

Wednesday, 25th March, 1942

COUNCIL OF STATE DEBATES

(OFFICIAL REPORT)

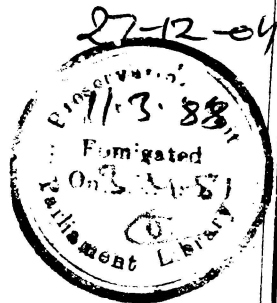
VOLUME I, 1942

(18th February to 2nd April, 1942)

ELEVENTH SESSION

OF THE

FOURTH COUNCIL OF STATE, 1942



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COUNCIL OF STATE.

Wednesday, 25th March, 1942.

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

MESSAGE FROM THE LEGISLATIVE ASSEMBLY.

SECRETARY OF THE COUNCIL : Sir, a message has been received from the Secretary of the Legislative Assembly. The message runs as follows :—

“ I am directed to inform you that the Legislative Assembly at its meeting held on the 24th March, 1942, agreed without any amendment to the following Bills, which were passed by the Council of State at its meetings held on the 20th November, 1941 and the 6th March, 1942, namely :—

1. A Bill further to amend the Indian Limitation Act, 1908 ; and
2. A Bill further to amend the Indian Companies Act, 1913. ”

BILLS PASSED BY THE LEGISLATIVE ASSEMBLY LAID ON THE TABLE.

SECRETARY OF THE COUNCIL : Sir, in pursuance of rule 25 of the Indian Legislative Rules, I lay on the table copies of the following Bills which were passed by the Legislative Assembly at its meeting held on the 24th March, 1942, namely :—

- A Bill further to amend the Muslim Personal Law (Shariat) Application Act, 1937 ;
- A Bill to confer supplemental powers on the Federal Court ;
- A Bill further to amend the Code of Criminal Procedure, 1898.

DELHI MUSLIM WAKFS BILL.

THE HONOURABLE MR. HOSSAIN IMAM (Bihar and Orissa : Muhammadan) : Sir, I rise to make the following Motion :—

“ That this Council do concur in the Resolution passed in the Legislative Assembly recommending that the Bill to provide for the better administration of Muslim Wakfs in the Province of Delhi be committed to a Joint Committee of this Assembly and of the Council of State and that the Joint Committee do consist of 18 members.”

This is a formal Motion, Sir, so I need not make a speech. I hope the House will accept it.

The Motion was adopted.

THE HONOURABLE MR. HOSSAIN IMAM : Sir, I move :—

“ That the following Members of the Council of State be nominated to serve on the Joint Committee to consider and report on the Bill to provide for the better administration of Muslim Wakfs in the Province of Delhi :—

1. The Honourable Malik Sir Firoz Khan Noon ;
2. The Honourable Mr. E. Conran-Smith ;

[Mr. Hossain Imam.]

3. The Honourable Saiyed Mohamed Padshah Sahib Bahadur ;
4. The Honourable Mr. Abdool Razak Haji Abdool Suttar ;
5. The Honourable Sirdar Saheb Sir Suleman Cassum Haji Mitha ;
6. The Honourable Khan Bahadur Mian Ali Baksh Muhammad Hussain ;
7. The Honourable Haji Syed Muhammad Husain ;
8. The Honourable Sir Muhammad Yakub ; and
9. The mover."

I may say that I have taken the consent of all the Honourable Members who are present in this session.

The Motion was adopted.

RESOLUTION *RE* APPOINTMENT OF INDIANS IN THE INDIAN CORPS OF ENGINEERS, ETC.—*contd.*

THE HONOURABLE THE PRESIDENT : We will now proceed with the discussion of the Resolution* moved by the Honourable Pandit Kunzru.

THE HONOURABLE GENERAL SIR ALAN HARTLEY (Nominated Official) : Sir, I was not in this House when the Resolution moved by my Honourable friend Pandit Kunzru was debated. My Honourable friend the Secretary for Defence Co-ordination supplied me with notes giving the points raised in the course of the debate and I will do my best to deal with them in the course of my reply.

Sir, the Resolution recommends to the Governor General in Council that immediate steps be taken to provide that Indians are freely appointed as officers in the Indian Corps of Engineers, in the Indian Artillery and in the Mechanised Cavalry. I should like to say at once that the policy of Government is to post officers, whether Indian or European, to all the different arms according to suitability and requirements. I take the Indian Engineering Corps first. The position is that prior to the outbreak of war there were only three companies of Sappers and Miners which have been Indianized, as the term was then. Honourable Members know that the scheme of Indianizing particular units has been abandoned since the outbreak of war and Indians are now posted to all units. Qualified and suitable men are taken, trained and posted to the Engineering arm. Before the outbreak of war there were only a dozen Indians in the Corps of Indian Engineers. The number is now nearly 20 times the pre-war figure, that is to say, it is now in the neighbourhood of 240. It is true that in the Corps of Indian Engineers there is a very large number of officers other than Indian. But, owing to the necessity for rapid expansion we have had to obtain qualified and trained officers from other sources. But that does not interfere with the fact that there is plenty of room for suitable, qualified young Indians, and as many as we can get.

As regards the Indian Artillery, the position is somewhat similar. Prior to the war there was only one field regiment of Indian Artillery. Since then

* "This Council recommends to the Governor General in Council that immediate steps be taken to provide that Indians are freely appointed as officers in the Indian Corps of Engineers, Indian Artillery and Mechanised Cavalry."

there has been considerable expansion. Whereas there were less than 10 Indians in the officer ranks of the Indian Artillery before the outbreak of war, there are now nearly 15 times that number, that is, about 150. Here again, in order to officer the greatly expanded artillery arm, we have had to take a large number of officers other than Indian. My Honourable friend, I understand, has complained that the proportion of Indians is slightly worse than it was some months ago, and from this he was inclined to infer that less Indians were being taken. As regards that I would point out that the proportion varies from time to time, and this is due to the rate of expansion. The artillery arm requires men with certain academic qualifications, especially mathematics, and all I can say is that men who are found suitable are freely taken.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : What are the qualifications in mathematics that are required ?

THE HONOURABLE GENERAL SIR ALAN HARTLEY : The Intermediate, I understand.

Regarding the Mechanised Cavalry or the Indian Armoured Corps, as it properly is, the position was that at the outbreak of war there were only two Indian cavalry regiments which had been mechanised and in neither of these two regiments had we any Indian officers other than the subedar or jamadar type because all the commissioned Indians were serving in the then three Indianized cavalry regiments. That, as you know, has been abolished. We have now nearly 100 Indian officers serving in the Indian Armoured Corps. The general policy which Government follows is that a proportion of all officers available for posting be sent to each arm of the service. In making these postings the technical qualifications of the cadets, or the officers concerned, and their suitability are the only governing considerations. There is no discrimination based on considerations other than suitability, aptitude and technical qualifications. Promotions are governed by regulations and considerations which apply equally to all officers. There is no reluctance to take Indian officers in any of these three arms and there can be no question of want of trust in Indians. Government have taken steps to post Indians freely to all arms in the services and will continue to do so. I have therefore no objection to accepting the Resolution, provided it is understood that in posting officers to the technical arms the main consideration is that of the efficiency of the service.

***THE HONOURABLE MR. HOSSAIN IMAM (Bihar and Orissa : Muhammadan) :** Mr. President, I am very glad that General Hartley has accepted the Resolution which has been moved by my Honourable friend Mr. Kunzru. The only thing which struck me was that I could not understand the complaint of paucity of suitable Indian officers. If the Intermediate is the qualification required, I think the United Provinces alone could supply enough Intermediates, B.Sc.s. and M.Sc.s. in mathematics. There is no dearth of Indians. The only trouble is that of suitability according to the military technical term. A man may be a very good mathematician and he may be hardy enough, but he may not suit the army and its traditions. As the Honourable General Hartley has already accepted the Resolution I can only say this, that given a real desire to find Indians there will be no dearth, and at a moment when first rate Europeans are not available in India I think it is better to take Indians than to hunt in the other British Possessions for European personnel for these arms. As far as the Engineering Corps is concerned, there too we find that there are quite a large number of qualified Indians available. The pay given by the military is more attractive than civil employment offers, and over

* Not corrected by the Honourable Member.

[Mr. Hossain Imam.]

and above that there is the motive of patriotism. I think if there is a genuine desire to find Indians there will be no more paucity of Indians and we will have more than we require.

*THE HONOURABLE HAJI SYED MUHAMMAD HUSAIN (United Provinces West : Muhammadan) : Sir, I very much appreciate the Government's acceptance of this Resolution. There is only one thing I suggest. There are certain engineering institutions in India which take matriculates for an overseer's course. I hope that the Overseer's certificate from those institutions will be created as equal to an Intermediate in mathematics.

