

Thursday, 21st February, 1924

THE
COUNCIL OF STATE DEBATES

(Official Report)

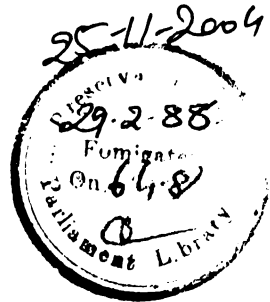
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FOURTH SESSION

OF THE

COUNCIL OF STATE, 1924



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COUNCIL OF STATE.

Thursday, the 21st February, 1924.

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

ELECTION OF THE EMIGRATION COMMITTEE.

THE HONOURABLE THE PRESIDENT: I have received nine nominations for the Committee to advise on questions relating to Emigration. That necessitates an election, and as papers have to be printed, I think it will be convenient to have the election on Monday.

THE HONOURABLE MR. LALUBHAI SAMALDAS: I should like to withdraw my name from the list of nominations, Sir.

THE HONOURABLE THE PRESIDENT: The House will greatly regret it. Does the Honourable Member persist in withdrawing?

THE HONOURABLE MR. LALUBHAI SAMALDAS: Yes, Sir.

THE HONOURABLE THE PRESIDENT: In that case an election will not be necessary. I therefore declare the following Members elected:—

The Right Honourable Srinivasa Sastri,

The Honourable Mr. G. A. Natesan,

The Honourable Dr. Sir Deva Prasad Sarvadhikary,

The Honourable Lala Ram Saran Das,

The Honourable Nawab Sir Amiruddeen Ahmad Khan Bahadur,

The Honourable Mr. S. Vedamurti,

The Honourable Mr. R. P. Karandikar, and

The Honourable Saiyid Raza Ali.

GROUP PHOTOGRAPH OF THE COUNCIL.

THE HONOURABLE THE PRESIDENT: There are two other small matters I want to draw the attention of the Council to. It has been suggested that Honourable Members would like to have a group photograph taken. I do not know whether that wish is common. Members of the Council will perhaps indicate their views in the matter. I only wish to add that, if Members wish to have it done, I think it will be in the interests of all of us to have it before it becomes too hot. Last year it was excessively hot when it was taken. Would Honourable Members express their views?

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN (West Punjab: Muhammadan): I think it is all right, Sir. I think there ought to be one.

THE HONOURABLE SIR MANECKJI DADABHOY (Central Provinces: General): I suggest, Sir, that it may be taken during Budget time because we will then have a larger number of Members present here.

THE HONOURABLE THE PRESIDENT: Very well. Secretary will fix a convenient date during Budget time. I hope that Members who do not intend to come will kindly notify the Secretary.

PROPOSED GIFT TO THE COUNCIL OF A PAINTING OF HIS EXCELLENCY LORD READING.

THE HONOURABLE THE PRESIDENT: There is one further matter. I have been informed that Babu Devaki Nandan Prasad Singh has obtained permission to present a painting of His Excellency Lord Reading to a public body. The donor is anxious that the picture, when painted, should be hung in the Chamber of this House. As Honourable Members are aware, in our Simla Chamber we already possess a picture of the late Viceroy, Lord Hardinge, and the House would doubtless like to have the picture of another Viceroy. But that is a matter on which I seek the direction of the House. If the House considers, as I have no doubt it will, that the offer now made is a very kind offer, which should be gratefully accepted, we should in the first place communicate this opinion. Then it will be a matter for consideration where this new picture should be hung. I would suggest that, before the House comes to a decision on that point, we should obtain the opinion of the Architect whether the new Chamber in Raisina will be so arranged as to make it suitable for pictures. It is quite obvious that this temporary Chamber is not suitable for the purpose.

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN (West Punjab: Muhammadan): Sir, as similar offers may come of pictures of other distinguished Members, etc., in order to provide for the same, I request that the Chamber in Raisina should be so constructed as to allow lots of space for such pictures to be hung.

THE HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI (Law Member): Sir, if I may venture to say so, the suggestion which you have made is one which I have no doubt will meet with the approval of Honourable Members. I think that it is the best way of proceeding about this business, to consult the Architect with reference to it and then come to a decision.

THE HONOURABLE THE PRESIDENT: Then I will cause the thanks of the House to be conveyed to the donor and inform the parties concerned that the House will gratefully accept the gift. The question where it should be hung will be brought before the House at a subsequent date when we have got the picture. I think the picture is not actually painted yet.

THE HONOURABLE SIR ARTHUR FROMM (Bombay Chamber of Commerce): Has the picture been painted, Sir?

THE HONOURABLE THE PRESIDENT: I understand that it has not yet been painted. If we consult the Architect we may be able to suggest that

the picture should be in such a shape as to be suitable for our new Chamber in Raisina. I think we should, if possible, put the Architect and the painter in touch with each other so that the picture may be suitable for the new Chamber.

THE HONOURABLE SIR MANECKJI DADABHOY (Central Provinces: General): May I ask for some information about this donor, as to who he is?

THE HONOURABLE THE PRESIDENT: I am afraid I cannot give you any details. His name is Babu Devaki Nandan Prasad Singh. My impression is that he is a landowner in the Monghyr District. That is my surmise. Some of the Honourable Members may be able to give better information.

THE HONOURABLE MR. PHIROZE C. SETHNA (Bombay: Non-Muhammadan): Is he not a Member of the other House?

THE HONOURABLE THE PRESIDENT: He has already presented a picture to the other House.

THE HONOURABLE KHAN BAHADUR AMIN-UL-ISLAM (Bengal: Nominated Official): Babu Devaki Nandan Prasad Singh is the son of Raja Sivanandan Prasad Singh who is the son of Raja Camelswari Prasad Singh of Monghyr. He is the nephew of the present Raja Regunandan Prasad Singh, M.L.A.

THE HONOURABLE THE PRESIDENT: The Honourable Member confirms my own recollection.

CRIMINAL TRIBES BILL.

THE HONOURABLE THE PRESIDENT: The Council will now resume the debate on the motion made by the Honourable Mr. Khaparde that the Bill to consolidate the law relating to Criminal Tribes be taken into consideration.

