THE

# COUNCIL OF STATE DEBATES

## (Official Report)

## VOLUME VII

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## FIRST SESSION

OF THE

## SECOND COUNCIL OF STATE, 1926

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# COUNCIL OF STATE.

*Tuesday, 2nd March 1926.*

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

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## RESULT OF THE ELECTIONS FOR THE PANELS OF THE STANDING DEPARTMENTAL COMMITTEES.

THE HONOURABLE THE PRESIDENT: I have to announce to the House the result of the elections held yesterday for the panels of the Standing Departmental Committees. The following Honourable Members have been duly elected:

*For the Home Department.*

The Honourable Colonel Nawab Sir Umar Hayat Khan.
The Honourable Sir C. Sankaran Nair.
The Honourable Mr. Phiroze C. Sethna.
The Honourable Mr. G. S. Khaparde.
The Honourable Mr. V. Ramadas Pantulu.
The Honourable Mr. Shah Muhammad Zubair.

*For the Department of Commerce.*

The Honourable Mr. J. W. A. Bell.
The Honourable Sir Arthur Froom.
The Honourable Mr. Phiroze C. Sethna.
The Honourable Rai Bahadur Lala Ram Saran Das.
The Honourable Mr. P. C. Desika Chari.
The Honourable Srijut Lokenath Mukherjee.

*For the Department of Education, Health and Lands.*

The Honourable Saiyid Raza Ali.
The Honourable Raja Sir Rampal Singh.
The Honourable Mr. R. D. Morarji.
The Honourable Mr. P. C. Desika Chari.
The Honourable Dr. U. Rama Rao.
The Honourable Colonel Nawab Sir Umar Hayat Khan.

*For the Department of Industries and Labour.*

The Honourable Mr. Phiroze C. Sethna.
The Honourable Saiyid Raza Ali.
The Honourable Sir Arthur Froom.
The Honourable Mr. J. W. A. Bell.
The Honourable Mr. K. C. Roy.
The Honourable Mr. Mahendra Prasad.

THE HONOURABLE MR. J. CRERAR (Home Secretary): Sir, I move that the Bill to define and limit the powers of certain courts in punishing contempts of courts, as passed by the Legislative Assembly, be taken into consideration.

Brief though the Bill is which I have the honour to present to the House, it nevertheless represents the result of long years of labour and deliberation. Though the matter is a very important one, the issue actually involved is in its essence simple and is capable of being very concisely stated. The details, the technicalities and the involutions of the law of contempt are very well known to the Honourable Members of this House who are lawyers. To those of them who are laymen, they are probably not of very much interest, and I think I shall earn some title to the gratitude both of the lawyers and of the laymen if I avoid unnecessary details and technicalities and state the case as simply and precisely as possible. We have to consider in the first instance what exactly is meant by contempt of court. Broadly speaking, it consists in disobedience to or disregard of the rules, orders, processes or dignity of a court. Contempts may be direct, that is to say, they may consist in insulting or resisting the powers of the court or the powers of the presiding judges. They may be consequential. Without definitely resisting or disobeying a specific order of a specific authority of the court, they may nevertheless plainly tend to create a universal disregard of the authority of a particular court or of courts of justice in general. Another distinction is to be made between contempts of courts in so far as they are committed either in or before the court itself, in the legal phrase *in facie curiae*, or outside the court. The first class of contempts comprises generally disrespectful or obstructive conduct in the court itself. The other is almost equally important, in some respects even more important. It covers all cases of intimidating or corrupting parties, witnesses, persons or officers of the court. It includes cases of speaking or writing disrespectfully of the authorities of the court. It includes prejudicial comment on proceedings before the court—such comment as might result in the deflection or perversion of the course of justice, and it further includes what is commonly known as the scandalisation of courts. That indicates in a broad and summary way the general character of contempts of courts. In England the law is to a very large extent contained in the common law. Courts of record have power in England to punish contempts. Inferior courts of record like certain courts in this country in the present state of our law have power only to punish contempts which are committed *in facie curiae*, that is to say, in the presence of the court itself. The superior courts of record which include, *e.g.*, the High Court of Judicature, the Judicial Committee of the Privy Council and even the High Court of Parliament itself have powers to deal summarily with contempts of court whether committed in or before or against themselves or in, before or against courts subordinate to them.