THE HONOURABLE SIR A. P. PATRO (Nominated Non-Official) : Sir, I am glad that the Resolution has been accepted without any reservation. But there are one or two facts which I want to mention to this House for its information, so that it may not be misunderstood that the acceptance of the Resolution is unreserved. The point is this. As one who has had experience of Selection Committees for recruitment to the Indian Engineers, Military, I can say there is considerable difficulty in selecting suitable candidates. The point is that whatever the qualifications and preliminary training which candidates possess there are other drawbacks. The Indian engineering institutions train two classes of people, namely, the civil engineers and the mechanical engineers. The civil engineering course in Madras, Bengal and other institutions do not help the military aspect very much, which requires structural works training, road making training, etc., and mechanical engineers would be useful only if they have another few months in certain military schools. Therefore even though a person may possess what is called the Intermediate or B.Sc. degree of engineering, he requires further training to qualify him for military engineering. And when we have asked candidates whether they would like to go in for further training, they hesitate, with the result that many who offer are not available in the final selection. This is not an easy matter and if today there are more of the other classes than Indians in the Engineering Services that is the reason. For instance, we have tried our best to pass as many Indians as possible into the Corps of Engineers. The difficulty is their qualification. When they are put to the hard course necessary to fit them for that work then candidates did not prove equal to the task. Therefore we were obliged to disqualify some of them. Even the Roorkee engineering course has been reduced to help in finding candidates. Each case depends on its own merits. The Committee has to examine the candidate, his antecedents, his training, and when it finds he is physically and mentally qualified and he is prepared to take a further course he is selected. Therefore it is not enough to say there is no dearth of candidates. It must take time for our people to understand what is actually necessary for military engineering and to qualify themselves for that service. I am very glad that the Defence Member has accepted this Resolution and I welcome that, but as I have said, it now devolves upon us Indians to understand what is necessary for military service. A sapper for instance is required to put up a bridge in a dangerous position. What is necessary is resourcefulness, initiative and courage. Those are the things which to a large extent go to make a successful military engineer. That is what is required. If we Indians qualify ourselves, certainly no Britisher can come in our way. Whatever may be the past sins, today there is such a spirit prevailing in the country that they cannot but take Indians into the services. Therefore I say it is open to us to acquire those qualifications and qualities which will necessitate and compel the admission of Indians into these services.

*Not corrected by the Honourable Member.

* THE HONOURABLE RAI BAHADUR SRI NARAIN MAHTHA (Bihar : Non-Muhammadan) : If you will allow me one minute, Sir, I wish to say that I appreciate the remarks made by General Hartley. But I would like to mention one thing, that in the selection of candidates for the army or any other department a great deal must depend on the people who select them and if the people selecting them are selecting them with a view to find out the best candidate amongst the Indians who would come quite near in efficiency or in quality to the non-Indian candidate available, I think a great many more Indians could be found. Another thing is that as General Hartley is accepting this Resolution I would like him to clarify one point which would convince us that he is accepting the Resolution in the true spirit. When he has two candidates before him with equal qualifications and merit, one non-Indian and one Indian, is it the policy of the Department to choose the Indian in preference to the non-Indian or not ?

THE HONOURABLE SIR GURUNATH BEWOOR (Nominated Official) : Sir, before the Honourable the Mover of the Resolution replies, may I say a few words with reference to the remarks that have been made by the speakers just now ? The Honourable Mr. Hossain Imam mentioned that there were plenty of Intermediates who had taken mathematics for their examination and plenty of engineers and that he was surprised that we were not getting sufficient numbers. May I say, Sir, that Government is equally surprised. Government is aware that there is excellent material in the country, that there are men with the necessary education and the necessary suitability for army service. But, Sir, we can call the spirits from the vasty deep, but they must come. We have no general conscription. It is a voluntary service. If you advertise for a job in the Supply Department you get 500 applications ; but if you ask for applicants for the commissioned ranks you get five and not the best of them. The monetary attractions are very good, but then there is the discipline and the risk which the candidate has to accept. Government welcomes these people. The reason why General Hartley mentioned the qualification was this ; when it comes to posting to the specialised jobs like mechanised cavalry, artillery or engineering, a certain amount of technical knowledge is necessary. A particular candidate may be a B.A. with history and economics. He may be a first class man. But you know, Sir, generally speaking not many have the aptitude for machinery or mathematics and people like that if recruited for the technical arms are not very happy. I would therefore say that it is up to the members of this Honourable House to encourage more candidates to come. We on our part have done all we could, by advertisement, by sending literature to universities, to colleges and to high schools, to advertise the fact that there are great openings in the army. We have sent certain selected officers, Indians who have had experience of fighting, for example, Captain Bhagat, V. C., Major Rajendra Singh, to the universities where lectures have been arranged under the auspices of the Vice-Chancellors and these officers have spoken about army life, about the prospects, and have made an appeal to young men. It is up to members like the Honourable Mr. Hossain Imam now to go round and lecture in the Patna University, the Patna Engineering College, and ask the young men to apply for commissions. It has been said that we reject candidates on grounds of unsuitability. The question of suitability is a very difficult one. We had a short time ago a broadcast by General Molesworth on this very question of suitability. We have drawn up a printed pamphlet which we have sent to all the universities and colleges to indicate what the idea of

* Not corrected by the Honourable Member.

[Sir Gurunath Bewoor.]

suitability is. It is a most difficult thing to define. A question was asked whether the members on the Board are really anxious to take them. We have now two Boards. The Board consists of a Chairman, who in the case of both Boards is a very senior member of the Indian Civil Service, who has had 35 years' service and experience of India and who has retired. There is one military member who is the expert adviser and there are two Indians on each of these Boards. These Indians are men of high status and general repute, men about whose impartiality there can be no doubt. I could mention a few names. We had the Honourable Dr. Paranjpye (now Sir Raghunath Paranjpye), on one of these Boards. At present we have got Rao Bahadur M. C. Rajah. We have had a Sikh gentleman. We have now at Allahabad Pandit Amar Nath Jha, Vice-Chancellor of the Allahabad University, and Sardar Moghal Baz Khan, a Member of the Public Service Commission of the Punjab and the North-West Frontier Province. I need not mention all the names, but the few names that I have mentioned are a guarantee that the members who are on these Boards are anxious to take every possible suitable Indian. If there is any doubt, he is given the benefit of the doubt. If there is a little more doubt, he is sent to the initial training school at Lahore where he is given two months' intensive training and after that there is no interview ; he goes straight into the officers' training school. A poser was put by the last speaker asking whether if you had two candidates, an Indian and a non-Indian for the artillery who would be taken. My reply is we will take both, because at present our need for expansion is so great that we want all the men we can get. It was stated that a number of Europeans, Englishmen or non-Indians have been taken. Yes, that is true. But not a single Indian has been kept out. We want every man whom we can get.

THE HONOURABLE MR. V. V. KALIKAR : Are the Chairmen of the two Boards Indians or Europeans ?

THE HONOURABLE SIR GURUNATH BEWOOR : They are Europeans. They are retired members of the I. C. S.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Mr. President, my satisfaction at the acceptance of my Resolution is by no means unqualified. Indeed considering the remarks made by General Hartley at the end of his speech, I feel very doubtful whether the acceptance of my Resolution would have any practical effect in increasing the number of Indians in the services with which it deals. My Honourable friend General Hartley said that though there was no discrimination against Indians and they would continue to be appointed to all the branches of the Defence Services, nevertheless it must be understood that Government had complete freedom to post any officer to any branch they liked. I do not know what the need for that qualification was. Nobody doubts the extensive power that Government wield. The only question under consideration at the present time is whether Government would be prepared to take immediate steps to increase the number of Indian officers in the three Services with which my Resolution deals. My Honourable friend General Hartley has not said one word on the subject. He has contented himself merely with telling us that the number of Indian officers in these Services is substantially greater than it was before the war. Of course it is ; everybody knows that. In every branch of the army where officer

are required the number of officers is greater and consequently the number both of Indian and European officers is greater. That is a plain question of fact which everybody can understand without the help of General Hartley. The only matter in which we require the assistance of Government is the steps to be taken now to improve the position of Indians in these Services, that is to raise their numbers. My Honourable friends Sir Gurunath Bewoor and Sir A. P. Patro have told us that Government are as surprised as the members on this side of the House to find that although there is no dearth of men who have passed not merely the Intermediate examination but also the M.Sc. and the B.Sc. examinations in this country, the number required for the Services that I am dealing with is not forthcoming.