THE HONOURABLE SAYID RAZA ALI (United Provinces: East Muhammadan): Sir, while introducing the Bill in this Chamber on the 28th of last month (*A Voice*: "We never met on the 28th of last month."), I mean on the 30th of last month, the Honourable Mr. Khaparde's modesty did not allow him to disclose the full nature of the arduous task undertaken by him and others who are responsible for this consolidation measure. In fact, he has not done full justice to himself and his colleagues in explaining the nature of the undertaking that he so voluntarily took upon himself. The Honourable Member contented himself by making a few remarks which went to show that, though the original Act was passed in 1911, it was amended subsequently on three different occasions, and pointed out that it was necessary to do away with scattered fragments of our Statute Law and put them all in one measure. Sir, on a careful perusal of the Bill, it appears that the Honourable Mr. Khaparde has not slavishly copied sections together with commas, semi-colons, colons and full stops from the parent Acts. But the re-arrangement that has been undertaken has necessitated the alteration of language in not a few places. In fact, it appears that the Honourable Mr. Khaparde and his colleagues have gone further and, where necessary, they have not hesitated to put in new words in order to facilitate the working of the Act. Now, let me make it clear that I make no complaint whatever that they have done so.

[Saiyid Raza Ali.]

What I do wish to say is that the work has been performed in such a manner as to deserve careful consideration in this Chamber. This is not the occasion, Sir, to say anything about particular clauses of the Bill. But in order to show that the changes made are more significant than they appear either from the Statement of Objects and Reasons or from the Honourable Member's speech, it would be useful to point out that the old section 2 (3) of Act III of 1911 contained the definition of "tribe, gang or class" which Honourable Members will find has been omitted from clause 2 of the Bill which corresponds to section 2 of the Act of 1911. Now, what has been the effect of the dropping of this definition? The effect has been that it has necessitated the insertion of these or similar words in clauses 3, 4, 5, 11, 15 and 16

THE HONOURABLE THE PRESIDENT: Did the Honourable Member refer to clause 4?

THE HONOURABLE SAIYID RAZA ALI: I am referring to the clauses in order to show

THE HONOURABLE THE PRESIDENT: I am only trying to follow the Honourable Member. Did he refer to clause 4?

THE HONOURABLE SAIYID RAZA ALI: I referred to clause 2 of the Bill which drops the definition of

THE HONOURABLE THE PRESIDENT: I follow the Honourable Member so far, but what I would like to ask is, does he say that the words "tribe, gang or class" are inserted in clause 4 of the Bill. I am merely trying to follow his point.

THE HONOURABLE SAIYID RAZA ALI: I say that these words are similar words. If you refer to clause 4, the words used there in the last line but one are "members of any criminal tribe." These words are new and have been added because the definition of "tribe," as it existed in section 2 of the Act, was done away with. Similarly, Honourable Members will find, if they refer to clauses 5, 11, 15 and 16, that the omission of the definition has necessitated the insertion of certain words. The point is obvious now, namely, if you do not define a thing then you have to use more words in order to convey your idea. Now, the point is not very material. I must make it very clear. The point is simply this. There are two courses either of which it is open to the Council to adopt. Either we should insert the definition of 'tribe or class' in clause 2 or, if we do not do that, we might follow the scheme adopted by the Honourable Mr. Khaparde. Perhaps the balance of advantages and disadvantages is equal. I do not think there is much to choose between the two. If you omit the definition, you have to repeat these words in so many places, which, of course, is against the canons of legislation, as is known to Honourable Members. If we can have a definition of a certain thing, it is better to have it in one place than to repeat the same idea in more words in a number of places. On the other hand, I am free to admit that the insertion of these words in the clauses which I have mentioned makes those clauses self-contained and complete. So that we can adopt either of these two, neither is very vital. What I want to say is that it is not after all a case of the original sections being copies, word by word.

Then again, if Honourable Members will refer to clause 11, sub-clause (2) (iii) they will find that there almost two lines have been

omitted as they existed in the original Act. Yet I must say it does not change the sense of the law in any way. I simply want to show how arduous the nature of the work performed by my Honourable and learned friend, the Honourable Mr. Khaparde, has been.

Then we come to another clause which perhaps makes a wider departure from the alleged object of the Bill than perhaps many of us realise, and it is the insertion in clause 28 of the Bill of a proviso which does not find a place in the original Act. The proviso is entirely new. As to what the effect of that will be I will explain, if necessary, when we come to deal with the Bill clause by clause. I just want to show that a rather important proviso has been inserted in the Bill.

Now, I congratulate the Honourable Mr. Khaparde and his colleagues for having done all this. As a matter of fact they have made some other changes also but they are not so vital. But, Sir, what strikes one is that my Honourable friend, after having introduced these various and some of them unimportant changes, modestly says in the Statement of Objects and Reasons:

"The present Bill which is, save for one slight alteration, purely a consolidating measure, brings the law together in the compass of one enactment. The alteration referred to is the substitution in clause 14 of the word 'who' for the word 'which'. This is necessitated by the fact that, since the enactment of the amending Act I of 1923, individual members of a criminal tribe may be restricted to an area or settled in a place of residence."

It is rather amusing, if I may be permitted to use the word, to find that, having introduced so many changes, having changed whole lines, having inserted an entirely new proviso, the only point that struck the Honourable Mr. Khaparde as worth mentioning is the change of the word "who" for the word "which." Now, perhaps it might be said by some unkind critics that the Honourable Mr. Khaparde having swallowed many a camel has been scrupulous to strain at a gnat. Whether that is so or not is for the Honourable Member to say, but I must say that the changes that have been introduced do not alter the substance of the law in any way. It may be that in one place perhaps it is open to us to follow either of two courses. So far as the rest of the Bill is concerned, having gone through it carefully, I am compelled to say that the work has been done very carefully. The arrangement is more scientific than was the case in the original Act, and therefore I support the motion that this Bill be given due consideration.

THE HONOURABLE MR. G. S. KHAPARDE (Berar: Nominated Non-Official): My friend, the Honourable Saiyid Raza Ali has not really found any fault but mention has been made of the fact that I did not take praise enough for myself and for my colleagues. It is due to our modesty.

THE HONOURABLE SAIYID RAZA ALI: I said exactly the same thing.

THE HONOURABLE MR. G. S. KHAPARDE: We did not talk much about ourselves.