I will not go at any length into the question of the jurisdiction and procedure in cases of contempt in England. Now in India, so far as the main principles are concerned, as frequently happens in regard particularly perhaps to criminal law in this country, the principles are precisely the same, but there are nevertheless some marked distinctions both in the matter of jurisdiction and in the matter of procedure. A considerable body of the existing law relating to contempt of court in India is in statutory form. For

example, Chapter X of the Indian Penal Code deals generally with contempts of the lawful authority of public servants and a considerable number of the offences set up by Chapter X of the Indian Penal Code would be contempts of court. In addition in the Indian Penal Code we find in section 228 a provision that intentional insult or interruption to a public servant sitting in a judicial proceeding is an offence for which punishment of imprisonment for a term of six months or fine extending to one thousand rupees can be given. Now the important point to note in regard to these offences is that they are statutory offences, many of which may be committed either in or out of court, but before the punishment incidental to such offences can be inflicted, the accused person must be brought before a court on a complaint, a charge must be framed against him, evidence for the prosecution and, if necessary, for the defence must be taken and then in the ordinary course the magistrate or other presiding officer of the court proceeds to pass judgment and sentence. We have one other provision of a statutory character relating to contempts which is contained in section 480 of the Criminal Procedure Code. Section 480 prescribes that where certain offences which are of the nature of contempts of court, drawn from the prescriptions of the Indian Penal Code to which I have just adverted, are committed in the view or presence of any civil, criminal or revenue court, the court may deal summarily with the offender. The main distinction then is that in the case of offences specifically contained in the provisions of the Indian Penal Code the procedure contemplated is that the accused person will after due trial if found guilty be sentenced. Section 480 permits in certain circumstances, where the contempt is offered in the presence and before a court, that the summary procedure may be adopted.

These provisions are applicable to all courts. There are however certain other provisions of law relating to the superior courts of record in India, that is to say to what are commonly known as High Courts, as distinguished from the Chief Courts and Courts of Judicial Commissioners. These courts inherit and exercise the powers at common law of the superior courts of record in England and the procedure before those courts may be summary. Those courts may take notice of contempts committed in their own presence or of contempts committed outside the court or of contempts committed in or in respect of courts subordinate to their authority. I have stated that conclusion somewhat summarily because I do not wish to enter too largely into technicalities. But as a matter of fact one of the reasons for bringing forward this measure is to make clear that that is the law, as certain doubts have been raised in the matter. Well, in their exercise of this jurisdiction at common law superior courts of record in India may take notice of contempts summarily, and they have at common law—or at any rate this is a view which is held on high authority, though it has not been entirely unquestioned—they have that jurisdiction at common law and their powers of punishment in respect of imprisonment or of fine are unlimited. I mentioned just now that the proposition which I stated somewhat concisely with regard to the jurisdiction and powers of superior courts in India is not entirely uncontested. As a matter of fact there is a very serious conflict of decisions in the matter. The High Courts of Madras and Bombay have held that they exercise intact the jurisdiction at common law which is vested in superior courts of record in England. The High Court of Bengal has expressed very grave doubts as to whether they do exercise jurisdiction and powers to that extent. Therefore one of the main objects of this Bill is, firstly,

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the resolution of doubts. It is exceedingly undesirable that in so important a matter as the law relating to contempt of court there should be any doubt whatsoever. The second effect which will be produced if this Bill is passed is that the unlimited powers of the High Courts in respect of the penalties they are now empowered to impose, or conceive themselves to be empowered to impose, will be limited. They will be limited to simple imprisonment amounting to 6 months and to a fine of Rs. 2,000. I should also point out that by clause 2, sub-clause (*3*), of the Bill no High Court shall take cognizance of contempt alleged to have been committed in respect of a court subordinate to it where such contempt is punishable under the Indian Penal Code: that is to say, in respect of the offences to which I have already referred which are set up by specific provisions of the Indian Penal Code, the ordinary procedure of law under the Criminal Procedure Code will apply. Thirdly, the powers which are now vested in superior courts in India will be extended to Chief Courts in respect of contempts committed against themselves but not against courts subordinate to them. That, Sir, is the purport and the effect of the Bill. I have endeavoured to divest it of all irrelevant technicalities and of anything which is not strictly necessary for the consideration of the matter before the House. I should only like in concluding to impress upon the House what an extremely important matter this question of contempt of court is. It is not merely a question of affronts offered personally to individual magistrates or judges. That in itself is a serious enough matter. The serious character and the consequences of contempts of court go very much further than that. Unless they are strictly abridged and penalised the consequence would undoubtedly be the arrest, perversion and deflection of the course of justice. There would be great danger that the majesty of the law would be brought into weakness and disrepute, to the great disadvantage and injury to the interests and liberty of the subject. It is therefore of the utmost importance that we should have a precise and unquestionable law on the subject. This measure may not perhaps go so far as some Honourable Members might prefer to see it go. Nevertheless, it is a useful and important piece of legislation and I have every confidence in commending it to the best consideration of the House.