Sir, we used to hear this complaint formerly with regard to the officers needed for the infantry and the old type of cavalry, but in spite of these complaints we find that the number of Indian young men offering themselves for service in the army is vastly larger than it was before the war. No one doubted our ability to furnish the candidates required, except the army authorities. They were responsible for maintaining an atmosphere of discouragement and keeping down the number of Indians. Things have changed now, but I should like to know, why Government find any special difficulty in connection with the officers required for these Services. The knowledge of mathematics required of the candidates is by no means of a high order. I personally think that the methods that have been adopted have not been as effective as they should have been, and, besides, as I said the other day, the treatment meted out to the Indian officers in these Services has been such as to create discontent amongst them. Indian young men feel that they are not welcomed in these Services and I personally do not blame them. My Honourable friends opposite will believe me when I say that I manage to get from time to time information about the doings of the army authorities, which is pretty correct. I understand that the attitude of the authorities towards the Indian officers in the technical branches is, to say the least of it, not encouraging. Take the artillery. The number of officers in it has certainly increased, but the complaints that I have received show that action is taken from time to time which produces the impression that the superior officers judge the Indian officers harshly and in accordance with standards different from those which they apply to British officers. I have had cases in this connection brought to my notice. I do not say that I am in possession of all the relevant facts relating to them but what I have learnt creates in my own mind also the impression that the complaints of the young men who have spoken to me are not unjustified. I know of some cases in which the judgment of the commanding officers of units was not accepted by their superior officers. The condemned Indian officers were fortunate in having the superior officers on their side but if the superior officers had been content merely with accepting the views of the commanding officers they would have been nowhere. This is the state of things, Sir, that requires to be looked into. To tell us that men with a moderate knowledge of mathematics are not available in the country is, if my Honourable friends opposite will pardon me for saying it, absolute nonsense.

THE HONOURABLE SIR GURUNATH BEWOOR : I never said, Sir, that men with knowledge of mathematics were not available.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Therefore, I say that they are not merely available but that they can be had if you change your attitude and if you adopt more effective methods.

[Pandit Hirday Nath Kunzru.]

Sir, I pass on now to the Indian Armoured Corps. My Honourable friend General Hartley told us that while there were no Indian officers in the two regiments in such units before the war there are about 100 officers now. That may be perfectly true ; I do not doubt that statement.

THE HONOURABLE GENERAL SIR ALAN HARTLEY : It is true.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : But I should like to know in that connection what is the total number of the cadets that are being trained as engineers and how many of them are Indians. I asked for this information the other day but Mr. Williams refused to give it on the ground that the proportion was changing from time to time. Of course, the proportion not merely of candidates under training at any particular school but of officers also changes as time goes on, but that is not regarded as a ground for denying us the information that we seek. Why has this ground been taken in order to refuse the information which would have been useful to us in discussing this Resolution. Sir, in the country so far as I know there are three schools where engineers are being trained : they are at Roorkee, Kirkee and Bangalore and I understand that at least at Kirkee and Bangalore the number of Indians receiving training is exceedingly small. That it seems to me is the main reason why the information I asked for was not given. Now, so far as the question of the supply of engineers is concerned, I think I am on even stronger ground than in respect of the artillery. We have been told that the training required is of a very high order and that although the period of training has been reduced, a sufficient number of qualified men is not available. I know of instances in which Indians with British qualifications have been sent away on the ground that they did not possess—mind you, not technical knowledge or knowledge of mathematics of the Intermediate standard but initiative, personality and character, those blessed qualities of which the army authorities, whose one business all these years has been to prevent an increase in the number of Indians, are the sole judges. Sir, we have been told of the qualifications that are required for these Services. But I think that we shall be able to consider this question in its true perspective only when we know the qualifications of non-Indian candidates who are selected. Are they all men who have had a previous engineering training? Are they men who have taken any diploma or degree from any university or institution? So far as I know, many of them are receiving engineering training for the first time and cases have been brought to my notice of the promotion of British non-commissioned officers who apart from any experience that they might have acquired in workshops have no knowledge of engineering. This is the manner in which differentiation is made between Indian and British candidates. If Government go about the thing in the right way and accept the services of Indian engineers and go lower down the scale and accept Indians with a lower standard of education just as they accept British and non-commissioned officers for promotion, there is no reason why a much larger number of Indian engineers should not be forthcoming for appointment in the Indian Corps of Engineers.

I do not think I need to deal with the figures relating to the Indian Armoured Corps—

THE HONOURABLE THE PRESIDENT : Please be very brief, because, even the mover of a Resolution is only allowed 15 minutes for reply.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU— as the same considerations apply to this Service as they do to the other two Services.

Sir, I think I have dealt with all the points that have been raised. My Honourable friend the Additional Defence Secretary told us that Indian officers had been appointed to meet Indian young men in order to attract them to these Services, and he mentioned the name of Captain Bhagat, V. C. As I said the other day, the example of Captain Bhagat itself shows that the position of Government is not a very strong one. I said that there were men with hardly any previous engineering training or with a moderate amount of training who were quickly promoted after their first appointment and had in some cases become commanding officers of units. If the need for commanding officers is so great that you cannot wait till you have fully trained officers, then why not take some of the tried and trusted Indians that you have and put them in that position? But the fact is, Sir, that Government have fought shy or are fighting shy of appointing Indians in charge of units.

THE HONOURABLE GENERAL SIR ALAN HARTLEY : No.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Of course you will say "No", but I repeat what I said before with greater emphasis because I know what I am speaking about. I know what the position of Indian officers is and a flat denial, such as that coming from General Hartley will not mend matters in my opinion.

I do not wish to say anything more. But, before I sit down, I will ask General Hartley to tell us what practical effect the acceptance of this Resolution will have. Will Government take determined steps now to increase the number of Indians in these Services and to attract them as much as possible? At present they are obtaining, I understand, a very large number of Britishers from England. This should become almost unnecessary should Government go about their business in the right way. It is a serious reflection on them and a libel on the country to say that men with the moderate standard of qualifications required for these Services cannot be obtained in this country.

THE HONOURABLE GENERAL SIR ALAN HARTLEY : Sir, there are really only two things that I wish to say. I should like to reiterate what I said yesterday that we are short of officers and we want to take all the Indians that we can, and I asked Honourable Members of this House yesterday to help us in this matter. The other thing which I want to say is that in accepting this Resolution I make no mental reservations or qualifications whatsoever.

THE HONOURABLE THE PRESIDENT : Resolution moved :—

"This Council recommends to the Governor General in Council that immediate steps be taken to provide that Indians are freely appointed as officers in the Indian Corps of Engineers, Indian Artillery and Mechanised Cavalry."

Question put and Motion adopted.

CANTONMENTS (AMENDMENT) BILL.

THE HONOURABLE THE PRESIDENT : We will now proceed with the Cantonments Bill.

THE HONOURABLE SIR GURUNATH BEWOOR (Nominated Official) Sir, I move :—

"That the Bill further to amend the Cantonments Act, 1924, as passed by the Legislative Assembly, be taken into consideration."

Sir, since the Cantonments Act was last amended about a year ago, several practical difficulties have come to notice in the working of this Act. These difficulties have been due in many cases to there being insufficient provision or

[Sir Gurunath Bewoor.]

lack of provision in the Act to meet the situations that have arisen. It is, therefore, now proposed to make provision to deal with these difficulties. Advantage has also been taken of the opportunity to clarify some of the other sections of the Act where similar difficulties may be expected to arise. The amendments, Sir, are miscellaneous and range over various provisions of the Act. The purport of each of these amendments is explained in the Notes on Clauses and they are, I hope, sufficient to explain why the amendments have been undertaken. There is no important question of principle involved in any of the amendments now under consideration. I do not, therefore, think it necessary for me to enter into details at this stage.

Sir, I move.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU (United Provinces Northern : Non-Muhammadan) : Mr. President, I should like to ask my Honourable friend the Defence Secretary to tell us in greater detail what is the reason for the amendments proposed in clause 3 and clause 8 of the Bill. Clause 3 relates to the election of the vice-president of the Cantonment Board. Now this official is to be elected from among the elected members of the Board. This is provided for in section 20 of the Cantonments Act. It is said in sub-section (3) of section 20 that in every Board in which there is more than one elected member there shall be a vice-president elected by the elected members only and from among their number. We see, thus, that this sub-section lays down two important qualifications. One is that the vice-president shall be one of the elected Indian members and the other that he shall be elected by the elected members. Government now propose to take power to provide for these elections in accordance with such procedure as they may by rule prescribe. I want to know in the first place whether any difficulty has been felt in this respect up to the present time. If any difficulty has been felt, what is it ? Again I want to know what Government intend. Do they want to provide only rules of the kind that are applicable, say, to the election of the president or vice-president of a municipality, rules which require only that certain provisions of the law should be complied with, or does Government intend to go further than this and give any military officer or the president of the Cantonment Board any power that he does not enjoy at the present time ? I hope that all that is intended is to lay down rules according to which the election is to take place, and that neither the conduct of the election nor the election itself will in any way be affected by the procedure that Government may prescribe.

