the requisite knowledge and experience.

THE HONOURABLE SIR C. SANKARAN NAIR: Of *recent* knowledge?

THE HONOURABLE MR. J. CRERAR: I would invite the Honourable Member's attention to the fact that they refer to the case of future appointments.

THE HONOURABLE SIR ARTHUR FROMM (Bombay Chamber of Commerce): May I ask if the Honourable the Mover of the Resolution accepts the amendment?

THE HONOURABLE THE PRESIDENT: Perhaps the Honourable Mr. Khaparde did not hear. The Honourable Sir Arthur Froom desired to know whether the Honourable Mover of the Resolution accepted the amendment.

THE HONOURABLE MR G. S. KHAPARDE: My position is this, that I put in those words, but if they are omitted, I will not make a grievance of it.

THE HONOURABLE SIR C. SANKARAN NAIR: Sir, I rise to support the Resolution as it stands and to oppose the amendment. We are going now to ask for an increase of pay to £4,000, and we have to justify that. We have to show why we want to do that. I can well understand that in the case of Indians going from India to Whitehall to sit there as Judges £4,000 is not ample. As long as Hindu law is not codified, we would like to have an Indian judge to take part in the decision of any question of Hindu law. The Honourable Sardar Charanjit Singh, who said that there are non-Indian Judges who can decide questions of Hindu law and therefore we might entrust it to them, does not understand the position. As long as Hindu law is not codified, we would like to have an Indian Judge always to take part in the decision of questions of Hindu law. Similarly, as long as Muhammadan law is not codified, we would like to have a Muhammadan Judge to take part in the decision of questions relating to Muhammadan law. When they are codified, the question will become altogether different; and therefore in the Privy Council, when they decide cases relating to Hindu law or to Muhammadan law, we would like to have a Hindu or a Muhammadan Judge sitting there to advise the other Judges and himself taking part in the discussion and decision. It may be only one Judge, but that does not matter; his knowledge will be at their disposal. Cases are decided by Judges in India in view of the arguments placed before them. But before the Privy Council new points are raised, a different aspect of the case is presented, and often there is nobody there with the knowledge necessary to deal with such arguments, and wrong decisions on questions of important principles may be the result. Therefore we want Indian Judges, Hindu Judges and Muhammadan Judges, to be there for that reason. Then there is another reason. The other class of cases, the most important class of cases which the Privy Council Judges have to deal with, are cases on questions of fact where there is a difference of opinion between the appellate Court here, that is the High Court and the District or the Divisional Court Judge. Now to decide those questions of fact again it is essential there must be Judges competent to deal with them. I do not say anything against Barrister Judges. But either experienced Civilian Judges or Indian Judges are the Judges really competent to deal with that class of cases. They have to deal with very intricate questions of fact which require a knowledge of the customs, the habits, etc. I say that for both these reasons it is essential that this Council must make up its mind and say whether it would like this increased pay to be devoted to Indian Judges or not. I think it is essential that we must make up our mind clearly on that point and say that we would like to have Indian Judges: and that alone is the justification for this £4,000 pay. Then as to the pay itself, I do not say now that the Anglo-Indian retired Judges are adequately paid; not at all. they are not adequately paid, their pay is very small. But if we had only to deal with those Anglo-Indian retired Judges, they might be allowed the same pay as the Members of

[Sir C. Sankaran Nair.]

the Secretary of State's Council which they get in addition to their pension. That would give them something like £2,700 or £2,400, which is quite good for such a man like that, living in his own country—but an Indian Judge is not in that condition. Somebody has said—I believe it was Mr. Khaparde—that £4,000 would be an attraction to an Indian Judge to go and live in England. Not at all; no Indian Judge would care to live in England all the year round. We have found that by experience in the case of Indian Members of the Secretary of State's Council who would like to go away from there during the winter, and it is with the greatest difficulty that they can be induced to remain in England. If Indian Judges go at all to sit as Judges of the Privy Council, it is because they consider it a duty to take part in the administration of law which refers to their own country. I therefore think that for all these reasons we must keep the Resolution as it stands. I am not in favour of any change.

Then, Sir, there is another point. The whole Resolution has an ugly look about it because you say there that in the case of future appointments alone all these things should be done. The qualification about recent knowledge of Indian law and practice is apparently intended to explain why the rule is confined to future appointments. Obviously it is intended to exclude men like Sir Lawrence Jenkins and Mr. Ameer Ali, whereas the local Anglo-Indian papers criticize the Legislative Assembly for not voting for a Resolution intended to assist men like Mr. Ameer Ali and Sir Lawrence Jenkins who have been there for 17 and 18 years without any pay. It is unfortunate that the Resolution as it is worded confines itself to future appointments; I understood that at any rate the statement in the second part, namely, "that they shall be persons possessed of recent knowledge of Indian law and practice" was intended to justify the statement in the first part, namely, confining this resolution to future appointments. If I am wrong, it is very unfortunate. I do not like that by the Resolution we should cast a slur upon existing men like that and deny to them the pay which they have honestly earned and the opportunity to do good work, by working for a few more years.

THE HONOURABLE MAHARAJADHIRAJA SIR RAMESHWARA SINGH OF DARBHANGA (Bihar and Orissa: Non-Muhammadan): Sir, I rise to say a few words in regard to this motion which marks an epoch in the history of the Privy Council so far as India is concerned. I am aware that the Colonial Governments do not contribute towards the emoluments of His Majesty's Privy Council, but I am equally aware that the colonial cases represent an insignificant and inappreciable proportion of their work. I know that this proposition has been negatived in the Legislative Assembly, but I am afraid that, unless the matter is set right, the only effect to my mind will be that no Indian will be attracted to His Majesty's Judicial Committee. This will be very sad indeed.

On the other hand I hear the demand that only Indians should be appointed to hear appeals from the Indian High Courts if this Resolution is to be accepted. Well, Sir, it will be accepted on all hands that the Privy Council should be manned by the best intellects available—be they Indian or English. I have no doubt that if suitable Indians are available Government will surely see the advantage of securing their services. It is hardly fair to ourselves to think that Government will choose only Englishmen to the exclusion of suitable Indians, if available. But surely His Majesty's

prerogative should not be narrowed down to selecting only Indians in case for any special reason the appointment of an Englishman is more desirable. For these reasons, Sir, I give my wholehearted support to the Resolution with the amendment proposed by Sardar Charanjit Singh.

THE HONOURABLE SAIYID MOHAMED PADSHAH SAHIB BAHADUR (Madras: Muhammadan): Sir, I gladly associate myself with all that has been said by my Honourable friend Sir Sankaran Nair. Sir, he was perfectly right in telling this House that it would not be justified in sanctioning this new charge upon Indian revenues unless there was some substantial advantage to be gained from that. It cannot be denied, Sir, that it is always undesirable that India should be asked to pay for anything that is to be done by the Home Government on account of the fact that the Home Government is responsible for the administration of this country. Now, Sir, there is again another aspect of the question. I ask, Sir, where is the necessity to increase the emoluments unless there is some new line of action to be adopted? There is no indication that there will be any paucity of people willing to take up this high office in future. Among people who may go to England after retirement and live there in the evening of their life you will always find several who will gladly assume the reins of this high office. Unless it is necessary for you to offer some attraction to Indians, to people who otherwise would not go to England and settle there, you will not at all be justified in increasing the emoluments. After all, Sir, if any retired Judges who go back to their country after retirement take up this high office they do so merely as citizens who are interested in doing their duty by the country. Again, I see no reason at all for bringing this question up before this House unless people are actuated by the desire to try and ensure efficiency in the personnel of the Privy Council. By making these remarks, I do not mean to say that India is dissatisfied with the constitution of the Privy Council. On the other hand India feels very proud of the services that have been rendered to India by the Privy Council. We all know that the work of the Privy Council has always met with general approval and satisfaction in India. It is quite obvious that the only reason which has prompted the question to be put forward in this House is the desire that we should take all necessary steps to continue to India the benefits which she has been receiving all along from the Privy Council, that all possible help should be given to the Privy Council in order to enable them to properly adjudicate upon Indian matters; and the best way, Sir, to provide for this would be only by putting Indians on the Privy Council, Indians who have been in living touch with the law and practice in this country. It is a matter of common knowledge, Sir, that besides these two officials, whose case is now being considered in this House, the Privy Council has on it a number of eminent Englishmen who have vast knowledge and experience of the working of the courts in their own country. So it cannot be contended, Sir, that the other appointments that have to be made to the Privy Council, namely, the Judges that have to be appointed to help the Privy Council in functions relating to Indian matters should be people who may afford assistance by virtue of their knowledge of Indian statute law. The necessity is quite obvious. All that is required is to provide the best possible knowledge of the Indian law and practice, and to do this, Sir, you cannot do better than having Indians on the Privy Council. Whatever might have been the achievements of Indians in other fields, that Indians have proved themselves

[Saiyid Mohamed Padshah.]

second to none in the legal profession will be accepted on all hands. People who are in India, who have been in India, in living touch with the law and practice here have a better insight into the life, habits and customs of the people of India than others however proficient in theoretical knowledge. I am of opinion that we shall not be justified in accepting the Resolution as amended by Sardar Charanjit Singh; and if we allow this increase at all in the emoluments and consent to bear our burden of the salaries of those officials in the Privy Council, we should insist upon the original Resolution being given effect to.