THE HONOURABLE MR. K. C. ROY (Bengal: Nominated Non-Official): Sir, I have heard with very great interest the legal exposition of the Honourable Mr. Crerar and I felt that I could sit and give a silent vote, but that would be unfair to my own profession and unfair to the Members of this House. Mr. Crerar said that he felt that there are Members in this House who might have wished the Bill to go further, but I am one of those who think that the Bill has already gone too far. At the outset, Sir, I should like to ask Mr. Crerar two very important questions. This is a very important piece of legislation and the other House was given almost a year over it. I should like to know why this Bill was not referred to a Joint Committee of the two Houses. It was a Bill not only very important and very interesting to our judicial system of administration, but also to the profession of journalism to which I have the honour to belong. In the second place, I should like to say that the Bill has been considerably changed by the Select Committee, and, in fairness to the Provincial Governments as well as to the High Courts, I think that the Bill ought to have been republished and recirculated, and that fresh opinions should have been

elicited before it was put to the final vote of the Assembly and to the final vote of this House.

Sir, with these preliminary remarks I come to the detailed consideration of the Bill. Sir, as a member of my profession I had an opportunity as one of the office-bearers of the Upper India Journalists' Association as well as of the All-India Journalists' Association in Bombay to give our views. When the Bill was originally introduced, it was a very drastic measure and we felt that it was our duty to oppose the Bill lock, stock and barrel, and we advised the non-official Members of the other House to turn the Bill down. But, Sir, speaking from my place as a Member of this House, I can no longer visualize the Bill is a member of the journalist fraternity; I have to visualize it as a Member of this House, I have to visualize it also from the point of view of the good administration of law in this country; and I think, Sir, it is our duty to uphold the dignity of our law courts, so that no press criticism, however just it is considered in the light of newspaper interests, should in any way hamper that administration of justice. Sir, the Bill as it was originally introduced contained drastic changes. There was a spirit of compromise in the Select Committee for which we are grateful to the Home Member. The Bill to-day is a great improvement upon the present position, and therefore I am in a position to vote for Mr. Crerar's motion. I may in the first place state that no attempt has been made to define the word " contempt ". I find from the proceedings of the Select Committee that my Honourable friend, Sir Hari Singh Gour, was very keen about it. I made a little research into the question of " contempt ", and I find that the only country which has a definition of the word "contempt" is China; (Laughter), and I am very glad, Sir, that our law-givers in India have decided not to follow that celestial Empire. The next point, Sir, which has really improved the Bill is the decision that the imprisonment should only be simple. Sir, I belong to a profession which is mainly manned by the intelligentsia, and rigorous imprisonment would not really be a just and fair punishment to mete out to members of my profession. Even when they commit a contempt, they feel that they are doing it in the discharge of their legitimate duties. There may be errors of judgment, but there is no mistaking the motive; we are all for upholding the tradition of the administration of justice in this country. The third point on which I am greatly indebted to the Honourable the Home Member is that the amount of the fine has been restricted to Rs. 2,000. The Press in India, Sir, is a poor man's profession, it is indeed a poor man's profession and a fine of Rs. 2,000, I consider, is very excessive. The economic life of an Indian newspaper man is far from satisfactory. He does not earn enough, he is often exposed to temptations and other vicissitudes of life in respect of which perhaps a man who is serving in other capacities, such as the lawyer or the Government servant, is immune; and, Sir, although I quite frankly admit that the Bill has been improved, it has not been improved to the extent we should have liked it to go. Sir, in this connection I will quote the opinion of an eminent Judge in the United Provinces, Mr. Justice Lal Gopal Mookherji, who says:

" I approve of the Bill except as to the nature and amount of punishment. A ' contempt of court ' committed out of court (and not in the presence of it) is much milder in form and substance than a ' contempt ' committed in court itself, yet the maximum sentence provided by section 228 I. P. C. is 6 months' imprisonment and a

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fine of Rs. 1,000.' * * * 'A heavier sentence may result in gagging the public opinion * * * I would fix the maximum sentence at one month's simple imprisonment with a fine not exceeding Rs. 500."

Sir, this is what we as press men would have liked to see enacted.

I have now, Sir, only one objection to the Bill, and that is with regard to the extension of these powers to the Chief Court. Sir, I have nothing to say against the Chief Court. I believe it is an anachronism in our judicial system. Sir, there is only one Chief Court now which we have got at Lucknow. Its establishment was sanctioned by the United Provinces Government with the full consent of the local Legislature. So, Sir, if anybody is to be blamed for the existence of the Chief Court, it is the provincial Legislature. But what I feel on this question is that the Chief Court should not have been given those powers, because, Sir, you are only widening the scope of our courts competent to punish contempts. I should have liked to see it restricted only to the High Courts. The way in which the Bill has been dealt with has convinced me that it has received the utmost consideration in all stages, and I have no desire to oppose this motion. All we feel, Sir, is that no amount of deterrent punishment will give you the result which the Government aim at; it can only be secured by the growth of goodwill and public opinion in this country, and I depend more upon the latter than upon Mr. Crerar's remedies to prevent contempts of court happening oftener than now. Sir, with these words I support the motion.