Now I will pass on to my second point, that is the amendment of section 99 of the Act proposed in clause 8. Section 99 mentions certain places which shall be exempt from any tax on property. They are, "places set apart for public worship and either actually so used or used for no other purposes, or buildings used for educational purposes and public libraries, playgrounds and *dharmshalas* which are open to the public and from which no income is derived, hospitals and dispensaries maintained wholly by charitable contributions, burning and burial grounds not being the property of Government or a Board which are controlled under the provisions of this Act, buildings or lands vested in a Board", and lastly, "any buildings or land used or required for the public service or for any public purpose which are the property of or under the occupation of the Government". Now it is proposed to qualify the exemption by inserting the words "other than a tax imposed to cover the cost of specific services rendered by the Board". At the present time the privilege which buildings of the character I have mentioned enjoy in respect of exemption.

from taxation is complete. It is now intended that it should be made partial. It is proposed to subject them to certain kinds of taxes. What are the taxes which Government wish to impose? This amendment raises two points, one the limitation of the exemption from taxation hitherto enjoyed by buildings used for certain purposes, and the other that the specific services for covering the cost of which taxes may be imposed on such buildings have not been mentioned. I suppose therefore that it will be for Government to decide what are those specific services for which these buildings should be taxed. I think that the amendment is unsatisfactory in both these respects. There is no reason why the privilege enjoyed by the institutions that are at present free should even partially be taken away. Why should a place of worship or a public hospital or a burial ground be subjected to any taxation from which it is free? If however Government mean to use this power only for certain well defined objects they ought to tell us what those objects are. They ought not to take this undefined power which will make them masters of the situation and enable them to do anything that they like in the future. Sir, unless my Honourable friend the Defence Secretary can explain the points that I have raised to our satisfaction I am afraid I shall not be able to give my support to the amending Bill that is before the House.

*THE HONOURABLE MR. HOSSAIN IMAM (Bihar and Orissa : Muhammadan) : Mr. President, now at this moment when the reforms have given greater and greater power to the Provincial Governments and to local self-government, it is strange that the Central Government should commence the innovation of bringing under taxation public utility buildings which are not used for other private purposes or for residence under the control and taxation of the Cantonment Boards. I entirely agree with Dr. Kunzru's point that this power which is being conferred on the Cantonment Boards is not in consonance with the movement of the times or with the practice in the Provinces. In the Provinces there is no general exemption. The power vests in the Boards to exempt them and usually institutions of this kind are exempted. The power of taxation has been given to the local bodies because it was thought that under the garb of a name, a religious institution or hospital people might have institutions for profit and therefore discretion was given to the local bodies. Here the definition as given in the original Act is very clear and there is no chance in section 99 of the Act that misuse can be made of this provision. In view of that definite and express exclusion of profitable utilisation of buildings there is no reason why it should be subjected to taxation.

Next, Sir, I come to section 76 which is being amended by section 7 of this Bill. The principle whereby Government is going to charge from householders tax even for the period of vacation in hill stations is sound. In hill stations you have got a season. If the house is let for the season and you utilise the rent for the whole year, there is no reason why you should give exemption for out-season vacancy of the house. That system has not been carried to its logical conclusion. If the house remains vacant during the season, you ought to give him rebate on the proportion of the days it was vacant to the whole year. You charge on the seasonal basis and you give rebate on the yearly basis. You are really inclined to have it both ways. Where the profit of the Government is concerned and the householder's liability to pay tax is concerned, he is charged on the seasonal basis. But when he wants a rebate and a refund, then you do not take that season as your basis. I think, if not by amendment of the

* Not corrected by the Honourable Member.

[Mr. Hossain Imam.]

Act at least by notification, it can be rectified. The wording is so wide that it can be used for seasonal basis too. Now I come to section 31. Their methods of collection are given. Government perhaps is not aware—

THE HONOURABLE SIR GURUNATH BEWOOR : Which clause is the Honourable Member referring to ?

THE HONOURABLE MR. HOSSAIN IMAM : It does not form part of the Bill ; it comes indirectly in section 27 where the election of office-bearers—

THE HONOURABLE THE PRESIDENT : That is not being amended.

THE HONOURABLE MR. HOSSAIN IMAM : I am drawing the Government's attention in connection with the election of office-bearers of this Board. The system of election for the cantonments is not given in the Act itself. The power is vested in the Government to lay down the boundaries of the ward or division of the people by means of a notification. I wish to draw the Government's attention to the fact that the Muslim League has been demanding that separate electorates should be provided in local bodies and if it is possible for the Government by notification to bring in this desirable change I hope they will bring in this change.

THE HONOURABLE SIR DAVID DEVADOSS (Nominated Non-Official) : A very undesirable change.

THE HONOURABLE MR. HOSSAIN IMAM : I have nothing more to add, Sir.

THE HONOURABLE MR. P. N. SAPRU (United Provinces Southern : Non-Muhammadan) : Sir, I have to offer a few observations on certain clauses of the Bill the principles of which are not quite clear to me. I would say nothing Sir, about clause 1. I will invite the attention of the Honourable Sir Gurunath Bewoor to clause 3. Now in clause 3 a change is proposed. I have compared the present section with the proposed sub-section. Under the present section the Board elect their own vice-president and the procedure for electing the vice-president is laid down. Sub-section (3) reads as follows :—

“ In every Board in which there is more than one elected member, there shall be a vice-president elected by the elected members only and from among their number”.

Therefore the rights and position of elected members is safeguarded by statutory enactment and what is proposed is that for this procedure we should have executive discretion, that is to say, that the vice-president shall be elected in accordance with such procedure as the Central Government may by rule prescribe. What is the defect of the present procedure and why is it necessary to change the present procedure ? I should have thought that we would be enlightened on this point ; but as matters stand, I cannot give my support to clause 3. Is it contemplated by Government to deprive the elected members, assuming there is more than one elected member, of the right to elect their vice-president ? If it is desired to deprive the elected members of the right to elect a vice-president, all that I can say is that the change contemplated by Sir Gurunath Bewoor is of a reactionary character and we who believe in the elective principle cannot give our support to it. Passing on from clause 3 to clause

6 I should like to point out that there is a change contemplated in section 34 of the Act. This is the change :—

“ In clause (a) of sub-section (1) after the word ‘ becomes ’ the words ‘ or is found to have been at the time of his election or nomination ’ shall be inserted ”.

Now clause 4 deals with the disqualification of members. Why should retrospective effect be given to the disqualification ? What is the difference that Government find between these words “ becomes ” and “ or is found to have been at the time of his election or nomination ” ? I have an open mind on the question. I do not say that I am opposed to the clause. I do not say that I am in favour of the clause. I want to be enlightened as regards the object and nature of this clause.

Then, Sir, I shall pass on to section 8 :—

“ In sub-section (2) of section 99 of the said Act, after the words ‘ any tax on property ’ the words ‘ other than a tax imposed to cover the cost of specific services rendered by the Board ’ shall be inserted ”.

Now, if you read the proposed change in section 9 you will find that under the law as it stands at present places of worship and burial grounds, hospitals and schools have been specifically exempted from taxation for all purposes. Why is it contemplated to change this rule ? Why do you want now to take power to put taxes on places of worship, burial grounds, schools and hospitals. I think, Sir, I need not invite the attention of the House to the section ; I think I have made my point clear. I hope that Sir Gurunath Bewoor will enlighten us on this question also. If you will look at section 99 clause (2) you will find that there is a specific provision there that the following buildings and lands shall be exempted from any tax on property, namely, places set apart for public worship and either actually so used or used for no other purpose ; buildings used for educational purposes ; hospitals and dispensaries ; burning and burial grounds ; buildings or lands vested in a Board ; and any buildings or lands used or acquired for the public service or for any public purpose, which are the property of, or in the occupation of, the Government.

The responsibility for providing amenities for these places will be thrown on the public places and I do not therefore like this change. So far as the other sections are concerned I have no objection to them but I would like to say a few words about the question of separate electorates, which was raised by the Honourable Mr. Hossain Imam. I know that the Honourable Mr. Hossain Imam is a warm believer or is a warm advocate of separate electorates. We on this side of the House have a different attitude towards the question of communal electorates.

THE HONOURABLE THE PRESIDENT : That is not the question before the House.

THE HONOURABLE MR. P. N. SAPRU : He made a suggestion and therefore—

THE HONOURABLE THE PRESIDENT : But I checked him.

THE HONOURABLE MR. P. N. SAPRU : I should like to indicate that so far as we are concerned we are not obsessed by communalism. We look at questions from the national point of view. Speaking for myself I do not know that I have any race bias ; I do not know that I have any nationality bias ; I try to look at questions from an international point of view myself. I

[Mr. P. N. Saprū.]

am interested in the common man. I am not interested in rajas maharajas, nawabs, taluqdars, landlords, millionaires. I like to be unfair to no class but I think that the future of this country lies in economics dominating the sciences. I do not think, with all respect to Mr. Hossain Imam, that the leader of the Muslim League, who is following rajas, maharajas and nawabs, can look after the interests of the poor man as well as, for example, my respected friend Mr. N. M. Joshi who has devoted his whole life to welfare work for the poor.