THE HONOURABLE RAI BAHADUR LAIA RAM SARAN DAS (Punjab: Non-Muhammadan): Sir, I rise to oppose the original Resolution as well as the amendment. I do not do so because I grudge the increase in the emoluments of the members of the Privy Council, but because I think that this will not be a right charge on India. This question has been very warmly debated in the other House and so I need not repeat the same grounds which the other House have very ably traversed. The Privy Council is not a Court but is an advisory body to His Majesty the King Emperor, and as such I do not think that India should pay any share of the salaries of the Privy Councillors. Justice is not to be purchased. It will create a very bad precedent because once we start contributing to the salaries of the Privy Councillors in England we do not know where we shall end. Only the other day under the Government of India Act the salary and the expenses of the Secretary of State for India were transferred to the British Exchequer, and in case we contribute to the salaries of the Privy Council we may be asked some day in the near future to share the expenses of the Cabinet and Army Council, etc., which look after Indian interests also. With these words I oppose on principle this Resolution and the amendment.

THE HONOURABLE MAJOR NAWAB MAHOMED AKBAR KHAN (North-West Frontier Province: Nominated Non-Official): Sir, although I am not so closely connected with the line of business with which the amendment brought forward by my Honourable friend Sardar Charanjit Singh deals, there appears to me every justification to support it, as it is expected to result in very great benefit to the disposal of the judicial business of India. As it is there are three Indian representatives who attend the sittings of the Judicial Committee of the Privy Council, two of whom are salaried representatives while the third, so far as I am aware, receives no salary. Now, each of the salaried representatives is paid the sum of £400 a year, which is less than the salary of a Sub-Judge, and too inadequate for the persons holding such a post of eminence, and I think the Honourable Members of this House will agree with me in saying that to give £400 a year and expect Judges of recent experience and of the highest eminence to sit on the Judicial Committee of the Privy Council is outside practical politics. I say it is quite impossible to have men of experience and knowledge on such a meagre pay of £400 a year. There might be objections to the enhancement of their salaries in view of the fact that the present Judges on the Judicial Committee of the Privy Council are quite content to draw the sum stipulated in the Judicial Committee Act of 1883, but I think Honourable Members are aware of the fact that one of them is an inhabitant of England, while the other, Sayyad Ameer Ali did not go to England for that purpose. He went to England

to make it his home and as he was available there, he was appointed a member of the Judicial Committee. So the Honourable Members will see for themselves the conditions under which the present salary of £400 is acceptable to the present Judges serving on the Judicial Committee of the Privy Council. With regard to future appointments the case is altogether different, for how many eminent persons are prepared to do the same, or for how many is the fascination of residing in England greater than that of living at home? I understand that the idea is to appoint distinguished lawyers, who can simply be prevailed upon to give up either a leading practice or a high judicial office to establish themselves in a country with which they may or may not be familiar and incur those expenses which are, as we all know, unfortunately incidental to a stranger in any country, provided you pay them a reasonable salary, so as to make them live comfortably. There may be doubts as to the amount of the salary, but I put it to the House that in case you are going to get a first class man, you cannot get him much under that laid in clause 3 of the Resolution. Personally I would like that the salaries of these Judges ought to be paid from the British estimates, but when we do not contribute anything towards their maintenance, we cannot have a say in the appointment of these Judges.

As regards clause 2 of the Resolution I would ask the House not to make the question of these judicial appointments a racial question. These are appointments of the very highest judicial importance and will be made by the Crown. I can naturally sympathise with the view that an Indian ought to occupy a position of that kind, as it is through an Indian that Indian law, customs and practice can have their full representation, but I am perfectly sure that no Honourable Member of this House would desire an Indian, who is not fit for that position, to occupy it. To take such a view would be, I think, to lower this country in the estimation of the world, which, I am sure, no Honourable Member would ever like to do. Moreover, these judicial representatives are to sit not only with the best judicial brains of England but also with the greatest lawyers from the Colonies and India, I hope you will agree, ought to send of its best as well. Personally, I would like India to be under the Privy Council, as its decisions emanate from His Majesty and it is a direct and clear link to connect India with England. I gather from what has been said by the Honourable Members of the House that there is nothing to prevent the residents of the self-governing Colonies such as Australia and Canada appealing to the Privy Council instead of to their Supreme Courts; and supposing we have a Supreme Court in India there can be nothing to prevent the parties concerned appealing to the Privy Council. After all the Privy Council is the supreme court of justice where law is equally administered to the self-governing Colonies as well as India. Our Supreme Court in India will have to be guided by the Indian customs and practice, but it will not be able to throw new light on the rapidly advancing civilisation of the western type. As regards the remark passed by my friend Lala Ram Saran Das just now that we might be asked to contribute some day to the British Cabinet, personally I would welcome the day when we are asked to contribute to the British Cabinet or the Army Council or any other such body, because then we shall have our voice in the membership of those august bodies. I do not know whether it will be a bad day for Indians. I would call it a lucky day when we are asked to make that contribution. With these remarks, I strongly support the amendment of Sardar Charanjit Singh.

THE HONOURABLE MR. P. C. DESIKA CHARI (Burma: General): Sir,
 12 Noon. we have been told that the Privy Council is a mere advisory body and not a court; and on going through the debates in another place we find that a good deal of point was made about this aspect of the Judicial Committee being an advisory body and not a court. We have to look at the substance and not at the mere form of it. In various institutions under the British constitution we find the form is one thing and the substance is another. In fact the British Cabinet has no place in it; it has grown to what it has only by a sort of convention. It acts merely as a Committee of the Privy Council, as the administrative committee of it. So no useful purpose will be served by delegating this important institution, which is the highest appellate court in the land, to the status of a mere advisory body. During the last 200 years we find that the mandates of this institution, though they are given in the form of advice, are uniformly followed and the rulings of this body, given in the form of advice, are regarded as mandates by the British Government and the British Empire. So this Judicial Committee of the Privy Council is a court, and the court of highest appeal in the Empire. I am one of those who think that the court of highest appeal for the British Indian Empire ought not to be at the centre of the activities of the Executive of the Government of India. It is better under the present constitution that our highest court of appeal should be 6,000 miles from the centre of activity of the Government of India. It is better that we should get our constitution revised and then have the highest court of appeal in India itself when we have an executive fully responsible to the Legislature. So my view is that it is better at present to have this court of appeal as far away from India as possible, and taking that view we have to consider whether it is desirable to improve this existing institution which is the highest court of appeal. In 1833 it was made possible for retired Indian Judges to take their seat in the Privy Council, and it was thought that a sum of £400 was enough to indemnify them in doing so. Now conditions have changed and there is a large volume of opinion that not only retired Indian Judges but also legal luminaries who are not Judges but are fit to take their place along with these eminent legal gentlemen in the Privy Council—that these people also ought to go there. And in order to secure the services of eminent legal men in India who are not retired Judges I think some provision ought to be made to make it worth their while to go all the way from India to take their seat in the Privy Council and be able to live there comfortably and discharge their duties properly. It is this aspect of the question which we ought to consider very carefully before accepting or rejecting a Resolution of this kind. In another place the Home Member said that the object of bringing this Resolution was to secure the services of men, Indians, who can be induced to go from here and take their seat in the Privy Council. Only they are not willing to have the words “of Indian domicile” in black and white. I do not know what harm there can be in having this implication expressly reduced to writing. We are told that it may be regarded as introducing the principle of racial discrimination. Personally I think there is no racial discrimination here. I believe that to aid the Members of Parliament in coming to a conclusion in accepting the principle of this Resolution, it is necessary to impress upon them this Indian aspect of the question, because then only will they understand the necessity for a change. We ought to tell them that this is meant to enable Indians who otherwise

would not be able to sit in the Judicial Committee of the Privy Council, as they cannot do so unless they receive adequate remuneration making it worth their while to go all the way from here to take part in the deliberations of the Judicial Committee. If these words "of Indian domicile" are included in the Resolution it is to show that it is to secure the services of those legal luminaries in India who are not drawing pensions, and there will be a greater chance of the necessary changes being effected by an Act of Parliament. And after all these debates are also public property and Members of Parliament and others can very well go through these debates and they will then see that the intention of the people who put forward this Resolution and took part in these debates is to see that Indians of proper standing are able to go to England in order to take their seats in the Judicial Committee of the Privy Council. Whether it is in the Resolution or not the debates are there, and it will be quite clear that the intention underlying this Resolution is to see that the services of a class of people who could not otherwise be secured are intended to be secured by this Resolution. Personally, if the Government are opposed specifically to stating that this applies only to Indians, I am prepared to accept the implications conveyed by the Home Member and by the Home Secretary here, when he states it was intended merely to secure the services of people whose services could not otherwise be secured: that is, the case of Indians who can be induced to go over there to sit on the Judicial Committee. I therefore think that this House ought to accept a Resolution of this kind, whether the words "and shall be of Indian domicile" are included in it or not, because the principle has been stated and we can have faith in the Government because the implication in the Resolution has been often repeated in both Houses. And we hope and trust that if this Resolution is accepted in that form that the Government will not think fit to go back on their words and commit a breach of faith. With these words I support the Resolution, whether the words "and shall be of Indian domicile" are allowed to remain in it or not.