THE HONOURABLE MR. J. CRERAR: Sir, I am extremely glad to note that though the Honourable Mr. Roy labours, or laboured, under certain apprehensions with regard to this Bill, he nevertheless considers that on the whole this Bill merits his own support and the support of the House. I understood him to make two complaints; firstly, that the Bill was not submitted to a Joint Committee of both Houses. Well, I think the reason why that particular procedure was not adopted was that though the measure itself is an important one, and though it represents, as I have already said in making my original motion, the result of many years of labour and deliberation, it is nevertheless a measure perfectly simple in itself, a short measure, a concise measure, and one which could with every justice to the issues and the principles involved be debated on the floor of both Chambers of the Legislature. He also suggested some dissatisfaction that the Bill was not circulated for eliciting opinions. I would however remind him that the original Bill as introduced in another place was so circulated, and as all substantial issues were at that time before the various authorities concerned, it was really unnecessary to circulate it a second time for the same purpose. We were indeed substantially in possession of all the opinions that were likely to assist either the Government or the Legislature in proceeding with the measure, and this course would only have added to the delay, the exceedingly unfortunate and prolonged delay, which has already taken place in the progress of this measure towards enactment. With regard to what the Honourable Member said as to the attitude of himself and the illustrious profession to which he belongs, I have nothing to say except words of gratitude and acknowledgment. I think his apprehensions as to how far this measure might bear hardly upon that profession are entirely unnecessary. I can hardly imagine, it is beyond my wildest dreams of conception, that any question could possibly arise as to whether

the Honourable Mr. Roy should be awarded simple or rigorous imprisonment; and as I feel completely relieved from any such unpleasant hypothesis, so I feel sure that the Honourable Mr. Roy and his colleagues may equally feel relieved from any such apprehension. I welcome nevertheless all the more his statement that the deliberate and united opinion of all responsible persons in his profession is that the authority and the dignity of the courts ought to be supported in this matter. The Honourable Member went on to make some observations on the point that the Bill contains no provision for the definition of contempt. I was not quite clear whether he considered that a defect or an advantage.

THE HONOURABLE MR. K. C. ROY: An advantage.

THE HONOURABLE MR. J. CRERAR: I understand that he considers it an advantage. If, however, there is any misgiving in the mind of any other Honourable Member of this House on that point, I should like to explain that an attempt was made to define the offence "contempt" and the attempt, I am bound to admit, was not very satisfactory. Indeed it was rather opposed to the tradition and practice in such matters as these of the common law; and here, I must remind Honourable Members, we were endeavouring to place in the form of a Statute a point of law which hitherto has been almost entirely regulated by the traditions and principles of the common law. The word "contempt" is, as the lawyers say, a term of art, that is to say, it is a term perfectly well understood by lawyers, perfectly well understood by the courts, and it is not left entirely to the imagination either of lawyers or courts to say what "contempt" is. What it means is settled by a long series of judicial decisions, and I think it is really much better to leave to the discretion of the high and responsible courts in whom it is proposed to invest these powers to apply to the cases before them the great traditions which it is their duty to enforce, to keep alive and to interpret. I am gratified that this Bill has received the measure, the handsome measure, of support it has received from the Honourable Mr. K. C. Roy, and if I may infer so much from the silence of other Honourable Members, the approval or acquiescence of the House as a whole.

THE HONOURABLE THE PRESIDENT: The question is:

"That the Bill to define and limit the powers of certain Courts in punishing contempts of courts, as passed by the Legislative Assembly, be taken into consideration."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3 was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

THE HONOURABLE MR. J. CRERAR: Sir, I move that the Bill, as passed by the Legislative Assembly, be passed.

THE HONOURABLE MR. V. RAMADAS PANTULU (Madras: Non-Muhammadan): Sir, we now find that the Bill embodies three principles; the first is to resolve certain doubts as to the powers of High Courts to