THE HONOURABLE MR. HOSSAIN IMAM : What about Mr. Savarkar ?

THE HONOURABLE MR. P. N. SAPRU : Mr. Savarkar's ideology is not exactly the same as my ideology. My ideology is quite different.

I just wanted to say that I am opposed to communal representation of the nature suggested by the Honourable Mr. Hossain Imam in any shape or form.

THE HONOURABLE THE PRESIDENT : It is a waste of words. The issue is not before the House at all.

THE HONOURABLE SIR GURUNATH BEWOOR (Nominated Official) : Sir, I will deal with the relevant points raised by the speakers who have preceded me.

Taking first clause (3), which provides an addition to sub-section (3) of section 20, the Honourable Pandit Kunzru fears, and so does the Honourable Mr. Saprū, that this is going to deprive elected members of their right. Well, Sir, there is no intention whatsoever of doing this. In the notes on the clauses it has been explained that section 20, sub-section (3), at present affords no procedure for dealing with an equality of votes in an election of a vice-president of a Cantonment Board. Now what happens is this. If Honourable Members will see section 30 of the Cantonments Act they will find that cantonments are divided into three classes and the number of elected members in each cantonment is based on the population. Now it so happens that the number of elected members in some cantonments is four and they have to elect from among themselves one vice-president and if there is an equality of votes we are absolutely left without a vice-president. Therefore all that the Government is now taking power is to lay down the procedure. The procedure to be laid down will probably be that in case of an equality of votes, lots shall be drawn. But at present there is no provision at all. It is not at all intended to take away the power which elected members have got of electing a vice-president from among the elected members only and by the elected members only.

Now, Sir, coming to clause 8 of the Bill, which provides for an amendment to section 99, this is a difficulty which has arisen as a result of a legal interpretation. In many cantonments the Boards provide various sanitary services. They provide conservancy, water, and so on. For these services taxation is imposed. Now in some cantonments taxation is based on property; in other cantonments it is based on letting value. Now where the tax is based on property even though the tax has been imposed for purposes of services rendered it has been held that it comes within the mischief of section 99 (2), namely, that tax is a tax on property and therefore all those buildings are exempt. Now, while I have every sympathy for places mentioned in, say, (a), (b), (c) and (d) you will see that clause (f) talks of buildings in the occupation of the Central or Provincial Governments. Consequently we have been reduced to this peculiar position that if a military officer is staying in a

rented building he has to pay the tax on property for conservancy and water, but, if he is staying in a Government building, in a building owned by Government, he does not pay any tax for conservancy and water, because it has been held that a tax based on the value of property is a tax on property and therefore all these are exempted. It is to get over this difficulty that this amendment is proposed. Honourable Members will see that section 99A which follows section 99 says that—

“ the Central Government may, by notification in the official Gazette, exempt either wholly or in part from payment of any tax imposed under this Act any person or class of persons or any property or goods or class of property or goods ”.

Therefore, I do not think there is any fear that this amendment would result in the compulsory taxation of all the items mentioned in sub-section (2) of section 99.

Coming to clause 7 which was mentioned by the Honourable Mr. Hossain Imam, I entirely agree with the remarks which he made, but I am afraid he made those comments without seeing the very last words of the amendment. It says here :—

“ the Board shall remit or refund such portion of any tax assessed on the annual value thereof as bears to the whole of the tax so assessed the same proportion as the number of days during which the building or land has remained vacant and unproductive of rent bears to the total length of the season ”.

The proportion is the total length of the season and the number of days during the season that the house has been vacant. So, the object which the Honourable Mr. Hossain Imam has in mind is achieved by that particular provision.

As regards communal electorates I have nothing more to say because it is not relevant.

THE HONOURABLE THE PRESIDENT : I think Pandit Kunzru also referred to clause 6. You have not answered him on that point.

THE HONOURABLE SIR GURUNATH BEWOOR : I am sorry, Sir. It was the Honourable Mr. Sapru. He asked why this is made retrospective. The matter is really very simple. At present section 34 says that the Central Government may remove from a Board any member thereof who becomes subject to any of the disqualifications. We had a case in which we discovered, after the man had been nominated to a Board, that he was subject to the disqualification. We wanted to remove him, but the Act as it stands at present prevents us from doing so, because it says “ becomes ” which means “ subsequent to his nomination ”, and that is why this small amendment is made so that if it is discovered after he has been nominated, we can remove him.

THE HONOURABLE MR. HOSSAIN IMAM : May I ask a question, Sir ? Do we take it that items (a), (b), (c) and (d) of section 99 will be exempted by the Government ?

THE HONOURABLE SIR GURUNATH BEWOOR : Sir, I cannot give any undertaking, but I quite recognise that it is usual in various municipalities to give exemptions and I have no doubt that the same general principles will be observed.

THE HONOURABLE THE PRESIDENT : Motion moved :—

“ That the Bill further to amend the Cantonments Act, 1924, as passed by the Legislative Assembly be taken into consideration.”

Question put and Motion adopted.

Clauses 2 to 12 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE SIE GURUNATH BEWOOR : Sir, I move :—

“ That the Bill, as passed by the Legislative Assembly, be passed.”

The Motion was adopted.

RESOLUTION *RE* EXAMINATION OF THE LAW OF CONTEMPT OF COURT.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU (United Provinces Northern : Non-Muhammadan) : Mr. President, I beg to move :—

“ That this Council recommends to the Governor General in Council to undertake an immediate examination of the law of Contempt of Court as administered in British India and to take such measures as may be found necessary to amend and consolidate the law on the subject, with a view to its improvement and better administration.”

Sir, contempt of court, as every one who has devoted any attention to the matter knows, is of various kinds. In Halsbury's *Laws of England* it is stated that it may be, broadly speaking, of two kinds. It may amount to criminal contempt or it may be contempt in procedure. Further analysing the matter, we find that contempt is of two kinds, contempt committed in the face of the court and contempt of court of which a man has been guilty through speech or writing. Now, the first kind of contempt, *i.e.*, contempt committed in the face of the court, is not the kind of contempt I shall be concerned with today, although in this connection I was told a story the other day by a Delhi lawyer which I think the House should know. A young lawyer appearing in a case in a court in Delhi was rather pertinacious and when the court expressed the opinion that a question put by him was irrelevant, he argued that he should be allowed to put it. This enraged the court so much that it ordered an officer known here as the Naib Court, who, I understand, has the rank of a sub-inspector or an even lower rank, to arrest him and hand-cuff him.

THE HONOURABLE THE PRESIDENT : This in Delhi ?

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : So, I understand, Sir. I was astonished when the story was related to me and I could not help laughing. But the lawyer said to me, “ You may laugh at it, but the man concerned did not know what to do for the time being”. However, the man was not arrested. The other lawyers intervened and the court did not insist on his being arrested. I have mentioned this instance to show how young lawyers consider their independence affected by the present state of the law of contempt of court. I shall, however, not deal with this particular kind of contempt, as I have already said, because I have to deal with a much more important kind of contempt.

Now as regards contempt by speech or writing, it may be of various kinds, it may for instance take the form of scandalising a court or a judge or it may consist in making remarks against the parties to a case or their lawyers, and so on.

THE HONOURABLE THE PRESIDENT : Or the publication of matters *sub judice*.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Yes, Sir, that is another illustration of it. And lastly it may take the form of creating prejudice against certain parties before their case has been heard. These are the various kinds of contempt which fall under the second category. Now the particular kind of contempt under this category which has exercised the public mind most is that which relates to the scandalising of a court or judge. Before dealing with this question further I should like to point out that it is not merely the uninstructed layman who thinks that the law as it stands at present is not in accord with the changing times. This is the view taken also by the highest judicial authority in India, the Chief Justice of India. In dealing, Sir, with a petition for contempt filed by Mr. K. L. Gauba in the Federal Court Sir Maurice Gwyer said :—

“ The law of contempt of court has at times been stretched very far in British India ”.

The same authority dealt a little more fully with the matter at Allahabad in February last. Sir Maurice Gwyer took the opportunity of unveiling the portraits of the late Sir Shah Sulaiman and Sir John Thom to deliver himself of sentiments which deserve to be quoted on an occasion like this. He said :—

“ We are now in the presence of such mighty events and the world is so full of new and revolutionary ideas that even the law and its practitioners cannot expect to remain untouched by them. We may therefore anticipate a greater measure of criticism in the future than we have ever had in the past and we should be prepared to meet it. In my view the profession, not excluding the judges themselves, ought never to resent honest criticism no matter how far it goes, for we are public servants discharging public duties. Changes will come and are not necessarily evil merely because they are changes, and I hope that the profession will never refuse to examine every proposal for a change with sympathy and attention, provided—and that is the all important condition—that there is no attempt to interfere with the independence of the judiciary and open and upright administration of justice. It is upon these two foundations that the safety and security of a State are built ”.