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN (Punjab: Nominated Non-Official): Sir, I rise to support the Resolution as well as the amendment. We should be thankful to the Honourable Mr. Roy as well as to the Honourable Mr. Khaparde for bringing this Resolution forward. There are two things. One is that if a useful thing has been thrown out by hasty obstructionists, the country should not know that all their representatives are such that when a thing so useful comes up, it is thrown out by us. The second thing is that it has given this House again the chance of rising to the occasion so as to show that the considered opinion of the country always backs up useful measures. Now, Sir, the reason why I have supported the amendment is that we have seen very very able Englishmen who after they have finished their school life come out and live in India and practically go back when they consider that they have done sufficiently useful work in this country—I mean they have practically spent all the best portion of their life in this country, and I would say that in fact they are more Indians than English, because if an Englishman, an able Englishman who comes out to India after passing the competitive examination and lives with us 30 or 40 years does not then know the requirements of Indian law, he would not have been able enough to hold the post which he was holding while in India. Sir, I am glad that the Honourable Sardar Charanjit Singh has brought forward this

[Sir Umar Hayat Khan.]

amendment. I strongly support both, and I would ask the House that there should be no discordant note in this connection.

THE HONOURABLE SIR ARTHUR FROMM: Sir, I think that this House should be very thankful to my Honourable friend, Mr. Khaparde, for bringing forward this Resolution. I consider that the Resolution is one of considerable importance. At the same time it is extremely simple. What is its object? Its object is to secure to the Judicial Committee representing Indian interests on the Privy Council the best brains which India can produce. At the same time owing to the small salary attaching to these appointments, the field of selection necessarily must be narrow. In saying this I do not cast any reflection on the present holders of the appointments. I think that this Resolution, which will expand the field of choice for these most important appointments, is a most estimable one. I do not share the fears of my Honourable friend, Sir Sankaran Nair, over the use of the word "future" in this Resolution. You must make a beginning sometime, and presumably the present holders of the appointments on the Privy Council accepted them with their eyes open. Also I suppose there is no reason, if they wish to do so,—presuming this Resolution is acted upon,—why they should not resign and be in the running for reappointment. If they are not satisfied with their present emoluments and see that there might be more to be gained, that is a line of action that I would recommend them to adopt. Sir, I also agree with the amendment moved by my Honourable friend opposite. I have in the beginning of these few remarks congratulated the Honourable Mr. Khaparde on the Resolution, seeing that he seeks to extend the field of selection for these two important appointments, and the Mover of the amendment seeks to establish further that that field should in no way be narrowed. My Honourable friend, Sir Umar Hayat Khan put forward the contention that he did not think that the selection should be restricted to any one class of person in India to the exclusion of any other class who had Indian experience and had practically lived in India. I agree with that, not from any racial consideration but simply from the point of view of "let us have the best men, the best brains, for these appointments".

THE HONOURABLE SIR BIJAY CHAND MAHTAB, MAHARAJADHIRAJA BAHADUR OF BURDWAN (Bengal: Nominated Non-Official): Sir, I do not wish to give a silent vote on this Resolution or amendment, both of which I support. I only wish to say one word regarding the remarks that fell from the Honourable Rai Bahadur Lala Ram Saran Das, in regard to this Resolution. If India's requirements in connection with Hindu and Muhammadan laws necessitate men with experience of these laws being put on the Judicial Committee of the Privy Council, I do not see any disadvantage to India in having a voice in such appointments or in sharing a part of the contribution towards the salaries of such Privy Councillors. What is more, I think, that those who contend that these appointments should go to Indians would also gain by this idea of India's share in the contribution by having a voice in these appointments. As regards getting the best men on the Judicial Committee, I do not think that there can be any two opinions on the subject. The intricacies of Indian laws of succession, the everyday occurrences of the appellate courts disagreeing with the lower courts and all these things necessitate that the

Privy Council should be manned by the best legal acumen available to His Majesty, and I therefore think that it is an erroneous idea to consider that because we have to contribute for the experts on the Judicial Committee of the Privy Council, we may be asked to contribute to the other things. I think we must take a more catholic, a broader, a more sensible view, and I think it is our duty, therefore to support both the Resolution and the amendment.

THE HONOURABLE RAJA SIR RAMPAL SINGH (United Provinces Central: Non-Muhammadan): Sir, it is an undisputed fact that the present salary, rather the indemnity, paid to the representatives of India on the Judicial Committee, is too small. It is a wonder to me why this injustice, this smallness of salary, had continued so long and why this reform was so long delayed. Perhaps the English people are inclined to be too economical, too stingy, when it touches their own pockets, but liberal and generous when it touches the pockets of others. Sir, I fully admit the justice of the Resolution. But I think the idea is that those men who have a knowledge of the customs, habits and usages of the people should be enlisted to help His Majesty in the decision of cases. It is, in my opinion, necessary that the selection should be narrowed to Indians. I do not know what is the salary of other members of the Judicial Committee, but this much I can say that if Englishmen, I mean retired Judges, are appointed to that post, they will go to their own homes and they can very easily maintain themselves on the salary which the present members get; it will be very difficult for Indians who go from here to a foreign country to maintain themselves in a respectable manner there. Therefore in my opinion it is very necessary that the Resolution as it stands should be accepted by the House and the amendment moved by my Honourable friend Sardar Charanjit Singh should not be accepted, because that will not serve our purpose. I therefore support the resolution and oppose the amendment.

THE HONOURABLE MR. G. S. KHAPARDE: Sir, I am very glad and I feel thankful to the Honourable Council for giving a favourable reception to this Resolution. I may state for the information of my friend, Raja Rampal Singh, that Privy Councillors get no pay at all. All these Judges—there are 28 Judges sitting in the Judicial Committee—get no pay absolutely. It is only two Judges who went from India and were living in the country and had to incur expenditure for going to London who got what is called an indemnity or allowance of £400; otherwise the whole thing is honorary.

THE HONOURABLE RAJA SIR RAMPAL SINGH: Why should Englishmen who go to England and work there get the same pay as Indians?

THE HONOURABLE MR. G. S. KHAPARDE: It is not intended for them. However, I am very glad to see that my Resolution has been well received and my meaning has been made clear. Nobody has accused me of communal ideas. As I said before if the amendment as it stands is passed I shall be very glad; but if the amendment goes, I am not likely to be very sorry for that. My main proposition is there. That is what I care for. These are my remarks in reply.

THE HONOURABLE MR. J. CRERAR (Home Secretary): Sir, I have very few remarks to make and I do not propose to detain the House long. I should like to associate myself with the feeling of gratification expressed by the Honourable Mover at the reception of his Resolution, with the amendment proposed by Sardar Charanjit Singh. Indeed the proposal is

[Mr. J. Crerar.]

of such manifest advantage to India that I could have hoped that it would have been passed without even a single dissentient voice in this House. Some of the criticisms that have been made are indeed rather surprising. The Honourable Raja Sir Rampal Singh apparently accused the British people and the British Treasury of some stinginess in the matter, but I should like to point out to the Honourable Member that for nearly 100 years the British Treasury has paid—and without any contribution from India—the salaries, meagre as they are, of two Judges appointed from Indian courts and they propose now to pay half the salaries of the two Judges to be appointed on the basis suggested in this Resolution, two Judges who, from the information I have given, would be employed for a great part, if not the whole of their time, in hearing Indian appeals. It is somewhat astonishing that stinginess should be attributed to the British Treasury, because to me the proposal seems one of great generosity, one which is an exceedingly good bargain for India, and one which India and this House ought to accept with very warm recognition of the spirit in which it has been made.