The next objection that has been taken is that words have not been copied from the old sections completely but the meaning of them has been taken and that they have been distributed all over the Bill in their proper places. I humbly submit that that is the proper business of consolidation. I do not claim that our Bill is merely a transcript of the old law. We call it consolidation, and consolidation means that you take all the parts and put them in their proper places and put them together so as to be both clear and brief. That being so, I think that task has been well done.

[Mr. G. S. Khaparde.]

Anyhow I can say so now. My friend admits also that it is more scientific, it is more concise, more clear and makes no alteration worth mentioning in the law as it stood when this Bill was undertaken and carried through, that is to say, therefore, that the work of consolidation has been carried out as the work of consolidation is usually carried out. There is nothing specially done.

Then there is a proviso to clause 28 and my friend thinks that it is a new provision. That proviso reproduces the judgments of the Bombay and Madras High Courts. As the clause was originally conceived, a member of a criminal tribe, committing an offence and getting punished, and committing that same or a similar offence again and getting punished, was liable to get a very high sentence, was liable to get an enhanced sentence as it is called. Then the Bombay and Madras High Courts held that those offences which would go to enhance his punishment have to have been committed after 1911, and if before 1911 he committed three offences you cannot say after 1911 that he has already committed three offences. You must take those three offences as one offence and then punish him. So the Bombay and Madras High Courts made the law more lenient and this proviso only reproduces the substance of those judgments or the rulings given and is therefore, if a change at all, not a change in the direction of making the law more severe, but to bring it up to date in the light of the judgments of the High Courts, a procedure which, I believe, is permitted everywhere. The law has been interpreted, the High Courts have interpreted the law in one way and all that has been done is that the High Courts' judicial interpretation has been introduced in the form of a proviso. So there is nothing new that has been done.

Lastly, I am glad to see that my Honourable friend, Saiyid Raza Ali, recognises the work that was done. This work was done by the Statute Law Revision Committee. I cannot take much credit or any credit for the matter of that beyond that I sat there and, while things were being discussed and put into shape, I gave my consent, generally silently and very rarely putting in a word or two. That is all the credit that attaches to me personally. The work has been very carefully done and I found, when I compared these clauses again on the motion of my Honourable friend, Saiyid Raza Ali, that everything that is given here is practically a reproduction of the old law as it stood, as far as possible in the words of the old law itself. He also does not take any objection on that ground nor does he say that there is any change introduced. His remarks, so far as they are addressed to me, I do not think were meant unkindly. (*The Honourable Saiyid Raza Ali*: "No.") But I believe that, having made a motion and having obtained an adjournment of 14 days and having been unable to discover anything material, my friend was reduced to this unhappy condition of having to appear as a critic, at the same time appreciative and depreciative, and putting both these things together, and his remarks, I take it, were meant kindly and as a commendation but a commendation diluted with the unfortunate situation that he obtained 14 days' delay for this purpose. I do not think any further point arises here.

THE HONOURABLE THE PRESIDENT: The question is:

"That the Bill to consolidate the law relating to Criminal Tribes be taken into consideration."

The motion was adopted.

THE HONOURABLE THE PRESIDENT: We will proceed to the detailed consideration of the Bill, reserving the Preamble as before.

THE HONOURABLE SAIYID RAZA ALI: I do not think, Sir, I need say anything more about clause 2. As I have already pointed out, we have omitted the definition of "tribe, gang or class" from this clause, but, as it appears that these words or similar words have been inserted in various clauses in their proper places, we might pass this clause as it stands.

Clauses 1, 2, 3 and 4 were added to the Bill.

THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY (West Bengal: Non-Muhammadan): Sir, with regard to this clause, a point strikes me which probably may be cleared up. The method of calling upon the members is not indicated here. I recognise that this is the wording of the old Act, but in these days there may be difficulty, particularly as disobeying the call may involve some penalties. It would be desirable to prescribe some method of calling upon the members by law and not by rules.

THE HONOURABLE THE PRESIDENT: I suggest with reference to that, if the Honourable Member felt that this was really desirable, he might put in an amendment.

THE HONOURABLE DR. SIR DEVA PRASAD SARVADHIKARY: I myself am not able to make out how it could best be done, Sir. I am drawing attention to what appears to be a defect in the clause.

THE HONOURABLE THE PRESIDENT: My point is this that, if this involved a change in the law, it would be more suitable to have an amending Act. But if it is merely a supplementary provision intended to fill the Bill out and not change the law, then I think the Honourable Member would have been in order in putting down an amendment on the paper.

THE HONOURABLE MR. J. CRERAR (Home Secretary): Sir, I think that the point raised by my Honourable and learned friend is sufficiently resolved in the Bill itself. In the debate on the Amendment Act, which was passed by this House last year, I drew the attention of the House to the fact that, owing to the subject-matter of the Act, it was highly desirable that a great deal should be left to Local Governments, who directly administer it to carry out its general provisions by means of rules in detail. Now, I think it will be apparent to the House that, dealing as the Act does deal with communities of very different habits and habitats, it would be somewhat rash on the part of the Legislature to be too precise in its prescriptions in matters of this kind. My Honourable and learned friend will, then, I think observe that, in the clause to which he refers, it is laid down that "the District Magistrate shall publish notice in the prescribed manner," and, if he will refer to clause 2 of the Bill, he will find that "prescribed" means "prescribed by rules made under this Act." It is, therefore, the intention of the Bill, as it was the intention of the Acts which it consolidates, to leave in this matter a certain discretion to the Local Governments. The Local Governments have framed rules for matters of this character and the difficulty which my Honourable and learned friend has pointed out is, I think, adequately met by that solution.

THE HONOURABLE SAIYID RAZA ALI: I just want to add one word, Sir, to explain that the objection taken by the Honourable Dr. Sir Deva Prasad Sarvadhikary was met even by the old law. If he will refer to clause 20

[Saiyid Raza Ali.]

he will find that under sub-clause (2) (b) of that clause, provision has been made as to the publication of the notice. So it is not a case of no provision having been made by the Bill, quite apart from the point taken by the Honourable Mr. Crerar, for the matter has been specifically referred to in clause 20.