Sir, the quotations that I have placed before the House show that the judicial authorities themselves consider that the interpretation placed upon contempt of court by judges in India has passed beyond the limits which can be accepted as reasonable. The words used by Sir Maurice Gwyer at Allahabad will I am sure be heartily concurred in by every Member of the House.

THE HONOURABLE THE PRESIDENT : But it is opposed to the view taken in England.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : I am not acquainted, Sir, with the English law, but all that I can say is that the British law or procedure as such cannot be made applicable to India. Apart from this Sir Tej Bahadur Sapru pointed out in a recent case, as my Honourable friend Mr. Sapru reminds me, that there has been no

[Pandit Hirday Nath Kunzru.]

case of scandalising a court of a judge for a very long time in England. But leaving the English law apart, I shall come to the law as it is administered in India.

Having established that the judicial authorities themselves feel that the view so far taken of contempt of court stands in need of revision, we have to consider what are the points that ought to be brought under examination if the law of contempt of court is to be amended and placed on a more satisfactory basis. Four questions arise in this connection in my opinion. The first is, what is the meaning of contempt of court, what amounts to contempt? The second is, what is the jurisdiction of the High Court in the matter of contempt? The third is, what is the extent of punishment that can be imposed for contempt? And the fourth is, the right of appeal of a person convicted for contempt.

I shall now deal with the first point. I shall not deal with it at any length because we have the Honourable the Law Member here, who because of his vast experience at the Bar and also as a Judge possesses a knowledge of this question which no one here can lay claim to. I will however briefly draw the attention of the House to certain important cases relating to contempt of court that have recently been decided in British India. It is not my desire at all to reflect on any of the High Courts that have had to deal with the cases that I shall refer to. I shall place certain facts relating to those cases before the House only in order to show that there is need and great need for the revision of the law as it stands at present. Now the first case that I shall refer to is the *Amrita Bazar Patrika* case. The editor of this paper was prosecuted for contempt of court in the Calcutta High Court in March, 1935. The House I am sure would like to know what was the article in the paper which was held to constitute contempt of court. The paper commenting on a speech that had been delivered in the Bengal Legislative Council said :—

“ We are glad to find that in the Bengal Legislative Council yesterday there was a discussion about the administration of the Calcutta High Court. Every word of Mr. N. K. Basu was true. It is so unfortunate and regrettable that at the present day the Chief Justice and the Judges find a peculiar delight in hobnobbing with the executive, with the result that the judiciary is robbed of its independence which at one time attracted the admiration of the whole country ” and so on.

Now, Sir, although the comments of the *Amrita Bazar Patrika* were not complimentary to the Judges, it is difficult for a layman to agree with the view that they would have brought the administration of justice into contempt. They did not relate to any particular case nor did they tend to create any doubt regarding the ability of the Judges to administer the law properly—

THE HONOURABLE SIR DAVID DEVADOSS (Nominated Non-Official) : They attacked the independence of the Judges.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : The remarks may have been regrettable. But the point is, were they of such a character as to make the editor liable to the summary jurisdiction of the High Court? I shall deal with the question of summary jurisdiction later on. But what I have said already and the remarks made by Sir David Devadoss show that the time has come when the narrow view so far taken of contempt of court should be altered, and that all criticism of the Judges should not be resented. Judicial authorities have themselves expressed the opinion that the Judges are open to criticism and that they should not resent criticism even of a far-reaching character, provided it is honest

THE HONOURABLE THE PRESIDENT : There is one point I would like to know. What are you attempting to show ? That there should be a codified law on the subject ?

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : I will make some specific suggestions later. But as I am suggesting that the Government should consider the whole matter they will have a full opportunity of deciding what steps should be taken to bring about an improvement in the present state of things. If by any definition the limits within which a man will make himself liable to prosecution for contempt of court can be clearly laid down, it will be a great advantage : but it will have to be seen on examination whether a definition can be devised which will serve the purposes I have in view.

THE HONOURABLE THE PRESIDENT : It has not been devised for many years in England yet, and the whole law in England is one to be gathered from case law. Is it possible therefore to define it here ?

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Not being connected with the law courts, I have not the same respect for tradition and antiquity as lawyers may have. I have read certain cases of contempt of court which have occurred in England and it has been a marvel to me that the present state of the law has been tolerated for so long in a freedom-loving country like England. What is happening therefore in England can be no argument against the point of view that I am urging today.

Sir, I shall now deal rapidly with one or two other cases that I want to draw the attention of the House to. The second case that I shall refer to is that in which an Advocate of the Allahabad High Court, Mr. Kapil Deva Malaviya and the editor and printer and publisher of the *Leader* were involved. Here what was held to constitute contempt of court was an article contributed by Mr. Kapil Deva Malaviya to the *Leader* the purport of which was that lawyers had been promoted to the Bench whose qualifications were not of a high order. I am merely paraphrasing the words in my own way ; I am not quoting the exact words used by the lawyer. The Right Honourable Sir Tej Bahadur Sapru who appeared on behalf of the *Leader*, and I believe also of the Advocate concerned, argued this case with an ability which has been recognised by men belonging to his own profession. The substance of his argument seems to me to be as follows. In a case for contempt of court it is not technical contempt so much that should be considered as the motive of the person concerned and the effect that his speech or writing would have on the administration of justice. The High Court convicted the persons concerned of contempt of court. They appealed to the Privy Council for leave to appeal. I understand that the Judges of the Privy Council expressed the view that the publication complained of did not amount to contempt but refused to grant leave to appeal as according to them no appeal lay against an order of conviction passed in a trial for contempt. The most recent case is that of the *Hindustan Times*. I should have liked to refer to it in some detail but as the facts are well known, I will not do so. It seems to laymen, that though the statement published in the *Hindustan Times* was held to constitute contempt of court, the purpose that the judicial authorities had in view would have been better served by merely issuing a denial of the allegation published in the *Hindustan Times*. These are the three cases that I wish to refer to. I will, however, in passing refer to another case, that of Mr. K. L. Gauba before the Lahore High Court. Let it not be thought that I am defending the allegations made by Mr. Gauba, but the point is that the very men whose uprightness had been impugned by

[Pandit Hirday Nath Kunzru.]

Mr. Gauba constituted largely the court which was going to try him. There was a third Judge, but he was an officiating Judge. Apart from this, Sir, the Chief Justice in his judgment has justified the procedure that was adopted. I will not quote from his judgment because it is unnecessary, but if the ground that he has given in defence of the present state of things is correct, then every man may be made a judge in his own case. Apart from this, although the judgment of the Lahore High Court contains refutations of the allegations made by Mr. Gauba, he was not allowed to adduce evidence. I can understand the High Court punishing him for contempt of court on the ground that the truth or falsity of the allegations did not matter at all. But if the authorities wanted to disprove the allegations made by Mr. Gauba then I think he should have been given an opportunity of producing evidence.

Sir, these are all the cases that I wished to refer to. They make it necessary for us to consider the second point, that is the jurisdiction of the High Courts in the matter of contempt. Now, where the entire Court is scandalized one may say that the particular Bench that is constituted to try a case is a matter of no particular importance, but where a particular Judge is scandalized the matter assumes a different character. As I have already said, Sir, the jurisdiction is of a peculiar kind. The accused cannot plead the truth of his allegations, cannot justify his action on the ground that it is based on truth. Besides action in cases of contempt is taken under the summary jurisdiction of the High Court and thus creates a great deal of embarrassment for the Judges as well as the accused. The embarrassment that it causes was referred to by Mr. Justice Mukerjee in the course of his judgment in the *Amrita Bazar Patrika* case to which I have already referred. I will not quote from the judgment at length because it is well known but I may be permitted to point out that he observed that the embarrassing situation in which the Court itself is placed when it adopts that procedure is apparent and that the "great disadvantages that it causes to the party brought up before the Court to be dealt with, precluding him from right of appeal and depriving him of his defence are obvious". Well, this shows, Sir, that the present method of trial also stands in need of change. If I may refer, Sir, again to the *Hindustan Times* Contempt Case I would point out that the Chief Justice, who was himself concerned, was one of the Judges who decided whether the conduct of the *Hindustan Times* and its reporter amounted to contempt of court. I do not dispute the accuracy of the Court's judgment but perhaps the House will allow me to point out that the proceedings of that case show that the questions to the witnesses were put more by the Chief Justice than by the Advocate-General. The Chief Justice was, of course, within his rights in putting the questions that he did but it is obvious that in a case of this kind, when the Chief Justice puts the majority of the questions, the effect on the public mind will not be of a very desirable character. The dignity of the High Court, instead of being enhanced, will be impaired. My suggestion, therefore, Sir, in respect of this particular case is that the Judges who are scandalized should not form part of the Bench constituted to deal with an offender for contempt of court.