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punish contempts committed in respect of courts subordinate thereto; the second principle is the extension of the powers to punish contempt to courts which did not hitherto enjoy such powers; the third is the limitation upon the powers of the High Courts with regard to punishment. Sir, my Party had no objection to the first and third principles, the resolving of doubts and the limitation to powers regarding punishment. So, Sir, when the Bill was introduced in another place, the Swaraj Party did not oppose the consideration of the Bill, nor did it object to its being referred to a Select Committee. But with regard to the second principle, the extension of the powers of punishing for contempt to courts which did not enjoy such powers, it was very objectionable in our view. We wanted to get rid of this objectionable feature in the Select Committee stage and we tried our best. Not having succeeded in that attempt and the objectionable provision having ultimately found a place in the Bill as presented to the Assembly, after it emerged from the Select Committee, we had no alternative but to oppose it and I will take the same course here. As we were in agreement with the first and third principles I did not oppose the Bill at the consideration stage, but as a very vital principle is involved in this Bill, namely, the second to which I take exception, I cannot but vote against the motion that the Bill be passed. I shall briefly state, Sir, my reasons for voting against this motion. So far as the first principle is concerned, resolving doubts, as pointed out by the Honourable the Home Secretary, the Madras and Bombay High Courts held that Chartered High Courts had power to punish contempts not only in respect of themselves but also in respect of courts subordinate thereto, but the Calcutta High Court took a different view. We feel that in the administration of law and justice there ought to be some uniformity and when there is a difference of opinion in the Highest Courts it is desirable for the Legislature to intervene and settle the conflict. So we agreed to that; and with regard to the limitation of punishment also the principle is sound, though I agree with my Honourable friend Mr. K. C. Roy that, even as it is, the punishment provided for in the Bill is far in excess of the requirements of the situation. But with regard to the second principle, namely, the extension of powers to courts which did not hitherto enjoy them, there are serious objections. In the first place, I do not agree with the statement made by the Honourable the Home Secretary that all the High Courts in India, which are said to possess the powers of courts of record by section 106 of the Government of India Act, do enjoy the powers which are sought to be conferred by this Bill. As I understand the law, I think only the presidency High Courts situated in Bengal, Madras, and Bombay do enjoy such powers. The Privy Council have definitely put it on the basis that those three High Courts succeeded to the powers of the Supreme Courts, and therefore they possessed the powers enjoyed by the King's Bench Court in England of punishing for contempts. But with regard to a High Court like that at Allahabad it has not succeeded or inherited any powers of any supreme court. Therefore, I maintain that under the law as it stands, the High Court of Allahabad does not possess any power to punish people for contempts committed even in respect of itself as the High Courts of Madras, Bombay and Bengal do. Clause 2 stands thus:

"* * * the High Courts of Judicature established by Letters Patent shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to them as they have and exercise in respect of contempts of themselves."

It is open to us on the clause as it stands to contend that if at present some of them do not enjoy such powers in respect of themselves, they cannot exercise such powers in respect of courts subordinate thereto. As clause 2 now stands, the Allahabad High Court does not possess the power regarding itself, and therefore much less can it exercise this power in respect of courts subordinate thereto, because it is not correct to say that all courts of record have such powers in India, whatever may be the law in England. Therefore, section 106 of the Government of India Act does not confer any such powers on High Courts other than those established by a Charter.

Sub-clause (*2*) of clause 2 of the Bill further seeks to confer such powers on Chief Courts which certainly did not enjoy these powers till now; and we find that it is not sought by this Bill to extend those powers in respect of courts subordinate to the Chief Courts. I am therefore justified in drawing the inference that this Bill makes a distinction between the High Courts and the Chief Courts with regard to the status and powers with which they are to be invested. While entrusting to the High Courts larger powers to punish for contempt, it does not confer all those powers on Chief Courts. Therefore, I take it, that it is recognised that the Chief Courts occupy a position inferior in status to the High Courts. Therefore this Bill certainly extends powers to certain courts not possessed of such powers hitherto and it is to this extension that we object. My objections are threefold. I submit that firstly the extension is undesirable on principle. In England the power to punish for contempt is not a statutory power but a common law power. The growth of common law in England is a matter of centuries, of labour of great jurists and judges. Nevertheless the law of contempt in England cannot be said to have reached a state of perfection. It is still in a state of flux, and to seek to import that common law into India is not defensible. This power to punish contempts, it must be confessed, is an extraordinary power. As pointed out by the Home Secretary, there are already some safeguards in existence to protect courts from interference in the due administration of justice. The provisions of the Indian Penal Code, section 480 of the Criminal Procedure Code, and the provisions of the Civil Procedure Code do contain provisions which are safeguards for protecting courts in the due discharge of duties by them without molestation or interference. This power which is sought to be given is of an exceptional character. The person who is offended against is constituted judge, witness and prosecutor; therefore such an extraordinary power should only be given to courts which command the highest confidence, and it should not be extended unless urgent and unavoidable necessity has been proved.

Now, Sir, this power also is undefined and said to be indefinable. The scope for courts exercising very wide discretion is patent from the fact that it is not found possible to frame a comprehensive definition. Again the procedure is very summary and no appeals lie. Therefore in placing such dangerous and very exceptional powers in the hands of courts, we ought to proceed very cautiously, and it is wrong to extend them.

Then *secondly*, I think as a matter of expediency it is very dangerous to extend the power to Chief Courts which have not hitherto enjoyed this power. In India the judicial and executive functions are not separate. The District Magistrate is the chief executive authority who really moves in the matter. For instance, if a subordinate magistrate is said to have been wrongly attacked by a newspaper, when the District Magistrate takes

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up the question of proceeding against the paper for contempt I am afraid a lot of executive bias will be thrown into it. All persons objectionable to the executive will be brought within its net, and therefore there will be room for the abuse of power by executive intervention. With regard to the Chief Courts we should not forget that it is the Government of India which appoints judges. The judges of these courts do not enjoy the same amount of confidence as judges of High Courts appointed by His Majesty. I mean no disrespect to them. It is the feeling. Sub-clause (*2*) of clause 2 does not intend to entrust Chief Courts with all the powers given to High Courts by sub-clause (*1*) and thus recognises the distinction between the two. Therefore I think any extension of power to Chief Courts is dangerous as a matter of expediency.