I have only one word more to say, and that is with regard to the views expressed by Honourable Members opposite in respect of the selection to be made to these two posts if the Resolution is accepted and if His Majesty's Government is prepared to act upon it. The Honourable Mr. Chari, whose interest in and respect for constitutional form I am glad to welcome, will surely, I think, see that the regard for constitutional form to which he himself invited the attention of the House is the real reason why it is very undesirable indeed to place any restriction whatsoever on the Crown in making the selection. As the Honourable Mover of the amendment very rightly said the only stipulation that we ought to make is that merit and the necessary qualification for performing the special functions likely to devolve on the Judges should be the sole guiding consideration and we can safely leave that to His Majesty and his advisers.

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

“This Council recommends to the Governor General in Council to take steps to secure:

- (1) in the case of future appointments the enhancement of the salaries paid to the two members of His Majesty's Privy Council with Indian experience who sit on the Judicial Committee under the provisions of the Judicial Committee Act of 1833 to hear Indian appeals;
- (2) that they shall be persons possessed of recent knowledge of Indian law and practice and shall be of Indian domicile;
- (3) that their salary shall be £4,000 per annum each, half of which shall be paid from Indian revenues; and
- (4) that during any period when this salary is enjoyed, any pension payable to either of them from Indian revenues shall lapse.”

Since which an amendment has been moved:

“That in clause 2 the words ‘and shall be of Indian domicile’ be omitted.”

The question I have to put is that those words be omitted.

The motion was adopted.

THE HONOURABLE THE PRESIDENT: The question then is that the Resolution, as amended, be adopted.

The motion was adopted.

RESOLUTION *RE* CREATION OF A SELF-GOVERNING TAMIL SPEAKING PROVINCE.

THE HONOURABLE SIR C. SANKARAN NAIR (Madras: Non-Muhammadan): I move:

"This Council recommends to the Governor General in Council to advise His Majesty's Government to take such steps as may be required to constitute the following districts inhabited by the Tamil speaking race, that is to say, Chingleput, North Arcot, Salem, Coimbatore, South Arcot, Tanjore, Trichinopoly, Madura, Ramnad and Tinnevely, into a Province with complete self-government."

As I have got only 30 minutes, I shall deal at once with the Resolution without any preliminary remarks. The Districts I have named contain a population of 20,060,037 (last census), of which 810,782 are Muhammadans.

When I use the term self-government I mean that, in framing a constitution for the government of the Province, we should follow the self-governing Dominions of the British Empire so far as circumstances shall permit. I have also in view the perpetuation of our connection with Great Britain and Ireland.

I shall briefly describe the scheme of self-government that I propose in accordance with this view. The Government of the Province should consist of the King, a Senate and a House of Commons. I love the name the House of Commons. Our descendants will consider themselves the inheritors of its noble traditions. A Governor appointed by the King should be His Majesty's representative.

This Parliament should have power to make laws for the peace, order and good government of the Province in respect of all subjects including taxation, expenditure, loans, postal and telegraphic services, railways, aeroplanes, naval, military and air forces.

There is no danger of any kind in giving the Province control over the Forces.

The Tamil land in extreme south of India need not fear any foreign invasion. It does not require an Army except for Police purposes. Even if dragged into war as a Member of the Empire, the Empire or the Province will not be put to any greater danger or expense on account of the Home Rule government. On the other hand, it may be desirable to create an Army so that eventually when British India gets Home Rule there may be armies created by the Provinces which would be able to undertake the defence of the Empire. I think there can be little doubt that a Province would be able to create an Indian force efficient and loyal to the Civil power long before the British Government. I would say in such a case while I would give to the Government of the Province the entire control of their own forces in time of peace, during war the Viceroy and the Commander-in-Chief should have the entire control with power to remove them from the Province for use either in British India or elsewhere. In the interests of efficiency they should have the power to inspect and demand the dismissal of any Officer for incompetency, and in the interests of the Empire they should have the power to demand the dismissal of any Officer for disloyalty to the King.

I shall now state my proposals about the House of Commons explaining how they deal with the great objections to Self-government that are advanced, i.e., the Hindu-Muhammadan question, the cases of various

[Sir C. Sankaran Nair.]

minorities and depressed classes that exist in the Province, as elsewhere in India.

I have already said that my scheme consists of two Houses one of them being a House of Commons. (1) This House of Commons shall consist of 300 members. (2) The Members shall be chosen by single electoral Districts by universal suffrage and secret ballot. (3) The voters must be more than 30 years old and not disqualified. (4) An elector shall be entitled only to one vote, and every elector shall be entitled to vote in any electoral division that he likes. (5) Each District will contain a population not less than 25,000 of 30 or more than 30 years of age according to the last census. (6) An absolute majority must be obtained for election on the first ballot, if no one obtains this there will be a second ballot which will be confined to the two who have obtained the largest number of votes. (7) The election shall be held on a Sunday or any other holiday. (8) A group of 30,000 voters in one District shall be represented by a member selected by them. The House as stated will according to this scheme consist of 300 members. The number of persons more than 30 years old, who alone will have the franchise is about 8,000,000 according to the census of 1921. Universal suffrage seems to be necessary in the interest of the so-called lower classes.

I have carefully considered this question of the electorate and I have come to the conclusion that suffrage without any restriction as to property or education or office or position should be given. I am one of those who think that the regeneration of a class can be effected only by the class itself. The so-called depressed classes form the most numerous element in the population. The higher castes, the land owners, the wealthy classes, may be very well inclined towards them; so have the British Government been. We know the result. They are what they are. There is no reason why we should not make them responsible for their own future. Let them shape their own destiny. Universal suffrage therefore limited only by age and any disqualifications that may be imposed is what I have suggested. The conditions justify the proposal. I will not dwell now upon the keen interest taken in the election of the members to the Councils created by the Government of India Act. I may draw attention not only to the energy and the interests shown by the candidates and voters, but also by others in Municipal elections. It was not the case that a few years ago much interest was taken in elections to the Local Boards; but very different is the case now. I know something of the Co-operative societies and Unions in some of the Districts. The great majority of the members are ignorant of English, but the questions that come before them are discussed, if I may venture to express my opinion, with intelligence and ability and those who are interested watch closely the conduct of these members. Some of these Unions consist of fishermen and so-called depressed classes. We know the tenants are fighting the landlords vigorously and openly in the matter of elections to the Legislative Councils, and when it is remembered that in many instances they belong to the so-called lower and higher castes, respectively, we may judge of the spirit shown by these classes. Railway employees, Mill hands are combining and making themselves heard and felt. Recent untoward events have shown the necessity of legitimate expression of their views in Councils. I would draw special attention to the great uprising of the depressed classes and so-called untouchables. Their claim to temple entry, the insistence

with which they press it forward, the riots some times accompanied with bloodshed, their sacrifices, including hunger strike, show the awakening of these classes. No priestly influence or property stand in the way of these classes of people to any substantial extent, and if for the first few years the priest and the lord of the soil influence the voters the position cannot be worse than it is now, and to me it is certain, looking at what is going on, that within a short time these men will fully assert themselves. Already the right to vote has created a feeling of great self-respect and broadened their general outlook in almost every direction. So much therefore for the so-called outcastes and depressed classes; next I shall deal with the minorities.

The Moslem League at their last session claimed and allowed communal representation in favour of all minorities. The communal representation claimed for the Muhammadans by the League are due to the strained relations between Hindus and Muhammadans all over Northern India on which Sir Abdur Rahim laid stress in his speech. Fortunately such is not the state of things in the Tamil land. May I be allowed to read to my friends what was said by Maulvi Sayad Murtuza Sahib Bahadur only a few days ago in the Legislative Assembly? He said: "I come from a province where we are 7 per cent. and 93 per cent. are our non-Muslim brethren and yet both communities live there very happily. There is no Hindu-Muslim question there. We respect the feelings of our Hindu brethren there and they reciprocate the same feeling towards us." Apart from the fact that the relations subsisting between the Muhammadans and non-Muhammadans do not demand any communal representation, for other reasons also it seems to be uncalled for and futile. In the whole Presidency with communities occupying different areas and speaking four different languages with separatist tendencies the Muhammadans form only 7 per cent.

In the Tamil land out of a total population of about 20,000,000 the Muhammadans form about only 810,000. Such representation therefore will not be of any use to them. On the other hand, it may be prejudicial; universal suffrage will only give them less than a twentieth of the members; educational or property qualifications still less. Representation far higher even than the numbers might warrant will be of no avail for practical purposes.

But all the benefits of communal representation are secured by allowing the voter to choose his own electoral District. This provision would enable the Muhammadan voters in various Districts to choose a particular District for voting and thus secure a majority in the same District. There is a further provision under which they might form a group of 30,000 voters in any one District and elect a member. This would prevent any possible hostile combination by the other classes. These two safeguards secure to them the benefits of communal representation while it is not imposed as under the existing law on those members of the community who do not wish for the same. The same observations apply to the other classes who are in the same position.