THE HONOURABLE PANDIT SHYAM BIHARI MISRA (United Provinces: Nominated Official): Sir, I just wanted to point out that clause 20 (2) (b), the same that has been referred to by the Honourable Saiyid Raza Ali, prescribes the manner in which the notice shall be published.

Clauses 5, 6 and 7 were added to the Bill.

THE HONOURABLE MR. S. VEDAMURTI (Burma: General): I do not know, Sir, whether I will be in order in objecting to the provision of including the District Magistrate in this clause.

THE HONOURABLE THE PRESIDENT: Does the Honourable Member consider that a change has been made in the law?

THE HONOURABLE MR. S. VEDAMURTI: I object to a provision like that.

THE HONOURABLE THE PRESIDENT: My point is whether the Honourable Member considers that there is a change in the law, or whether the law is the same as the old one.

THE HONOURABLE MR. S. VEDAMURTI: The old law is the same.

THE HONOURABLE THE PRESIDENT: Then the Honourable Member is not in order.

THE HONOURABLE SAIYID RAZA ALI: Sir, taking my direction from my friend, the Honourable Mr. Khaparde, I may be allowed to state that in this clause Mr. Khaparde and his friends have substituted the word "think" for the word "see" which appears in the original Act. I may say that it is not a change in the law. I say this because the Honourable Mr. Khaparde was careful enough to point out in the Statement of Objects and Reasons that the only alteration made in the Bill was the substitution of "who" for "which."

Clauses 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 were added to the Bill.

THE HONOURABLE SAIYID RAZA ALI: Sir, a small point arises in the consideration of this clause, not of any very material importance, but I want to draw attention to it. The question is whether we should specifically mention section 18 in this clause. As Honourable Members are aware, the corresponding section of the old Act, namely, section 19 of Act III of 1911, specifically mentions sections 16 and 17, but it did not mention section 18. But that is not the real objection. The point is whether it is necessary to mention section 18 at all. If Honourable Members will turn to the Bill, they will see that clause 16 provides for power to place the criminal tribe in a settlement and then clause 17 provides for power to place children in schools and to apprentice them. Clause 18 as a matter of fact takes into consideration the cases of both those who come either under clause 16 or clause 17. Clause 18 does not make any change in the mode of residence or the place to which they are to be restricted. As a

matter of fact, sub-clause (a) of clause 18 provides for discharge and sub-clause (b) provides for transfer from one settlement or school to another in the same province. Now, clause 19 which is now under discussion provides for such people being transferred to another place in another province, so that it, as a matter of fact, legalises the action taken by Government under clauses 16 and 17. To me it seems that the mention of section 18 would be unnecessary. If you think, Sir, that this is so, we might omit the words " or section 18 " in clause 19.

THE HONOURABLE SIR MANECKJI DADABHOY (Central Provinces: General): Sir, I do not think that in this case the contention of my Honourable friend, Saiyid Raza Ali is tenable. Clause 18 contemplates some further action: (a) regarding the order of discharge of any person from a school or settlement, and (b) regarding the order of transference from one settlement to another.

THE HONOURABLE SAIYID RAZA ALI: In the same province.

THE HONOURABLE SIR MANECKJI DADABHOY: Yes. That necessitates the order of the Local Government or of an officer authorised by it. It cannot be done without the Local Government's order and it is necessary, therefore, to provide for the insertion of section 18 in this clause. It is an important step preliminary to a discharge or transfer order and it ought not to be taken without the special permission of the Local Government or any officer authorised by it.

THE HONOURABLE THE PRESIDENT: I suggest one other reason for, as the Honourable Member knows, I was concerned with this Bill. I suggest for his consideration that clause 19 as it stood in the original Act conferred the power on the Governor General in Council. That was subsequently amended and the Local Government was given the power, and that may be the reason why there is mention in the old section of section 18.

THE HONOURABLE MR. R. P. KARANDIKAR (Bombay: Non-Muhammadian): Sir, the only question in this case is as to the power of discharge. For instance, when a person is transferred to some other Local Government's jurisdiction, who would be the Government empowered to discharge the man? Clause 19 refers to the power to discharge and transfer from one settlement to another. That may be so far right. But when such a person is transferred to the local jurisdiction of another Government, who is the Government that could have jurisdiction for the purpose of discharge?

THE HONOURABLE THE PRESIDENT: Is that with reference to clause 18?

THE HONOURABLE MR. R. P. KARANDIKAR: Clauses 18 and 19 taken together. If clause 18 enables the officer concerned or the Local Government to discharge the person and that person is transferred to some other jurisdiction and the man goes out of the first Government's jurisdiction and is transferred to the jurisdiction of some other Local Government, the question may arise as to which would be the Government that might possibly be in a position to discharge him unless section 18 empowers the Government that sends out the man to some other Presidency to desire that other Government to discharge him.

THE HONOURABLE THE PRESIDENT: If the Honourable Member will look at the wording of clause 18 he will see that the Local Government

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is empowered to discharge any person who *may* be in any industrial, agricultural or reformatory settlement or school in the province. Therefore it must be the Local Government of the school.

Clauses 19 and 20 were added to the Bill.

THE HONOURABLE SAIYID RAZA ALI: Sir, in this case reference has been made to a preceding clause, namely, clause 9. That clause provides that:

"The District Magistrate or any officer empowered by him in this behalf may at any time order the finger-impressions of any registered member of a criminal tribe to be taken."

Clause 21 says that, if any man refuses to allow his finger-impressions to be taken, then he will be liable to a certain punishment. It appears to me, Sir, that the words "by any person acting under an order passed under section 9" are not absolutely necessary. There is no harm in keeping them, but it seems to me that the power to be exercised by an officer under clause 21 must be a lawful power and the only lawful power that he can exercise for taking the finger-impression can be that conferred upon him under clause 9. These words therefore appear to be redundant. If it is thought necessary to retain them, in order to make the intention of the Legislature clear, there is no harm in allowing these words to stand.

Clauses 21 and 22 were added to the Bill.