THE HONOURABLE THE PRESIDENT : They do not usually sit in such cases.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Well, Sir, it has been held that they have a right to sit and since you have referred to this

matter, I will draw your attention to a very short quotation from the judgment of the Lahore High Court in the Gauba Case to which I have just referred :—

“ While it is unpleasant for any Judge ”, it is stated in the judgment, “ to have to sit in judgment in a case in which he has been personally attacked, I consider it his duty to do so where, as in this case, he has been the subject of a malicious and impudent publication containing imputations which are obviously false and of which he himself has the best knowledge of the falsity. I would go further and say that he has no alternative but to sit. As the authorities to which I have referred clearly indicate, it is impossible to vindicate the reputation of the Court which has been attacked by taking proceedings in any Court for libel or otherwise ”.

Sir, if this observation is to pass unchallenged I do not think, moderately speaking, that the confidence of the public in the administration of justice by the High Courts can remain unimpaired. A doctrine has been enunciated here with which at any rate no layman can agree and with which in the public interest it is our duty to disagree emphatically.

And now, Sir, I shall deal with the extent of the jurisdiction of the Court and the punishment that it has a right to inflict and I shall deal with both these points very briefly.

THE HONOURABLE THE PRESIDENT : Please be as brief as possible. You have already taken a lot of time.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : I shall be as brief as possible because it is not necessary to deal with these points at length. The question of the territorial limits of the jurisdiction of the High Court has never been fully considered. Questions have arisen, I understand, in which this matter might have been raised but the persons concerned declined to raise them. Nevertheless it is a matter, I think, that requires consideration. It should be made clear whether a man who does not live within the jurisdiction of a High Court can be tried for contempt of court by it.

As regards the extent of punishment, Sir, this too has given rise to complaints. In the *Leader* case, to which I have already referred, the Privy Council came to the conclusion that the matter complained of did not constitute contempt of court but could give no relief. The *Leader* was fined but this was not the only punishment that was imposed on it. Action of an extra judicial character also was taken against it. It was taken afterwards and the *Leader* was, by an order of the High Court, deprived of the advertisements that it received either from the High Court or from the courts subordinate to it.

THE HONOURABLE SIR SULTAN AHMED : I do not think any provision of law can stop that.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Nobody will dispute my Honourable friend's—

THE HONOURABLE THE PRESIDENT : But if the High Courts themselves decline to give them advertisements how can you help ?

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Sir, if the High Courts issue directions to their subordinate Courts not to send advertisements to a particular paper whose conduct in a certain case it has disapproved this may not be against the law but it deserves a little more serious consideration than has so far been given to it.

Sir, these are the main points that I wish to place before the House and they raise the question whether a man who is convicted of contempt of court should have any remedy after his conviction. Should there be any right of appeal? It has been held so far that no right of appeal exists and I have no

doubt that the law has been correctly interpreted. But
 I P. M. what we have to see is whether the law should not be changed in this respect. If a judge is scandalised, he does not stand exactly in the same position as a high executive officer on whose conduct strictures are passed. There is a difference between the position of executive and judicial officers. But is the difference so great that the man who is guilty of contempt of court should not be given the right of appeal to any other court in order to justify and vindicate his position? If this right of appeal is granted, then the question of the truth or falsity of the allegation made can also come under review and I personally think that it is very desirable that such a procedure should be adopted.

THE HONOURABLE THE PRESIDENT : Is it expedient?

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : This is a solution which experience seems to call for. Let me take the case of the Lahore High Court again. I shall not say anything which will throw doubt on the correctness of its judgment but I personally think that the interests of the Court would have been better served, and that its reputation for the impartial administration of justice would have been better preserved, had the truth of the allegations made against it been tested before an independent judicial authority. The Judges would not have lost anything thereby but would have gained a great deal in the public estimation. The reputation of judges cannot be preserved by merely punishing persons who bring serious charges against them for contempt of court. The point is so clear that I need not dwell any more on this matter. I have ventured to direct attention to it in order to make my Honourable friend the Law Member realise not merely the strength of feeling that exists on the question but the very difficult position in which those persons are placed who are either aggrieved or who consider it their duty to criticise the conduct of judges. No one wants that aspersions should be cast on judges. But, at the same time, they should not be regarded as sacrosanct and immune from criticism. In order that my purpose may be fully achieved, I feel—and many lawyers of long experience hold the view—that a right of appeal should be granted at least in certain kinds of cases of contempt of court.

I do not think I need take the time of the House further by discussing the points that I have raised, but in order to clinch the matter, I will end by citing the opinion of a judicial authority just as I began by citing the opinion of another such authority. The opinion that I am quoting is that of the Chief Justice of the Bombay High Court on an application filed by the Government pleader, High Court, Bombay, that action for contempt of court be taken against one Tulsidas Subhan Rao Jadhav :—

“ It is a class of contempt ”, said the Chief Justice, “ usually referred to as ‘ scandalising the courts ’ and the principle on which the Court proceeds in taking notice of that class of contempt is based on the interest of the public and not on the interest of the particular Court or Judge which is attacked. It is in the public interest that confidence should

exist in Courts of Justice and if an attack is made upon a judge who is not in a position to answer the attack, the authority and prestige of the judge tends to be lowered in the estimation of the public and that is contrary to the interests of the public. At the same time one has to recognise that in the long run the degrees of confidence reposed in the judiciary will depend on the character of judicial work, and confidence cannot be for long artificially engendered by the simple process of stifling criticism. It has been laid down many times and by the highest tribunals that judges are not immune from criticism and that fair and reasonable criticism of a case which is finished is not objectionable. The process of contempt of court for scandalising the Court, a process in which the Court is both the Prosecutor and Judge and in which the respondent is deprived of the ordinary methods of trial is one which should be sparingly used. Lord Morris, in the case of *McLeod v. St. Aubyn*, delivering the opinion of the Privy Council, said that committals of contempt of court by scandalising the Court itself has become obsolete in England though Lord Atkin pointed out in *Ambard v. Attorney General of Trinidad* that the opinion was falsified by the case of *Reg. v. Gray* decided in the next year. In my judgment the process should be used in this country where attacks are made on the personal character of the Judge or where base or improper motives in the decision of a case are attributed to a Judge".

Sir, I could not state what I had in my mind in better language. I thought, therefore, that I might place this rather long quotation before the House so that they might realise how strongly even judicial officers feel at the present time that the law of contempt of court ought not to be administered in the manner in which it is being administered now and that things should undergo a change at an early date.

The House then adjourned for Lunch till a Quarter to Three of the Clock.

The Council re-assembled after Lunch at a Quarter to Three to the Clock, the Honourable the Chairman (Sir David Devadoss) in the Chair.

THE HONOURABLE THE CHAIRMAN: The discussion will now proceed on the Honourable Pandit Kunzru's motion.

THE HONOURABLE MR. P. N. SAPRU (United Provinces Southern : Non-Muhammadan): Mr. Chairman, the Honourable Dr. Kunzru is to be congratulated on the very able manner in which he, a layman, has dealt with a legal question. He has dealt with it with extreme ability and lucidity. The House is fortunate in possessing a Law Member of the eminence in the legal world of the Honourable Sir Sultan Ahmed, and I am sure that he will appreciate the question which has been raised by Dr. Kunzru. Nothing is dearer to the heart of a lawyer than the dignity of our courts of law. Probably the greatest contribution which Britain has made to this country is the rule of law, the administration of justice, and we are all interested in the purity of the administration of justice. I should be the last person, practising as I do in one of His Majesty's Courts, to say one word of disrespect against our High Courts or against the Judges who administer the law, often in difficult circumstances. But there is also a public aspect of the question. I am interested in journalism and I do a fair amount of writing for the press and I have some experience of daily journalism and know how hard the lot of the average journalist or of a newspaper editor is. A correspondent whom he has appointed after careful consideration writes to him a letter in the usual course of business. That letter is published in the paper. There is something in that letter which reflects upon the administration of justice. The editor finds himself in trouble. Therefore the work of public criticism of justice becomes difficult. I am not referring to any particular case. I am making a mere general statement. Now the difficulty with the law of contempt as it stands is that the judge and prosecutor in such cases are one and the same. I do not say that judges do not endeavour to administer justice in cases of contempt that come before them, but it is a well known principle of jurisprudence that you must not do justice only, you must make appear that justice is being done. Therefore it is largely a matter of good taste, and I think it is not right for judges

[Mr. P. N. Sapru.]

who have been scandalised to sit in court themselves. Justice suffers in the eyes of the public, the reputation of courts suffers in the eyes of the public if there is the slightest suspicion that justice has not been done, even though justice may have been done, and I am sure has been done, in a particular case. Therefore on this particular ground of principle I think one change which is needed in the law is that the judge who has been actually scandalised should not sit in judgment. Dr. Kunzru has dealt with the various classes of contempt. They will be found in the famous Trinidad case which is reported in 28 Bombay Law Reporter. Therefore it is necessary that the judge of the court which has been scandalised should not himself sit as the judge in its own case. I am glad that reference was made by Pandit Kunzru to the wise observations of the eminent Chief Justice of India on the question of contempt of court. We are all human. We cannot help our subconscious processes. And when our own interests are involved we are inclined to lose a proper sense of values and there is at times a tendency particularly on the part of the subordinate judiciary to lose sight of these elemental facts of human nature. Therefore I would suggest for the consideration of the Law Member that the law should be revised in this manner that the judge who has been scandalised should not himself sit in his own cause. His authority, his prestige, are very dear to us. But equally dear is the liberty of the subject and we have got to reconcile these two conflicting principles. They are not in fact conflicting if you come to think of them clearly. But we have got to reconcile these two principles, the principle that the honour, the prestige, the reputation, the authority of the judge must be safeguarded and the subject must be safeguarded.