The Christians come next to the Muhammadans and number 697,925. Both of these are comparatively considerable in numbers. Confining myself to the religious communities the Jains number 14,044. There are certain persons called Animists who are said to number 1,320. There are 639 Budhists, 58 Parsis, 36 Brahmos, 19 persons who describe themselves as

[Sir C. Sankaran Nair.]

Theosophists which means, I suppose, that they do not belong to any recognised religious sect. There are 5 persons who are described as Agnostics and 2 as free thinkers. Now it may well be doubted whether, if any religious minority requires protection against orthodoxy, it is not the last two denominations. Now all these minorities are surely not to be represented by separate nominees of their own, by separate electorates, even though such representation would be futile for any practical purpose.

While the minorities have thus got the benefits of proportionate representation if they desire it, I would in addition give them further safeguards of deliberation, of careful consideration as explained below. It has also to be borne in mind that various classes smarting under real or imagined hardship may utilize the House of Commons to sweep away their grievances, real or not, in a manner that might cause intolerate hardship and misery to the other classes. It is also possible that a democratic assembly may under the impulse of passion or the influence of a demagogue be led to ill-considered and hasty legislation. To meet this situation a periodical dissolution of one-third of the assembly, a second House which I have called a Senate and a reconsideration of any legislative measure is proposed. The proposals which I now proceed to explain are intended for that purpose.

(1) On the expiration of one year from the date of the first election, 100 members chosen by ballot shall vacate their seats and a fresh election shall take place to fill their vacancies. (2) On the expiration of 2 years from the date of the first election another batch of 100 members shall similarly vacate their seats and be replaced by members who shall be elected by those electoral Districts. On the expiration of the 3rd year the remaining 100 members shall vacate their seats and shall be replaced by the electoral Districts. (3) From this time forwards a batch of 100 members shall continue to vacate their seats after having been members of the Parliament for 3 years. (4) A member who got in by a bye-election shall be regarded for this purpose as standing in the shoes of the member whom he had succeeded.

SENATE.

(1) The Senate shall consist of persons—(a) whose annual income is not less than Rs. 1,00,000; (b) who have been members of the Government before or after this Act is passed; and (c) members of the Civil Service who have retired after twenty years' service. (2) Any law passed by the House of Commons shall become operative when it receives the assent of the Senate. (3) The Senate may refer the measure for the further consideration of the Parliament after the next election of the 100 members. If the measure is again passed by the House of Commons by a majority equal to or larger than the majority by which it was originally passed the law shall become operative. If the measure is passed by the majority smaller than the majority, which passed it originally, the Governor in Council may on the request of the Senate remit the measure again for the consideration of the House after the next election. The decision of the House will then be final. (4) On a reference to the House of Commons by the Senate, it will be open to the latter to refer the measure immediately to the opinion of the electorate. (5) Before any reference to the House of Commons it will be open to the minority, if it is not less than 100

members and the Senate, to refer the measure to the opinion of the electorate. (6) The decision of the electorate shall be final.

Thus no sudden wave of religious fanaticism can carry the assembly into any hasty conclusion. If under these circumstances and in spite of the safeguards by proportional representation the Muhammadans still desire communal representation, I am prepared to agree to it as I am satisfied a few years' experience will satisfy them of its baneful effects and they will abandon it and it will serve as a warning to the minorities in similar circumstances elsewhere in India. I have no doubt my Muhammadan friends will remember that the same principle will apply to the Non-Muhammadan minorities in the Muhammadan North West Province and other Muhammadan Provinces in similar circumstances that may be given self-government if they accept the policy I am putting forward.

I have now a few words to say about the services.

SERVICES.

The idea of constituting an Indian Civil Service was conceived at a time when it was necessary to protect against their own country men the people of India from economic exploitation and alien oppression. It was also necessary to bring out young men to obtain experience in order to govern India. Those conditions do not now exist. What we now want is experts in every branch of knowledge for the development of India's natural and other resources, to carry on research work in India and to train Indians themselves in research work to organise and govern Universities and large educational institutions. We want trained administrators of proved capacity and men whose statesmanship has been proved. We want to engage these men only for definite periods to be succeeded by others who will bring to India the knowledge then available in Europe and America. This possibly would be more costly than the existing machinery; but in the meantime the pecuniary prospects of the service as it now exists should in no way be prejudiced. The following provisions are therefore put forward for consideration. (1) The members of the Indian Civil Service, who belong to the Madras Presidency, shall not in any way be prejudiced so far as their pecuniary prospects are concerned by the constitution of these Districts into a Province. (2) The Civil Service of the Province shall be recruited solely by competition either in the Provinces itself or in England for the next 5 years generally under the same conditions as now prevail. It would be open to the Governor to entertain outsiders for fixed periods as experts. (3) After 5 years it will be open to the Parliament to make fresh regulations for the recruitment of the Civil Service subject to the provision that those who are already in the service will not be prejudiced so far as their pecuniary emoluments are concerned.

I have now to explain the reason for bringing the question of Home Rule for Tamil land alone before this Council. The communities of India are in such varying stages of evolution, social, moral, economical and political and are separated from one another by such differences, and other conditions vary so much, that it may be that the same constitutional machinery will not do for all the Provinces. I shall not here discuss the propositions of the Secretary of State about the Hindu Moslem difference or the problem of defence or the British Army as my Resolution is restricted to one particular part of the country where these problems do not present the same

[Sir C. Sankaran Nair.]

difficulties as they may be held to do in other parts of the country. Each province may put forward its own scheme meeting any difficulties with which it may be faced. I believe this fact is already recognised. The late Mr. C. R. Das has put forward one scheme for Bengal. Lala Lajpat Rai has put forward another for the Punjab. It is for the members of the various Provinces to bring forward their various schemes before the Legislature and the Government. I am putting this forward on behalf of the Tamil race because I am fairly well acquainted with the conditions of the Madras Presidency, and I think the Tamil Districts are entitled to autonomy. I am aware that in many parts of India there may be serious objections to the language test. But in the absence of such objections language should be the guiding principle. A common language is desirable in a Home Rule Parliament. The educational policy followed since Lord Curzon's time, the direction the Reforms have taken have practically eliminated English as the common language. The relations between Europeans and Indians are more cordial in southern India than elsewhere. The Tamil nation is as intellectual as any in India and the Tamil boys are holding their own in India and in England. They have got a culture which they claim is not inferior to any other in the world. They are liberal in their attitude towards all religions. It was a Tamil King who introduced Muhammadan religion into India and had mosques built for them soon after the days of the Prophet. Another Tamil King received St. Thomas the apostle and introduced Christianity into southern India. Another King welcomed and gave a home to the Jews after their dispersion. The revolutionary spirit has not made any substantial progress.

I come next to the question of co-operation, the working of the Reforms about which there has been a good deal of misapprehension. I know the aim of the authors of the constitution and what was expected of it as well as any other. It was not a dyarchy, which postulates a separate purse for both halves of the government. Being a transitory stage if the goal itself was not made attainable great advance towards it was rendered possible by operation of the machinery inherent in the scheme itself. This progress was to be achieved by allowing the ministers to interfere with the working of the reserved half, through the instrumentality of the joint purse and joint consultation on all important subjects. This requires of course the hearty co-operation of the reserved half and the Governor. Thus when the Secretary of State said about that scheme that "where it has succeeded the price of the success has been at some stages and in some directions a considerable inroad upon the dyarchical principle" he was paying the highest compliment to the authors of that scheme though he used an unfortunate word. This precisely is what was intended by the scheme. I derive a personal satisfaction as it was the view expressed in my minute of dissent from the Government of India on the question of a joint purse which cut at the root of Dyarchy that was finally upheld. I presume the Secretary of State had Madras in view. I do not wish to say anything about the other Provinces. About Madras allow me to read the opinion of the late Chief Minister Sir Theagaraya Chetti, who was speaking on behalf of his Government "Madras can proudly claim that under the Governorship of His Excellency Lord Willingdon, provincial autonomy has grown as rapidly if not much more so than in any other part of India. From the outset it has had party government. The Ministers

are all leaders of the party in power. They work with the rest of the Government in one Cabinet and so reduce the evils of Dyarchy to a minimum. The important portfolios of Revenue and law and justice have both been handed over to non-official members of the Executive Council. The Finance Department is common to both sides of the Government. The party in power has every reason to regard the Government of Madras as their own". For detailed information I would refer the Honourable Members to the Reports of the Local Government on the working of the Reformed constitution. The Madras Presidency having gone very far in the direction of unitary government, transfer of all the subjects and Home Rule seems to be the next inevitable and logical consummation.