THE HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI: Sir, in his speech on the motion that the Bill now before the House be taken into consideration my Honourable friend, Saiyid Raza Ali, invited the attention of the House to what he supposes to be a fact that the proviso to clause 23 is something new and is not to be found in the corresponding section of the Act of 1911. Now, my Honourable friend, Mr. Khaparde, has already traced the history of this proviso and has informed the House that the proviso is the result of certain judgments delivered by the Bombay and the Madras High Courts. But what I would like to point out to the House is this, that the judgments of these two Courts merely interpreted section 23 of the Act of 1911 as it stands on the Statute-book. They did not introduce anything new. If Honourable Members will turn to the language used in section 23 of the Act of 1911 they will find that it reads thus:

"Whoever, being a member of any criminal tribe and having been convicted of any of the offences under the Indian Penal Code specified in the Schedule"

Mark the words that follow—

"is hereafter convicted of the same or any other offence specified in the said Schedule, shall, in the absence of any reason to the contrary to be mentioned in the judgment of the Court, be punished"

Then follow the rules relating to enhanced punishments in those circumstances. Now, it will be clear to the House that the words "is hereafter convicted" under section 23 of the Act of 1911 clearly mean convicted after the 1st March 1911. Therefore, in order to remove any possible ambiguity in the law as it stands under the Act of 1911, the words "is hereafter convicted" have been eliminated from the first portion of the clause as it now stands in the Bill, and the effect of those words is now embodied in the proviso. The provision of law is what it was in the Act of 1911, and is now rendered absolutely clear by transposing all those

words "is hereafter convicted" into a subsequent portion of the sub-clause in clearer language than was the case in the Act of 1911.

THE HONOURABLE SAIYID RAZA ALI: I confess that the Honourable the Leader of the House and myself are in agreement on this clause though on entirely different grounds. The Honourable the Leader of the House has tried to make out that the proviso does no more than enact the law as it stood under Act III of 1911. Sir, I beg to differ. In fact, the proviso goes much further, but the change, as I call it, that has been made is one that will commend itself to all humanitarians. I do not propose to go into nice questions of interpretation of law, but I will ask the Honourable the Leader of the House to consider this case if the words "is hereafter convicted" as used in section 23 of the Act of 1911 are to be retained and if this proviso is not to be re-enacted. The result will be this. Take the case of a man who has had two convictions before the 1st March 1911 and a third conviction takes place after that date, namely, in the year 1924. What will be the punishment to which the man would be liable? Sir, under the law as enacted in Act III of 1911 he would be liable to no less than transportation for life, and under the law as it would stand, if this proviso is enacted, he would be liable only to seven years. So that it will not be open to the Honourable the Leader of the House to say that both the things mean exactly the same thing. They mean different things. I must say that it would be very hard on the offender if he were to be sentenced to transportation for life because this Act was enacted in the year 1911 and two of the offences were committed by him previous to that year. As a matter of fact, it would be giving a prospective effect to his convictions if you were to retain the word "hereafter" and not enact this proviso. Therefore I am for the enactment of this proviso, though, as I have said, for reasons very different from those given by the Honourable the Leader of the House.

Clauses 23 to 30 were added to the Bill.

Schedules I and II were added to the Bill.

The Preamble was added to the Bill.

THE HONOURABLE MR. G. S. KHAPARDE: Sir, I move that the Bill be now passed. In making this motion I may say that I am very glad that the Bill has been very well received in the Council and that it has been carefully scrutinised and well argued except that I beg to make one remark. When I began the practice of law, there was a Judge before whom I appeared. On my appearing there the Judge said, "Is that your case? I accept your argument and I acquit the accused." But there was a colleague of mine who was senior to me, who said, "Yes, yes, Your Honour is right in acquitting him, but will you kindly hear me." "What for?" asked the Judge. "I have acquitted your client." "You may have acquitted my client, but I want to adduce my reasons" said my colleague. The Judge said, "There is no use of your giving reasons now." My colleague replied: "No, no. Though you may acquit him still I want to argue." Something of that kind has happened here. The Bill is all right, the clauses are all right, but the reasons differ. My colleague in the case to which I have referred said "No, no, I want to say something though you may acquit." My friend has told us something of that kind to-day. He said that the sections are all right but the reasons differ and he thought it fit to put them forward. Anyhow they were kindly meant and I hope that the Council will now pass the Bill.

THE HONOURABLE MR. J. CRERAR (Home Secretary): Sir, I should like to say a few words before the motion is put that the Bill be passed. I think I may conclude from the course which the debate has taken on the detailed consideration of the Bill that this is a measure which commends itself to the House and, in the few words which I have to say, I propose to myself the pleasant task of making an acknowledgment and expressing an obligation. The House has before it now in a concise and compendious form the result of a series of enactments. Those enactments have been very carefully scrutinised by the Statute Law Revision Committee. We have had the additional advantage, at the instance of my Honourable and learned friend, of a further interval in which the House has been able to deliberate upon this consolidation measure. It must, I am sure, be gratifying to the Committee and reassuring to the House that my Honourable friend's labours during the course of the last fortnight have resulted almost entirely in compliments to the Committee. Before I resume my seat, I desire to express on behalf of the Government of India and, more particularly, on behalf of the Home Department which is specially charged with the administration of this Act, our deep thanks to the Committee for its labours and for the great and valuable part it has taken in promoting to a place on the Statute-book a largely improved measure. I express that gratitude not only on behalf of the Government of India, but also on behalf of the officers of Government whose duty,—a delicate, difficult and responsible duty,—it is to carry out the provisions of the law, not only legally but with a humane consideration for the unfortunate persons whose destinies are concerned. I have had a considerable amount of personal experience of the administration of this Act and I have no hesitation in assuring the House that this measure will greatly facilitate the labours and relieve to a material extent the responsibilities of the officers immediately charged with its administration. The work of original legislation is no doubt a very heavy and a very responsible one, but that of codification and consolidation is, in practice, at least comparable in value. Not only Government and its officers but lawyers and the general public do, I think, owe a very deep debt of gratitude to the work of the Committee; and, if I associate the legal profession and the public with Government in the expression of my gratitude to the Committee over which you, Sir, presided, I do not think that I shall exceed my commission.

THE HONOURABLE THE PRESIDENT: I desire to acknowledge the very kind references that have been made to the Statute Law Revision Committee by Mr. Crerar. I shall have great pleasure in conveying this appreciation of their work to the Statute Law Revision Committee at their next meeting.