*Thirdly* and lastly, my objection is that absolutely no need has been made out for this legislation. As pointed out by the Honourable Mr. K. C. Roy, the Press on the whole has shown great moderation and a due sense of its responsibility in dealing with the judiciary. I hope it has won approbation from all quarters. I do not think any case has been made out by citing instances in which it has been brought to the notice of Government that a measure of this sort is imminently needed. The Press has on the whole done very well and there is no apprehension that it will not do equally well in the future. With a growing sense of responsibility and public opinion the Press is trying to show greater regard to law, and there is not the slightest danger of its going wrong. The Home Secretary said that the matter had engaged the attention of the Government for a long time. I do not think that that is any justification for the measure, unless it is shown at the same time that in these long years matters have grown so serious as to justify the measure. Because the measure has been hatched for a number of years it will not be a sufficient justification for its introduction. I would point out that there is a loud, strong and almost unanimous protest against the measure. All sections of the Indian Press objected to it and many newspapers of eminence, well conducted and respectable, launched reasoned protests against the measure. I think Government ought to pay heed to these protests unless they can show some strong case; otherwise there is no justification for it. I do not think that either on principle or in the way of expediency has any case been made out for the extension of these powers. No need for it has been felt; we have got on very well with powers which the courts at present enjoy, and there is no demand for newly investing those courts with other powers. I have not been shown any papers in which the need for this measure has been urged. I therefore vote against this Bill which contains a vital objection in principle. On these grounds I oppose this motion.

THE HONOURABLE MR. P. C. DESIKA CHARI (Burma: General): Sir, I do not want to say much on this motion; I find that the codification of the law of contempt is certainly a step in the right direction, and it is the duty of the Legislature to set doubts at rest in cases like this. The law of contempt as everybody here knows is a very delicate branch of the penal law, and it is as well that an attempt is made by the Legislature to place it on a proper footing whereby not only the lawyers and judges, but the people concerned, may know where they stand in regard to this measure. In the Bill before us I find the law of contempt has certainly

been very much improved and there is every reason to be gratified at the measure of punishment which is sought to be given in connection with contempt against the highest courts in the land and also the courts subordinate to the High Courts. As the law was administered, we come across cases where severe punishment in the form of imprisonment for disobedience to orders of the court have been given. I know of a case where a Judge sitting on the Original side of the Madras High Court awarded punishment for contempt by giving the man a term of imprisonment which could last till the pleasure of the court. No doubt the man was not brought into the clutches of the law, because he managed to escape, and later on it was brought to the notice of the court that he showed signs of repentance and he was let off. I bring in this instance merely to show that the law of contempt, as it stood, was administered very rigorously in small cases where a court thought that its dignity had been infringed. People are all aware of the punishment awarded to the *Kesari* in one case of contempt where a fine of Rs. 5,000 was imposed, but I believe it is not possible for any of the High Courts to give imprisonment to last till the pleasure of the court or punishment which may extend to a fine of over Rs. 2,000. And then it is clearly laid down that only simple imprisonment can be awarded and there is no question of rigorous imprisonment being awarded in cases of contempt. The Honourable Mr. Ramadas Pantulu objected to the extension of these powers to Chief Courts, *i.e.*, the highest courts which are not High Courts. I fail to see why, if the Presidency High Courts, established by Royal Charter, can be safely entrusted with this power, the other courts which are the highest courts in the land, should not be given the same power. Of course it may be argued that, because these Chartered High Courts in the Presidency-towns have been exercising this jurisdiction, they can safely be entrusted with it as they have been used to exercise such power, but I do not think such an argument is sufficient to prevent the power being given to the highest courts in the land under the existing circumstances. When they can have the right to punish people to the same extent in all other respects as the Chartered High Courts, there is no danger in entrusting this power to them, though they are not Chartered High Courts. It is only an accident in the evolution of the judicial history of India that some only of these High Courts are chartered and there is no reason why the other High Courts should not be given the same powers.

Then I find no attempt has been made to define the word "contempt", and I am glad that no attempt has been made to define it because it is not a thing that can be defined as a term of law, and it is better that the old tradition of the law of contempt of the common law as it stands should be allowed to stand because there would be difficulties in applying the law if some form of definition was given to the word " contempt." It may lead to trouble afterwards.

Then as regards the other objection, that no case has been made out to extend the power to other High Courts. I admit that the Press, including the vernacular Press, has shown that they understand fully their responsibility and they have been very fair in their criticism; but when an attempt is made to codify the law of contempt, it is better to define what the law is and to make it as satisfactory as possible, and there is no need to make out a case for placing this law of contempt on a satisfactory footing. It does not imply that the Press has been giving trouble and it is

[Mr. P. C. Desika Chari.]

necessary to bring in legislation of this kind. It has been thought fit to resolve certain doubts, and in resolving certain doubts, to extend the provisions of the law in such directions as are considered satisfactory. With these words I heartily support the Bill.