I have now to state my reasons for not making any proposals about the Government of India. Such proposals should really be made
 1 P.M. by the Parliaments of the self-governing Provinces of India in consultation with one another. But whether it is so or not, I do not wish to overload the boat and complicate the situation as the Government of India can be treated separately. Any attempt however at the present time to introduce any responsibility in the Government of India or any modification in machinery in the Government of India will in no way be inconsistent with or repugnant to the scheme that I am now putting forward. And my omission should not stand in the way of any favourable consideration of these proposals. Now I come to the last and perhaps the most important question of all; is it necessary now to push forward?

Since the war all over the world there is a movement for freedom, in America, in Africa and all over Asia. It is not indigenous to India alone. But in India the demand has acquired an intensity for reasons of its own. Lord Ronaldshay speaks of that "consuming hatred of the west that is gripping the spirit of modern India with an intensity comparable with that displayed by the amazing vegetable ground known as the water hyacinth which has laid hold of and is rapidly choking the great water ways of Bengal". He describes in detail the differences in what he calls the thought structure of the west and of India. The differences according to him are fundamental and make the different races view the problems of life from entirely different standpoints which run throughout the philosophies and religion and therefore their social and political institutions and their ideals of administration. The great social and economic transformation which is needed in India would therefore seem to be impossible under the present system of government. This view repeated in almost identical terms can be supported by extracts from various writers. It is not the Hindus alone who have demanded Home Rule but also the Muhammadans. The All-India Moslem League in 1924, at Lahore declared the speedy attainment of Swaraj as one of its declared objects, and they say it has become a daily factor in the daily life of the Indian people. This Resolution was practically reaffirmed by the same League in December last at Aligarh. Natural rights are prone to slumber till roused into tremendous activity by practical grievances when people become fanatic in their faith. It does not matter whether they are real. It is enough that from the days of the old Indian National Congress the Indian politicians have affirmed their reality and the masses fully believe in their reality. I speak with special reference to the south. The Indians want the land to produce to its full capacity. They want the agricultural

[Sir C. Sankaran Nair.]

labourer to get his share of the produce, a living wage, before its distribution amongst others who may be entitled to it. They want the ryot also to get his share out of the produce sufficient for his living before the tax-gatherer taxes anything. They don't want the cottage industries to be killed by machinery and mass production. Such industries have survived the competition under National government elsewhere. They also want the manufacturing industries without the evils of capitalist industrialism of the west. The industries cannot thrive as long as the country is governed by a cabinet which is controlled by the capitalists and manufacturers of England. They want Compulsory, Primary and Secondary education and higher education for those who may desire it. The people of India are now suffering from appalling preventible destitution which has reduced their duration of life to a distressingly low figure and makes them an easy prey to diseases. They want all boys and girls to grow vigorous, healthy and strong and all of them, boys and girls, to attain their full development, mental and physical and moral of which they may be capable. All this is practically impossible under a foreign Government. It is not a discredit to the British Government that with the best intentions this economic and social and moral reconstruction cannot be successfully undertaken by them as the fierce conflict that is going on around us requires the enthusiasm, the devotion and the energy of which a national Government alone is capable for the nation to attain its full development on all sides; and to deal with the problems between capital and labour, landlord and tenant, between sexes, and religious and class issues. India wants a national flag under whose shadow Indians might be safe. The English flag is admittedly no protection to us. The Indians will not continue as helots despised by all the nations of the world. Indians, politicians and others have been driven to the conclusion that self-government is the only remedy. It is the conviction that in spite of repeated attempts not only no adequate efforts are being made but the steps which are being taken tend to aggravate the situation that has led to the bitterness testified to by various witnesses. Is it not possible for us to get on well together as members of the same Empire to work for our common good and for the good of mankind? I know it is dangerous to conjecture and it may be that the great war would have been won even without India's assistance. As a fact it was won with the assistance of India which was cheerfully given. Apparently no one will know the nature of the assistance rendered by India to England; nor do the Government of India and the Secretary of State seem to be very anxious to make public that information to India and the world. Our loss in human life by plague and influenza due to our privation consequent on the war alone comes to, I make a moderate estimate, at least 20,000,000—the Census Commissioner says 125 millions have been affected.—a total not less than that sustained by Russia, Germany, France and England. The Muhammadans in particular feel this more than any other as they cannot escape the reproach of having contributed to England's acquisition of what is called the Near East Muhammadan countries to keep her way clear to India, a situation which according to them requires absolute Indian Home Rule or independence. God grant that another war may not come, but if it comes before this bitterness disappears, under the conditions that now exist it seems fairly certain that England will not get that assistance from India which she obtained last time and she may even be faced by a hostile

India. A grave warning was uttered by a Muhammadan gentleman who pleaded for Home Rule with the responsibility of one at one time a member of the Government of India, who deprecated any delay as it might endanger the position in India on account of the growing desire for separation. A similar warning of the serious danger of separation in the All-India Leaders, manifesto supporting Dr. Besant's Bill should not be disregarded. I have selected two out of the innumerable warnings that have been published. Already the extreme left wings, both Hindu and Muhammadan, are claiming independence. I trust that my language will not be taken as minatory in tone. This bitterness has not permeated the whole of southern India and any substantial step taken in the direction that I suggest would be a pledge of good real faith, inspire confidence and go far to calm the public mind. The aim of the class to which I belong is to establish a British commonwealth of nations in which each nation or race might develop its own civilization, might give of its best to the Empire and the Empire might give of its best to its component nations. For this purpose partnership and equality must take the place of subordination. India in her present temper if allowed to get out of hand without being properly directed might ruin the Empire. India might become a scene of chaos and bloodshed and England fall from her high estate covered not with glory but with infamy. On the other hand, with India as a partner the Empire will be a bulwark for peace and goodwill among all the nations; the self purification and the spiritual exaltation that will come to England by grant of Home Rule and her glory through the coming ages will be unexampled in the story of nations.

It is in this spirit, and actuated by such feelings, that this Resolution is brought forward and I commend it to your favourable consideration.

With your leave, Sir, I lay on the table these propositions that I have formulated in case any Honourable Member of the Council wants to have a glance at them.

THE HONOURABLE MR. J. CRERAR (Home Secretary): Sir, in rising to oppose this Resolution, I feel somewhat in the position of a man who, having been invited to dine in order to meet two old friends and having attired himself in the manner suitable for such an occasion, finds himself unexpectedly in a vast assembly of extremely important people with very few of whom he has any but the most distant acquaintance. That would have been entirely my position, but for the courtesy and consideration of the Honourable and learned gentleman who two days ago conveyed to me an intimation of the lines on which he proposed to develop his argument. I am much indebted to the Honourable gentleman for that measure of courtesy, but I confess it is very far from relieving me from my embarrassment. Indeed when I received the first notice of the Honourable and learned Member's Resolution, I was somewhat struck by the fact that it seemed to raise two distinct and exceedingly important issues, but the Resolution as it has been argued and expounded by the Honourable gentleman has done a great deal more than that. It raises a whole multitude and multiplicity of issues each one of which is of extreme magnitude and complexity, and I fear if I were to reply in detail on the merits of each one of them I should have to invite the House with extreme reluctance to attend a long and elaborate course of lectures on political science. I do not propose to myself either the presumption of extending that invitation

[Mr. J. Crerar.]

to the House or the audacity of undertaking such a course of lectures myself, but I say this to explain why my reply to the Honourable gentleman must necessarily be brief and summary; and I trust that the Honourable Member will not ascribe the brevity and the summariness of my reply to any discourtesy to the argument which he has laid before the House.

The two issues to which I referred and with regard to meeting which in one debate I anticipated some difficulty—the two issues are firstly the constitution of a province on a linguistic basis and secondly, the granting to the province so constituted of complete self-government. The preliminary issue is one on which the Honourable gentleman has touched very lightly himself, the preliminary issue of the constitution of a province on a linguistic basis. I was reminded of the old adage about first catching your hare, because the Honourable Member entertained and instructed the House for the greater part of his speech with the process in which he proposed to cook his hare. I had occasion very recently to explain what is the attitude of Government to the general proposition of the constitution of provinces on a linguistic basis, and indeed to any particular proposition taking that form. I trust the House will bear with me if I recapitulate that position very briefly, because it really is essential to my argument and it is essential to the position which I have to explain to the House this morning. I then explained that, in accordance with the policy which is laid down in the Montagu-Chelmsford Report and likewise in the Joint Parliamentary Report on the Government of India Bill, the policy of Government with regard to these proposals is certainly one of respect and even benevolence, but they do insist upon these as precedent conditions to any consideration of any such proposition, firstly that the proposal should emanate directly from the community concerned, that there should be the strongest indications of a very strong measure of public opinion in that community behind the proposal and that that public opinion ought in the first instance to be expressed through its proper, primary, constitutional channel, the local Legislative Council. I think that in some measure the Honourable and learned gentleman recognised the justice of that position himself, because he observed in the course of his argument that “each province should put forward its own scheme.” I think the Honourable Member would have been wise if he had adhered more fully to that position the wisdom of which I entirely appreciate, and which is embodied in the brief outline I have given of the attitude of Government to all propositions of this character. The Honourable Member however attached comparatively little importance to the fact that his proposition had certain reference to a linguistic basis; he did not attach very much importance to that linguistic basis, for he said incidentally that English has ceased to be the common medium of communication in the country. I must take . . .