THE HONOURABLE THE PRESIDENT: The question is:

“That the Bill to consolidate the law relating to Criminal Tribes be passed.”

The motion was adopted.

INDIAN TOLLS BILL.

THE HONOURABLE THE PRESIDENT: The Council will now resume further discussion on the motion made by the Honourable Dr. Mian Sir Muhammad Shafi on the 5th February 1924, that the Bill, to consolidate the law relating to Tolls on Public Roads and Bridges be taken into consideration.

THE HONOURABLE SAIYID RAZA ALI (United Provinces, East: Muhammadan): Sir, the Bill before the House is a very short measure and I may be allowed to say that, having regard to the careful handling of this measure at the hands of the Statute Law Revision Committee, it will not be necessary for me to detain Honourable Members of this Council for any length of time. I may however be allowed, Sir, to say in passing that there are certain points about which I should have liked to have some information in the Statement of Objects and Reasons. While we were discussing the previous measure I pointed out that the Statement of Objects and Reasons might with usefulness have contained a little more information than the Honourable Member in charge of the Bill chose to give. I of course recognise the great labour that it has entailed. Since this is a much shorter measure than was the case with the Criminal Tribes Bill, not very many points arise in connection with this. Yet, Sir, I think I am voicing the feelings of my Honourable colleagues in saying that we would very much welcome a little more information being vouchsafed to us, especially on those points where the Bill before the House, if it is a consolidation measure, does not agree with the original Act or makes any departure from the scheme laid out in the original Act. I may point out here to illustrate my meaning that clause 2, which contains definitions, seeks to define toll collector and toll superintendent. Now, at this stage it is not necessary to go into those definitions, but I think some Honourable Members may be under the impression that these definitions were taken from any of the Acts which it is proposed to consolidate. It may be useful to point out that in fact these definitions are entirely new and are not contained in any of the Acts referred to herein. Now, if a short note about that had been included in the Statement of Objects and Reasons it would have put Honourable Members on their guard, and in that case they might have been in a position to scrutinise these definitions more carefully than most of us have perhaps done now.

Then we find, Sir, that another point about which some information might have been given arises in clause 6. Now, Honourable Members will find that in the marginal note against clause 6 reference has been made to section 8, Act II of 1901. Now, Honourable Members will be interested to know that Act II of 1901 contains only as many as 7 sections, not 8. So that here clearly some mistake has crept in. As a matter of fact this section has specifically been repealed, it does not exist. I may say, to avoid any unnecessary trouble to the Honourable the Leader of the House, that this reference is to section 3 and not to section 8.

Now, then, as to the scheme of clause 6, I have a little more to say, Sir, which I will reserve till that clause itself is before the House.

I support the motion that this measure be taken into consideration.

THE HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI (Law Member): Sir, in the speech which has just been delivered by my Honourable friend, there are only two points really which have been made in the observations addressed by him to the House. The last point he himself admitted was really no point at all. That "8" is really a misprint for "3," in the marginal note to clause 6.

In so far as the complaint that more information ought to have been given in the Statement of Objects and Reasons than is actually the case is concerned, I venture to submit that there is really no substance in that complaint. The Statement of Objects and Reasons, Honourable Members

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will find, gives everything that is necessary for information in the case of a Bill like this. If it had gone on to state that the definitions given in clause 2 of "toll" etc., are not to be found in any of the previous enactments which it seeks to consolidate, that as a matter of fact would have been no information at all and no Honourable Member would have been any the wiser for the giving of that information. The definitions really, if Honourable Members will have a look at them, do not introduce either any change in the law or bring out anything which is not to be found already within the four corners of the previous enactments. The words were used in various parts of the original enactments and the definitions, as given now, simply make the position clear. They do not introduce anything new.

THE HONOURABLE SIR MANECKJI DADABHOY (Central Provinces: General): Sir, I am not quite satisfied with the explanation which has been given by the Law Member. I understand a consolidation measure means that you are strictly confined to consolidating the various preceding Acts and Statutes into one self-contained measure re-arranging them scientifically and methodically, and bringing the same matter and substance into the measure. As far as I have understood a consolidating measure does not exceed these limits. I would like to know from the Law Member if it is permissible for a statutory body or a Committee to introduce new matter, even in the shape of definitions which do not find place in any original Act. As far as I am aware, it ought not to be and it is not a correct, legitimate and permissible procedure and, if that had to be done in the present case for any special reasons, this ought to have been stated in the Statement of Objects and Reasons to the Bill.

THE HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI: Sir, might I point out that in a consolidating measure it would not be legitimate to amend the law as it exists nor to introduce new matter—of course an amendment might mean a modification, an addition and so on. But it is perfectly legitimate in consolidating to so place the various provisions contained in the enactments sought to be consolidated as to make the law clear without introducing anything new. Now, if my Honourable friend will turn to clause 2, he will find that the words "toll", "toll collector" and "toll superintendent", which occur in several or perhaps in almost all the previous enactments, are defined. All that clause 2 does is merely to make their meaning clear; "toll" means a toll leviable under this Act; "toll collector" means a person appointed to collect tolls; and "toll superintendent" means a person appointed to superintend the collection of tolls. I venture to think that, even without the inclusion of these definitions, those words in the clause would have meant what the definitions say they do mean, so that the definitions do not really introduce anything new nor do they modify any of the provisions contained in the previous enactments, and in consequence it was perfectly legitimate to include them in this clause.

THE HONOURABLE SIR MANECKJI DADABHOY: Then the definitions are superfluous.

THE HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI: They make the meaning clear, that is all.