THE HONOURABLE MR. J. CRERAR (Home Secretary): Sir, I am reluctant further to trespass upon the indulgence of the House and I only rise now lest I might be considered guilty of some discourtesy in making no reply to the observations which have fallen from the Honourable and learned gentleman from Madras. It is only a few minutes ago that the House passed, without a single dissentient voice, a motion to take this Bill into consideration, and, in doing so, it accepted the principles involved in the Bill. I was therefore somewhat surprised to hear the character of the arguments which were brought forward by my Honourable friend at this stage in the debate. It appeared to me that they referred solely, singly and entirely to the main principles involved in a measure which in principle the House has already accepted. The Honourable Member will therefore, I trust, pardon me if I reply to his criticisms in only the very briefest terms. The Honourable Member said that his objections to the Bill were threefold. He thought any extension of such powers in contempt as existed was in itself undesirable. Well the extension contemplated by the Bill is not a very great one. It extends it to Chief Courts in respect of contempts of themselves. Now the real point that arises in the matter—because I think no one can contest the proposition that the actual effect of the law ought to be perfectly clear—the only question that can possibly arise with regard to this point is whether or not Chief Courts constituted in India are worthy to be entrusted with these powers. For my own part I should very gladly have seen the Chief Courts entrusted with similar powers in regard to the courts subordinate to them, and that feature of the Bill, I need not attempt to conceal from the House, was largely a matter of compromise. My Honourable and learned friend now alleges it as a discrimination against the Chief Courts and as constituting a ground why the Chief Courts should not have the power to punish contempts committed in their own presence. I do not think that is a fair argument, but the real point on which the House has to satisfy itself, after getting rid of all technicalities, all unfounded apprehensions and all matters of prejudice, is whether it is really the fact that the Chief Courts in India are unfit to exercise powers of contempt. I say if they are unfit to exercise jurisdiction in contempt, they are probably unfit to exercise most of the other powers entrusted to a Chief Court.

The second objection alleged by the Honourable gentleman was that, in the case of prosecutions for contempt, the matter was usually set in train by the executive power. Well, I think the House has already heard a little too much of this attempt to treat the intervention of the Executive Government in any judicial process as a matter for constant suspicion and constant disparagement. But the argument that has now been introduced in regard to proceedings in contempt leads me to ask the Honourable Member does he really contend that in the matter of the administration of the criminal law, in the matter of the prosecution of offenders, the executive power is to be totally excluded? Is that a possible position? The Honourable and learned gentleman is far better aware than I am that in the ordinary processes of the criminal law prosecutions are undertaken on behalf of the King, that

serious criminal offences are committed not only against the law but against the King, that the King is the prosecutor in these cases and the executive authority takes part in those proceedings in its capacity as exercising that part of the functions of the Crown. If the Honourable Member alleges this as a reason why the House should not accept any provision for jurisdiction in contempt, he employs an argument which if carried further would reduce the whole of the criminal administration of this country or of any other country to an absurdity.

Finally, the Honourable and learned member said that no need for this measure had been disclosed. I think that point has been adequately replied to by the Honourable Mr. Chari. He pointed out, as I had already myself pointed out, that if you have an important branch of law in a state of flux, in a state of doubt, it is surely in the interests not only of the legal profession but also of the courts and of the public that that law should be made precise and clear.

Those were the three main objections taken by my Honourable and learned friend, and I am afraid I cannot regard any one of them as tenable. I submit the motion to the House.

THE HONOURABLE THE PRESIDENT: The question is:

"That the Bill to define and limit the powers of certain Courts in punishing contempts of courts, as passed by the Legislative Assembly, be passed."

The motion was adopted.

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## INDIAN MEDICAL EDUCATION BILL.

THE HONOURABLE RAO SAHIB DR. U. RAMA RAU (Madras: Non-Muhammadan): Sir, I beg to move that the Bill to regulate medical education in India be circulated for the purpose of eliciting opinions thereon before 1st July 1926.

Sir, in doing so, I do not wish to tread on the same grounds as were adduced already in support of this Bill, once again now. The Statement of Objects and Reasons clearly defines the scope and purpose of the Bill. The importance of this legislation cannot be minimized and the public must have their say in the matter. The Government too may be anxious to invite the opinions of Local Governments and the various Provincial Medical Councils on this Bill. I, therefore, move that the Bill be circulated and that public opinion be elicited before 1st July 1926, so that the Bill may be piloted through in all its other stages, during the Simla Session and passed into law without undue delay.