THE HONOURABLE SIR C. SANKARAN NAIR: I said “is ceasing to be”. Not ceased but is going to cease.

THE HONOURABLE MR. J. CRERAR: About to cease to be the common medium. Perhaps the Honourable Member is right in his prophecies, but he is not dealing with practical propositions. I think we will be well advised to adhere to, and to argue on, facts as they are. People as a matter of fact are not brought together and kept together in the intricate organisation of a modern political unit by vocabularies and lexicons. With the shrinking of the world in consequence of the great developments in means

of transit and communication the enormous complexities of economic, intellectual and social interests have set up a condition of affairs in which you cannot eliminate and isolate one single factor in the factors which make up the possible basis of a State. The days of the City State are over. Even so compact, homogeneous and successful a small State as Switzerland is far from being a State in which a single language is the basis of its unity. Switzerland is a country of four languages and nearly all the numerous States which have been created as a consequence of the war are polyglot. I must therefore demur on that ground to the first part of the Honourable Member's proposition. They are things which cannot be taken for granted. I do not say that a proposition of this kind may not have to be a sound proposition. All I say is it has not come to us in the proper form or at the proper stage. What the Honourable Member is inviting the House to do is not to examine the proposition, but to pronounce an exceedingly comprehensive affirmative decision. There are, for example, one or two comparatively minor matters—minor matters relatively to the larger propositions urged—which are nevertheless of very great importance. What, for instance, is to become of Madras the capital of the Madras Presidency, under the Honourable gentleman's scheme?

THE HONOURABLE SIR C. SANKARAN NAIR: Madras is not included in this. The Madras Collectorate is not included in my proposal.

THE HONOURABLE MR. J. CRERAR: I am glad to receive that assurance because I looked at the map and the territorial divisions which appear in his Resolution and it seemed to me that he intended either to annex Madras to the Tamil Nadu or perhaps to mediatize it.

I am glad, however, to accept his assurance that the other communities in the Madras Presidency would still be left with some remnant of interest in the capital of their Presidency.

Now, Sir, I am not in any sense objecting to the Honourable and learned gentleman's raising these issues and placing them before this House. I quite concur in his proposition that it would be wrong to suppose, wrong at any rate to presume, that political progress in India must necessarily pursue identical and simultaneous lines throughout the whole of this great continent. Indeed the Government of India Act expressly recognises that fact. It is recognised in the Joint Report, and in opposing the Honourable Member's Resolution, I should not desire to be construed as in any sense attempting to lay an embargo on, or putting any obstacles in the way of, proposals of this kind being carefully and duly considered. Indeed, in proportion as the issues involved in them are momentous and in the extremest degree complex and difficult, clearly an inquiry ought to be carried out deliberately, thoroughly and exhaustively. That has not yet been done and what the Honourable and learned gentleman is proposing to do is not to promote such an inquiry. If that were the case, I should personally, subject to the conditions precedent I have referred to, not be opposed in any way, but what he is advising the House to do is to come to conclusions on propositions before they have been made the subject of due inquiry.

Now, Sir, that is practically all I have to say on the first issue or rather the first group of issues moved by the Honourable gentleman. I have not very much to say about the second, largely for reasons which I think the House has already apprehended. He has raised the great and important question of the immediate grant of provincial autonomy in its

[Mr. J. Crerar.]

most extreme form. I think I should be justified in taking some objection to the Honourable Member raising that issue now and in this place, because it did as a matter of fact form a relevant issue in a very recent debate on the Honourable Mr. Phiroze Sethna's Resolution. The House will remember that an amendment was moved by an Honourable gentleman who is unfortunately no longer with us, which brought into issue the question of the immediate grant, as it was phrased, of complete autonomy to the provinces. That subject was directly in issue in the course of the debate and it was decided in the negative, and I might perhaps have taken some exception to the Honourable Member raising in another form an issue which, I maintain, has already been considered by this House, only very recently, and has already been decided in the negative.

THE HONOURABLE SIR C. SANKARAN NAIR: Could the Honourable Member tell me which Resolution?

THE HONOURABLE MR. J. CRERAR: The amendment to which I was referring cited a Resolution passed on the 18th September last in the Legislative Assembly, which directly brings in the question of complete provincial autonomy, which is the point to which I refer. However I only make that as a preliminary remark.

Secondly, I am unable to meet the Honourable gentleman's case in all its details for another reason. Quite apart from the fact to which I have already alluded, namely, that the matter in substance has very recently been before this House and decided, it is quite obvious that constitutional and political decisions of this kind are matters which must inevitably come within the scope of the Statutory or Royal Commission, and I think that if we attempted to say Aye or Nay on the numerous important propositions which the Honourable gentleman has laid before us this morning in a very summary manner, we should ourselves be prejudging the inquiry which must necessarily fall within the scope of that Commission. Therefore, I am not prepared to enter deeply into the merits of the constitution proposed by the Honourable and learned gentleman for his Tamil province, and I will limit myself to making a very few summary comments. I notice that this happy Tamil province is in the fortunate position of having, as far as I can judge, no Executive Government whatsoever. That famous passage in the treatise on Iceland, "there are no snakes in Iceland" summarises, as far as I can judge, the account given by the Honourable and learned gentleman of the executive Government which he proposes to set up in the Tamil province. Then I come to the Legislature and I take first the Senate. I am not quite sure whether the House has completely gathered what the constitution of that Senate is to be. It was, I think, to consist partly of gentlemen who draw not less than a lakh of rupees a year from land, of former members of the Government and of members of the Civil Services with 20 years' service.

THE HONOURABLE SIR C. SANKARAN NAIR: That is the Senate.

THE HONOURABLE MR. J. CRERAR: I am now referring to the Senate. I must disavow any plutocratic proclivities except in so far as they may arise from the conversation and association which I have enjoyed with Honourable Members of this House who draw fabulous revenues from vast estates. I disavow any further plutocratic predilections, but I cannot help feeling a certain subtle sense of flattery that the Honourable and learned

gentleman should have equated a revenue of not less than a lakh of rupees from landed estates with 20 years in the Civil Service; and if that indicates the views entertained by the Honourable and learned gentleman as to the appropriate scale of pension on the expiry of 20 years in the civil service. . . .

THE HONOURABLE SIR C. SANKARAN NAIR: I did not say that. He must either draw that income or have had 20 years' service.

THE HONOURABLE MR. J. CRERAR: I was not suggesting that he proposed to give a *jagir* of the value of one lakh of rupees to every member of the Senate. I merely suggested that if the Honourable Member equated gentlemen with this income with gentlemen whose claim to public estimation was 20 years' service in the Civil Service, he in some sense implies a compliment to the Civil Services which I am very happy to note. Whether the rest of the community concerned would be prepared to accept this combination of plutocrats and bureaucrats as sufficiently representative of every important interest, especially in view of the extremely important functions that are to be assigned to the Senate, I have considerable doubt. There are I take it industrial interests. There are I take it commercial interests. There are I take it interests of various kinds—a multiplicity of interests which, unless adequately represented in the Senate, might perhaps take some exception to the representative character of the Senate proposed by the Honourable and learned gentleman.

I pass on now very briefly to deal with the House of Commons. I invite the attention of the House to the very important and significant proposal of the Honourable and learned member to institute universal suffrage with no property qualifications and no educational qualifications whatever. In other words, making all deductions for his claim that in the area which he proposes to convert into a province education and civilisation are very advanced, the predominant majority will consist of what we must unfortunately still call the depressed classes. Now, Sir, the Honourable Member proposes to put supreme political power now into the hands of a predominant majority of what he himself calls the depressed classes. He does not propose to give political control contingently on there being a final court of appeal or revision but by instituting the popular referendum he proposes to put them very directly and immediately into power. Whether a proposition of that kind is a proposition for which the times are already ripe I am very doubtful; and I think this House will be very doubtful. The Honourable gentleman said, very rightly I think to some extent, of the depressed classes that we should let them shape their own destiny. I must however remind him that his proposition implied that they are not only to have a voice in shaping their own destiny but a predominant voice in shaping the whole destiny of the whole State into which they are to be constituted. Now as regards the Honourable Member's expedient for dealing with the representation of minorities, I am not quite sure whether the House quite appreciated what he intended. I take it that under his proposals there would be a large number of electoral districts

THE HONOURABLE SIR C. SANKARAN NAIR: 20 millions is the population and 300 electorates.