THE HONOURABLE THE PRESIDENT: Not on the particular point before the House but on the question of consolidation in general, I should like to

say that it is not only a permissible part of consolidation to redraft and recast sections, it is the very essence of consolidation. If you take sections and cut them up into pieces with a pair of scissors and then stick them together with paste and think to reproduce the law you will be wrong. That is the very last thing that is done. The first object of consolidation is to re-enact the law—not altering the substance—but to do this you must offer redraft it. Sir Courtney Ilbert who was perhaps the greatest authority on consolidation in recent years and Lord Thring who is acknowledged to have been a prince among draftsmen, always used to reproach the members of the House of Commons for entertaining the idea that consolidation simply meant a clerk sitting down with a pair of scissors and a pot of paste and pasting section after section in order. Well, gentlemen, if you had ever tried to do any consolidation work—I have spent a good many years of my life in doing this kind of work,—you would realise that that conception is entirely wrong. I can assure you that, so far from producing the same law, you would be producing an entirely different law. It is of the essence of consolidation that you have to extract the substance of the law and to endeavour, where necessary, to put it into a better shape and form, without altering the substance. That is why consolidation, so far from being bricklayer's work, requires very delicate handling. I hope Honourable Members will believe how much the Statute Law Revision Committee welcome the interest the House takes in its work. They will help also if on their part they point out any errors—because the best draftsmen do make errors—and such scrutiny is of real assistance. I hope however they will be merciful in destructive criticism. It used to be said in my old Department, when we criticised the drafting of the Bills from Local Governments, that “those who live in glass houses should not throw stones,” and I think that is a very good proverb in any case and it is an extraordinarily good proverb for the draftsman, and also for those who criticize his efforts. If in making these remarks I have detained the House unduly I apologise, but I do think that we ought to be quite clear on this question of consolidation. You must not take one section and say that a particular word is not clear or take one definition and say that that definition is not clear. You must read the whole Bill and you must then gather why this definition has been put in. In this particular case, it may perhaps be a pure drafting device.

The question is :

“That the Bill to consolidate the law relating to Tolls on Public Roads and Bridges be taken into consideration.”

✓The motion was adopted.

THE HONOURABLE THE PRESIDENT: We will now proceed to the detailed consideration of the Bill, reserving the Preamble as usual.

Clause 1 was added to the Bill.

THE HONOURABLE SAIYID RAZA ALI: Sir, Honourable Members will have noticed that, when offering a few observations on the previous stage, I did not go into the merits of any of the definitions that are before this House. Nor did I say, Sir, that it was improper in a consolidation to improve the scope of the existing law or make it clear without changing it. In fact, difficulties of this character will be obvious to all those who take an interest in this branch of the law. The only thing that I pointed out to this House—and I think the House will see that it is a legitimate grievance against those who are responsible for introducing such measures—was that nothing was mentioned as to the fact that the definitions incorporated in clause 2 were new and did not find a place in any of the

[Saiyid Raza Ali.]

original Acts. I did make mention of the fact, and I repeat it again, that in future it will be deemed proper to give information of this character in the Statement of Objects and Reasons, so that those who feel an interest in the subject might be in a position to form an accurate estimate of the labours undertaken by the Committee or the authorities responsible for the work. Otherwise, as it is, one has to go through the whole Act to find out what new measures have been incorporated in a consolidation Bill. That was my complaint and I do not think that is a complaint that is not legitimate.

Now, coming to these definitions, Sir, let me say at once that I have absolutely no objection to the definitions for the simple reason that, as definitions, they are not of any very great use. Let us see what the definition is. "Toll means a toll leviable under this Act." Is this any definition at all? As a matter of fact, the reason why I do not object to these definitions is because they are not very useful as definitions, much less can they be injurious. Even if these definitions were done away with, no harm would be done. I agree with the Honourable the Leader of the House that it will look odd if you use the words "toll," "toll collector" and "toll superintendent" very frequently and you do not attempt to define them. The definitions are not at all illuminating as I have pointed out. But to remove the extraordinary feature of these words being used constantly without being defined, I for one, Sir, would be satisfied even without these definitions, if they deserve the name at all.

THE HONOURABLE MR. G. S. KHAPARDE: Sir, my Honourable friend has objected to the definition of the word "toll" which says, "toll means a toll leviable under this Act." He thinks that these definitions may have been omitted. In India, as we know, there are customary tolls and also tolls which are sanctioned by Government and imposed by law, and this definition means that customary tolls that people take are not included in the purview of this Act. Therefore, I think the definition of "toll" is very necessary.

THE HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI: Sir, I would like to point out to the House that the fact that there is as against clause 2 no marginal reference saying that this clause has been reproduced from a previous enactment, as is the case in connection with all the other clauses of the Bill, is a sufficient indication to Honourable Members that this provision is a new one and has not been reproduced from any of the previous enactments.

Clauses 2, 3 and 4 were added to the Bill.

THE HONOURABLE MR. R. P. KARANDIKAR (Bombay: Non-Muhammadan): Sir, I would draw attention to the proviso to clause 5 which runs:

"Provided that, if, at any time before the sale begins, the person whose property has been seized tenders the amount of all the expenses incurred and of double the toll leviable, the superintendent shall forthwith release the property seized."

I want to make it clear that the expression "the person whose property has been seized" includes the person who was primarily responsible to make the payment of the toll. As I find generally, it is the cart driver or whoever is in charge of the cart that primarily pays the toll. It is not

always the case that the property in the cart or vehicle belongs to the man that drives the cart. I would therefore make it clear by adding after the words "the person whose property has been seized" the words "or any other person on his behalf." Possibly it may be that if this clause stands as it is, the expression "whose property has been seized" is liable to be construed in different ways. I have no doubt that we may depend on the commonsense of the officers or individuals concerned in exacting the tolls and disposing of the property. But it would be much better to make it clear in the Act itself. It is not always the case that it is the person whose property it is that makes the payment. It may be the cartman. Perhaps he does not hold the property. He has no rights in the property. The section does not go into that. It merely says in a general manner "the person whose property has been seized" though it may be only a reproduction of the old Act. It has been explained very properly that a consolidation measure is not limited to mere reproduction and must not leave any room for doubt. I should like to make the point clear by adding some such expression as "or any other person on his behalf" if that is acceptable.

THE HONOURABLE THE PRESIDENT: There is a point of order here and that is, there is no formal amendment of which notice has been given. I do not know whether the Honourable the Leader would like to look into the point and perhaps to consider whether it is an improvement, and if so, move it as a formal amendment during the third reading of the Bill. At the moment there is no amendment before the House.

THE HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI: What I would like to point out to this House is that this proviso has been reproduced from the previous Act word for word, and the words "Whose property has been seized" merely refer back to sub-clause (1) of this clause in which it is said:

"In the case of non-payment of any toll on demand the toll collector may seize such of the vehicles or animals on which it is leviable . . ."