THE HONOURABLE SIR MUHAMMAD HABIBULLAH (Member for Education, Health and Lands): Sir, I think the House will expect that I should at this stage indicate briefly the attitude of the Government towards this measure. I may at once state that the Government of India reserve their opinion until they have fully considered the expressions of opinion which the motion of the Honourable Mover is intended to elicit. All the same, Sir, I think I cannot refrain from making a few general observations. A cursory examination of the Bill has disclosed certain defects which I think I should bring to the notice of the House. Honourable Members will have observed that the Bill attempts to regulate the standard of qualifications for the purpose of the practice of indigenous systems of

[Sir Muhammad Habibullah.]

medicine, and this I venture to think is rather impracticable. Further, it seeks to place on the same register the practitioners of this system and those of the allopathic system, and I fear that it may lead to difficulties with the General Medical Council. Even in regard to the practice of Western system of medicine the Bill seeks to regulate standards of qualifications in respect of the Sub-Assistant Surgeon class as well, which for obvious reasons ought properly to be left to Provincial Governments. It is indeed significant that the Bill is silent in regard to the source from and the methods by which the various, or shall I say the long, catalogue of the activities of the proposed All-India Medical Council should be financed. It is, I take it, a truism which I need not stress that without finance no organisation can function; and perhaps, lastly, the proposed All-India Medical Board is rather unwieldy.

THE HONOURABLE RAO SAHIB DR. U. RAMA RAU: Sir, with regard to the observations made by the Honourable Member, I beg to point out that it is futile to depend on the allopathic system alone, should we desire to make medical relief available to every class of people in every corner of the country. The indigenous system has the merit of being or at least of becoming cheap if it is sufficiently encouraged. The first step in popularising it, is to systematise the training given in it and make it scientific. The late Director-General, Sir Pardey Lukis, while speaking of the Ayurvedic system of medicine said:

"The longer I remain in India and the more I see the country and the people, the more convinced I am that many of the empirical methods of treatment adopted by the Vaids and Hakims are of the greatest value and there is no doubt whatever that their ancestors knew ages ago many things which are nowadays being brought forward as new discoveries."

There are similar opinions held by other competent foreigners who cannot be accused of national bias. Besides, the Ayurvedic system having been evolved in this country is better suited to the people, their habits and mode of life, their constitution, their temperament and their environment. It is hoped that no manner of opposition would be raised against this particular provision in the Bill and that under the fostering care of the would-be Council, each system will be allowed to grow independently of the other for the ultimate benefit of suffering humanity.

Sir, objection has been taken to coupling the Ayurvedic and Unani practitioners with allopathic practitioners. In England, the General Medical Council has allowed that class of practitioners who practise homœopathy to be associated with allopathic practitioners.

It has also been said that the proposed Council is a very big body. I would merely point out in this connection that whereas in the British Medical Council there are as many as 42 members, my Bill provides only for 35 members. And I may further point out that it is not correct to say that the Sub-Assistant Surgeon class should be left to the Provincial Governments and should not concern the Government of India.

We have been told that the Government are averse or unwilling to interfere with the provincial transferred subject of medical education; but it must be understood that the regulation of medical and other professional qualifications is a reserved provincial subject and is moreover subject to legislation by the Indian Legislature. All-India legislation is therefore necessary. If I remember aright, some years ago the Government of India

consulted all the provincial medical councils as to whether it was possible to have an all-India medical registration, on the lines of my proposed Bill, and I understand that most of the Provincial Governments gave a favourable opinion. Further, Sir, I have myself privately got the opinions of many of the associations and provincial councils and most of them are in favour of this Bill. I am only asking the Government to elicit further information; and if they do that and get favourable opinions, then the Government can themselves take up the matter. As regards the financial aspect of the question, when the Bill is referred to Select Committee, they can introduce provisions concerning the financial aspect. With these few words, Sir, I would suggest to the House to pass this motion.

THE HONOURABLE THE PRESIDENT: The question is:

"That the Bill to regulate medical education in India be circulated for the purpose of eliciting opinions thereon before 1st July 1926."

The motion was adopted.

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## PHOTOGRAPHIC GROUP OF THE MEMBERS OF THE COUNCIL OF STATE.

THE HONOURABLE THE PRESIDENT: It has been suggested that as usual a photographic group of Honourable Members of the Council should be taken before the close of the present Session. I think that is a proposal which may commend itself in general to the House, and arrangements have accordingly been made for the attendance of a photographer on Saturday morning at 10-30, so that a group of as many Honourable Members as can possibly be present may be taken before we meet to discuss the second part of the Budget.

I think it may be useful also to Honourable Members to know that of the items on the List of Business for to-morrow, one will not be brought forward. The Honourable Mr. Desika Chari has given notice that he does not intend to move the Resolution standing in his name which concerns the Burma Expulsion of Offenders Act, 1925.

The Council then adjourned till Eleven of the Clock on Wednesday, the 3rd March, 1926.