THE HONOURABLE MR. J. CRERAR: And with an electoral district of approximately 30,000, well we should have at any rate some hundred electoral districts. The expedient he propounds is that the particular

[Mr. J. C. Fraser.]

minority which desires to have some separate degree of representation is to arrange to vote in one or more of these electoral districts. Well the detailed working out of electorates of that kind would be extremely difficult, and I do not think that any part of such an electorate is nearly well organized enough and sufficiently aware of its own political interests to be capable of taking advantage of this expedient. And I think it pretty certain it must necessarily break down in practice. Then another point on which I have a considerable amount of doubt also relates to the House of Commons. The Honourable Member has not provided his province with an Executive Government, and I am not quite clear whether or not he proposes to equip it with a Government run on party lines. But if he does, I must point out that his expedient of turning out a hundred Members of the House of Commons by ballot every year will have an exceedingly unsettling effect upon his political system. Let us assume that we have Ministers in power with a majority of, say, 75, a fairly strong majority for an administration to possess in a House of 300. Supposing by the fate of the ballot 75 of their supporters are removed, as might quite conceivably happen; what is going to happen to the Ministry? That is to say, every year by a process of ballot you put your ministerial system into the utmost jeopardy, and I cannot imagine how any consistent, continuous and stable policy could be framed or executed under conditions such as that.

Then, Sir, we come to the public services. I have already made some acknowledgment of the attitude displayed by the Honourable and learned gentleman in the matter of his constitution of the Senate, but when I come to his specific proposals regarding the public services I fear that the compliment evaporates. I take one practical exception to the Honourable Member's suggestion. He says the time has long gone past when it is necessary for administrators in this country to acquire experience of administration by long labour in the country, and he proposes that their places should be taken by expert administrators and statesmen brought out on contract. I venture to warn the Honourable gentleman that he will not get statesmen and administrators of the right calibre and of the right experience on contract. The thing has never been done and I do not think it is likely to be done in India and on the terms suggested by the Honourable and learned Member. Capacity must be based on knowledge, knowledge must be based on experience, experience must be based on work.

Then, Sir, I have two words to say about the Honourable gentleman's military arrangements. The Tamil land he says need not fear any hostile invasion. Why? Sir, because of the British Navy in the first instance; because of the Army in India in the second. Has it completely escaped the Honourable Member's memory that a hostile battleship not so many years ago was bombarding his own capital of Madras? And does he seriously ask this House to believe that the defence of his province can be conducted by any means other than those which now exist subject to the developments which we all look to in the future. I ask the Honourable gentleman, does he suppose that the internal and external defence of his province can be adequately carried out by a provincial militia, over which even the Commander-in-Chief has apparently no control in peace time except the right of inspection and power of dismissing obnoxious officers? When we consider what labour, what industry, what intelligence

in the years of peace has to be devoted to the training of an army before it is efficient for the purposes of war, I am astonished that there are Honourable and learned gentlemen who would suggest that a provincial gendarmerie of this kind could discharge one-tenth of the responsibilities which would fall upon real military forces whether for offence or defence.

The Honourable Member, very prudently I think, omitted any proposals for the regulation of the relations between the Provincial Government of his new province and the Central Government. In fact he said such proposals should really be made by the Parliaments of the self-governing provinces in consultation with each other. Well, Sir, I presume the Honourable Member will concede that he could not set up his province until its relations with the Central Government had been determined, and when he goes on to say that such proposals should really be made by the Parliaments of the self-governing provinces in consultation with each other, I might reasonably and fairly conclude that on the Honourable gentleman's own argument his present proposal is extremely premature.

Now, Sir, I have one word to say about the failure alleged by the Honourable and learned gentleman of the Government as at present constituted by law in India and its predecessors to secure economic, social and moral progress in India. I deny the proposition. I think that any one who reads the history of the social, economic and moral progress in India during the last hundred years will, if he is a candid judge, admit that infinitely more progress was made in those 100 years than perhaps in any 500 years that preceded. I should venture to extend to him one word of warning. He suggested that all the social, economic and moral troubles under which we now do unhappily labour will be at once swept away if you have a national government. I would invite his sober and serious attention to this question. Where in the world, where amongst the most civilized States of the modern world, will you find a State in which moral, economic and social progress have been entirely promoted by the Executive Government? My own reading of the case is that no Government, national or otherwise, is capable of discharging all these tasks single-handed. It has not been so in the past, and I fear it will not be so in the future.

Sir, the Honourable Member's Resolution has opened a vast province for discussion, a vast field for expatiation, and I do not pretend to have covered more than its widest frontiers, and I have explained to the House that it is useless for me to attempt to do more. I may summarise the main reasons why I oppose this Resolution. I oppose it not because the Government of India are in any way averse from the undertaking of inquiries as to the various directions in which political progress in India may be achieved. But on the preliminary question of the formation of provinces on a linguistic and a racial basis I told the House that we cannot possibly support a proposition of this kind until it comes to us in the right way. By "in the right way" I mean, as I have already explained, "supported by a clearly expressed popular opinion in the community concerned, a clearly and strongly expressed public opinion of that kind, communicated to us through the proper constitutional channel". That is my objection to the acceptance of this Resolution before the House. Both on that narrow issue and on the broader issues I object to the Resolution, not because we are opposed to an inquiry, but because an inquiry has not yet been held. It may be put in progress if the Honourable and

[Mr. J. Crerar.]

learned gentleman exerts himself, but we have not before us the results of such an inquiry. The House has not before it the data on which it would be legitimate and wise or even defensible for it to arrive at any final and determinate conclusions.

THE HONOURABLE THE PRESIDENT: The Council will now adjourn to twenty minutes to three. . . .

THE HONOURABLE SIR MUHAMMAD HABIBULLAH: (Member for Education, Health and Lands): Sir, I venture to suggest for your consideration that instead of meeting again this afternoon to continue the discussion of this Resolution, we might as well take up the discussion to-morrow. As you are aware, Sir, and the Council is also aware, as the agenda for to-morrow has already been circulated, there is very little Government work to do, and I think it may not occupy any appreciable length of time. I should therefore be quite prepared to allow this Resolution being resumed immediately after the Government work is finished.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab: Non-Muhammadan): I rise, Sir, to support the Honourable the Leader of the House.

THE HONOURABLE SIR C. SANKARAN NAIR: May I know what time the Government propose to take?

THE HONOURABLE SIR MUHAMMAD HABIBULLAH: There is only one Resolution.

THE HONOURABLE SIR C. SANKARAN NAIR: I simply suggest that my Resolution be taken up at a particular time, say 12 o'clock, or 1, 2 or 3 o'clock—any time, I do not mind. I speak for my personal convenience so that I might be here at that particular time.

THE HONOURABLE SIR MUHAMMAD HABIBULLAH: So far as the work before the House to-morrow is concerned, there is only one Resolution to be moved by the Honourable Mr. McWatters regarding the export of opium, and I do not expect that that Resolution will be discussed the whole of the forenoon. I think it may be over in about an hour, and after that I believe this Resolution could be continued.

THE HONOURABLE SIR C. SANKARAN NAIR: Is there any objection then to continuing the discussion of this Resolution first and putting off the Government Resolution till later?

THE HONOURABLE THE PRESIDENT: That is a matter for the Government. I could not do it on my authority.

THE HONOURABLE SIR C. SANKARAN NAIR: They want your favour now. . . .

THE HONOURABLE SIR MUHAMMAD HABIBULLAH: I am sorry I have been misunderstood. It is not that the Government want this Resolution to be adjourned until to-morrow. I think it would suit the convenience of the House if instead of meeting again in the afternoon we resume the discussion to-morrow seeing that we have to meet to-morrow and the work for Government is so small that this Resolution

can find sufficient time to get through. But if the House is prepared to sit in the afternoon, of course I have no suggestions to make.

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN (Punjab: Nominated Non-Official): I think the House would like to adjourn this debate till to-morrow.

THE HONOURABLE THE PRESIDENT: I think that I may assume that the Council is grateful to the Honourable the Leader of the House for the suggestion and the offer that he has made.

(Voices of assent.)

THE HONOURABLE SIR C. SANKARAN NAIR: I do not object.

THE HONOURABLE THE PRESIDENT: Before adjourning, I might inform the House that I propose in this week to fix the second day for Government business on Friday instead of on Thursday. The reason for that is that the progress of legislation may not be delayed but may be facilitated. Bills passed in another place can be laid on the table to-morrow and can be taken on Friday, and Bills passed in another place during the rest of the week will be laid on Friday, and there will be nothing then to prevent their being taken up on the following Monday. The Council will now adjourn till to-morrow, 16th March, at 11 o'clock.

The Council then adjourned till Eleven of the Clock on Tuesday, 16th March, 1926.