So that it is the owner of the property seized under sub-clause (1) who is mentioned in this proviso. Whether in these circumstances we should be improving the law by adding the words that have been suggested by my Honourable friend I am very doubtful.

THE HONOURABLE SIR MANECKJI DADABHOY: I do not think that there is any cause for the apprehensions indicated by the Honourable Mr. Karandikar. I think the wording is perfectly right. The wording is "the person whose property has been seized." It is quite a complete and adequate expression and conveys an interpretation the Legislature intended because "the person whose property has been seized" means the person who is in actual possession of the thing, who is in possession at the time being and who is the custodian thereof. There may be a cart with stuff which may belong to some other person, but the cartman is for the time being in possession of that property, both *de facto* and *de jure* and it makes no difference whatever that he may not actually own it. The law as framed in this clause is absolutely clear and includes a person who is for the time being in charge of the property.

THE HONOURABLE THE PRESIDENT: I just want to make one point clear. When I intervened, it was not with the object of expressing an opinion on the merits of the case, but merely to point out that there was

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no amendment on the paper to indicate the only way in which it could be considered by the Leader of the House if he wished to take action.

THE HONOURABLE MR. R. P. KARANDIKAR: I take it that I was not in order.

Clause 5 was added to the Bill.

THE HONOURABLE SAIYD RAZA ALI: It appears to me that the language of this clause requires serious consideration at the hands of the Honourable the Leader of the House. Here we find a provision made for the exemption of certain classes of persons from toll. Sub-clause (a) of the clause mentions the persons who are entitled to be exempted from paying toll under the Indian Tolls (Army) Act, 1901. Yet, when we come to the Schedule, we find that no provision has been made for repealing any portion of that Act, namely, Act II of 1901. Now, Sir, if we allow this clause to be passed as it is without adding something to the Schedule, making a clear reference to the relevant portions of the Indian Tolls (Army) Act, the result would be this, that you will have two provisions giving the benefit of exemption under two different Acts, namely, Act II of 1901 which will be allowed to remain as it is since it is not proposed to repeal any portion of that Act, and the present Bill, and it will be wholly unjustifiable. I need hardly point out that you cannot allow one provision to be had in two Acts. If you want to have this, either repeal the relevant portion of Act II of 1901 and add that portion to the Schedule to this Bill, or, if it is found that it will be inconvenient to adopt that course, then the best thing I would suggest will be to do away with sub-clause (a) of clause 6 of the Bill. It seems to me that it would be an extremely anomalous position to take up if we retained the provision in both the Acts. The best course I suggest is to do away with sub-clause (a) of clause 6 of the Bill and allow the Indian Tolls (Army) Act to remain as it is, because that would be more convenient than repealing a portion of that Act and having a corresponding provision enacted in sub-clause (a) of clause 6 of the Bill.

THE HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI: Sir, if Honourable Members will glance at the Statement of Objects and Reasons they will find that according to the statement therein contained:—

“It has not been found possible to include the provisions of the Indian Tolls (Army) Act, 1901, in the present consolidation. The law consolidated only relates to tolls on roads and bridges, while the scope of the Act in question is far wider and cannot be incorporated in the present Bill.”

That being so, it seems to me that not only was there nothing incongruous but that it was necessary in the present enactment to exempt from payment of tolls the classes of persons or property exempted under the Act of 1901. All that this clause 6 does is that it lays down that no toll shall be leviable from any person or upon any thing exempted from the payment of tolls under the Indian Tolls (Army) Act, 1901. In fact, had there been no inclusion of this provision possibly a contention might have been raised that there was inconsistency, that, while there is one Act which makes the payment of toll obligatory, there is another Act which exempts certain persons or things from payment of toll, and it might have been contended that this, being a subsequent enactment to that of the Act of 1901, must prevail as against the previous one and therefore the persons or things specified in the Act of 1901 are liable to payment of toll. In order to make

it clear that the provision embodied in the Act of 1901 is to hold good in spite of the enactment of this particular law, sub-clause (a) has been introduced here. Otherwise, possibly there might have been an inconsistency, or in any case there might have been room for contention that the exemption given by the previous Act of 1901 is no longer in operation.

Clauses 6 to 12 were added to the Bill.

The Schedule and the Preamble were added to the Bill.

THE HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI: Sir, I move that the Bill be passed.

The Honourable Mr. Karandikar has sent me a letter in connection with this Bill in which he has mentioned a point which, with your leave, Sir, I would like to make clear at this stage. He points out the desirability of letting local Legislatures know that they are not deprived of their powers when the Executive of the Local Governments acts under this Bill when passed. May I point out to him that under section 80 of the Government of India Act, 1919, the powers of the local Legislatures are clearly specified and that local Legislatures are presumed to know the scope of their powers, and therefore it is unnecessary to point this out to them.

THE HONOURABLE MR. R. P. KARANDIKAR: I had no intention of taking a very great part in the discussion of this small Bill, which was merely a reproduction of old enactments, but I find that the Act of 1851 was passed at a time when the Local Governments had no power to legislate for their own provinces, between the period 1833 and 1861. Under these circumstances the Act of 1851 came to be passed. Before that no doubt the Bombay Regulation XIV of 1828 made some reservation with reference to the power of the Bombay Government in respect of a small causeway in Sion which is near Bombay. My only object in troubling the Honourable the Law Member was that perhaps it may be assumed for the moment from the language used in this Act that other Governments (Bombay being excepted from the operation of this enactment) have to subordinate themselves in reference to certain matters and that they are merely given power to fix the rates and to appoint the agency wherewith to collect the tolls. My only point was that since the passing of the Reforms Act the local Legislatures may care to look into these matters and, if, as in Bombay the local Legislature, is freed from the obligations to subordinate itself to the Central Legislature, other Governments may equally want to be freed from it, if it is possible for them to do so. I quite accept the Honourable the Law Member's explanation.

THE HONOURABLE THE PRESIDENT: The question is :

"That the Bill to consolidate the law relating to Tolls on Public Roads and Bridges be passed."

The motion was adopted.

THE HONOURABLE THE PRESIDENT: Has the Honourable the Leader of the House any statement to make regarding the business of the House?

THE HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI: No.

The Council then adjourned till Eleven of the Clock on Monday, the 25th February, 1924.