■ The second suggestion that I would offer for his respectful consideration is that there should be a right of appeal provided to the Privy Council from the High Courts in regard to contempt cases. The procedure, we know, is summary procedure. In summary procedure, injustice, unwittingly, unconsciously, may be done. I do not attribute the smallest bias, I know that judges endeavour—no human being can do more—to be absolutely impartial. But we want to ease the public mind and therefore I think it is but right that there should be some remedy provided against possible injustice and the practice of the Privy Council in regard to appeals has not been uniform. In some cases they have entertained appeals from courts which have been held up to ridicule or contempt. In other cases they have not entertained appeals. I think the correct position is that they look upon contempt cases as *quasi-criminal* cases. That is what they say in the Trinidad case and they say that they will follow the principle laid down in Delett's case. They will interfere in appeal or revision only in cases where there has been a departure from the principles of natural justice. You were, Sir, an eminent Judge, you will be able to appreciate this point much better than I. I think the principle that they have laid down is this :—

“ It is competent to the Judicial Committee of His Majesty ”, I am reading from the Trinidad case, “ in Council to give leave to appeal and to entertain appeals against orders of the courts overseas imposing penalties for contempt of court. In such cases the discretionary power of the court will no doubt be exercised with great care ”.

Then they go on to say—

“ Everyone recognises the importance of maintaining the authority of the courts by restraining and punishing interferences with the administration of justice, whether they be interferences with particular civil or criminal cases or whether they take the form of attempts to deprecate the authority of the courts themselves. But such interferences when they amount to contempts of courts are *quasi-criminal* acts and orders punishing

them should generally speaking"—here again they are a little vague—"be treated as orders in criminal cases and leave to appeal against them should only be granted on the well known principles on which leave to appeal in criminal cases is given".

Sir, we know that the principles on which leave to appeal in criminal cases is given were enunciated in what is known as Delett's case. In subsequent cases, in Bhagat Singh's case and several other cases, the Privy Council have expressed themselves clearly that they adhere to the principle enunciated in Delett's case. Therefore the position is that as a matter of right there is no appeal in cases of contempt from the High Court to the Privy Council. Therefore, Sir, the second suggestion that I would make is that there should be a right of appeal provided in cases of contempt to the Privy Council or to the Federal Court if the Federal Court is given appellate jurisdiction. I should prefer the Federal Court because it will be more convenient for lawyers and litigants to go before a court which is situate in India. I do not think it is necessary for me to point out what the various classes of contempt are. They have been enumerated I think with care by Dr. Kunzru and I should not like to repeat the ground covered by him already. In one or two cases which have come up before our High Courts—the other day it came before the Lahore High Court—we have seen that there was a Bench of three Judges. Out of those three Judges two of them had been directly attacked in the pamphlet which was the subject-matter of investigation. So far as the third Judge was concerned, he was only a temporary Judge and he also had figured in that pamphlet. I am not suggesting for a moment that justice was not done. I am quite sure that justice was done and that there was every intention on the part of the Tribunal to do justice. But it is not enough that justice should be done. The public should be made to feel that justice had been done. Confidence in the administration of justice is shaken and not enhanced when the public begin to whisper and think that a particular Bench has been constituted for a particular purpose. I am not insinuating anything in the slightest degree. But I say all this because the reputation of the High Courts, of the administration of justice, is very dear to me. It is dear to every lawyer and I speak as a lawyer.

I think, Sir, that there is a strong case for the revision of the law. I think the law is also too wide. Indeed there has been much criticism of the law of contempt. In England also many newspapers have said that the law of contempt is archaic, that it is an inheritance from older times. I think there was a good deal of criticism about the law of contempt when action was taken against the *New Statesman* which attacked Mr. Justice Avery some years back. But in England a Judge of the High Court can be criticised in Parliament. Here even that is not open to us. You can present in England addresses to both Houses of the Legislature if you are dissatisfied with the conduct of a Judge of the High Court. You can raise discussions about the traditions of the English Bench and the traditions of the English Bench have been very great. There has never been any occasion for such things to occur. Occasionally Judges have been short-tempered and they have been criticised. I remember that Lord Darling was criticised very severely by the Press at one time. I remember that Mr. Justice McCardie, because of his temper, came in for criticism in the Press but all that is taken in the day's work. People in England are not as sensitive as they are here and therefore I think as there is a little tendency on the part of our judiciary to be sensitive there is need for a revision of the law and I do hope that the Honourable Sir Sultan Ahmed will appreciate the motives with which this Resolution has been moved and will be able to accept it.

With these words, Sir, I support this Resolution.

THE HONOURABLE MR. V. V. KALIKAR (Central Provinces : General) : Sir, I support the Resolution so ably moved by my Honourable friend Dr. Kunzru and supported by my friend Mr. Sapru. This House has taken interest in laying down the procedure so far as the punishment under this Act is concerned. It was in the year 1937 that the then Law Member introduced a Bill in the other House and that Bill was passed. Sir, when the Act of 1926 was passed it was made clear that the High Courts and the subordinate courts had power under that Act only to give a maximum punishment of six months but though that Act was on the Statute-book one High Court decided that it had inherent power of giving indefinite punishment and so, Sir, the Bill was brought before the Central Legislature.

Sir, after that many cases of contempt of court have occurred. I do not say that the cases were not decided properly. What I do submit is that the law itself requires revision so that people must think that the cases have been decided properly and justly. The public must have confidence in the judgments that are passed by the Judges of the High Courts. There is a feeling in the country, Sir, that some of the judgments that are passed by the High Courts under this law are not properly passed ; they are not just. I do not share that feeling. I submit, Sir, that the Judges are perfectly justified in passing those judgments under the law as it is at this moment but I submit, Sir, that the Government of the country should take precautions to revise the law in such a way that the public will feel that the law is administered not only to vindicate the dignity of the High Courts but is administered in such a way that people must feel that their legitimate rights are ensured.

I fully agree with the remedies suggested by my Honourable friends Dr. Kunzru and Mr. Sapru. Some of the English Judges also, Sir, have stated that the procedure where the prosecutor and the judge play the same role are rather an archaic procedure. My Honourable friend Mr. Sapru said that the judge and the prosecutor should be two different persons. I fully agree with him on that point. I do not agree with him that the appeals from the High Courts should go to the Privy Council. I want that appeals should go only to the Federal Court because that will expedite matters and that will not cost much to the litigants in such cases.

Sir, I hope that the Government will take interest in these matters and will see their way to revise the law as it stands at present.

THE HONOURABLE SIR SULTAN AHMED (Law Member) : Sir, I join in the congratulations offered to the Honourable the mover for the moderation with which he couched the Resolution itself and also for the temperate speech that he has delivered. The Resolution has been couched in language which gives a very wide latitude to the Government. It simply makes a recommendation for the examination of the law of contempt and also to consider whether there can be any improvement and better administration of that law. There would ordinarily be no difficulty in accepting such a recommendation. I could simply get up and say that we will examine it and I suppose that would have satisfied the Honourable the mover of the Resolution but I feel that I would not be fair to the Government or to this House or to the public at large considering the comments that have recently been made in the Press, on the platforms, in this House as well as elsewhere, on this question, if I did not fully deal with all

the points which have been raised by my Honourable friend Dr. Kunzru, and clearly state what the attitude of the Government would be to it.

The Resolution as it stands may be safely divided into two parts : first, that the Council is asked to recommend to the Governor General in Council to undertake an examination of the law of contempt as administered in British India and to take such measures as may be found necessary to amend and consolidate the law on the subject. That means that the substantive law of contempt must be brought on the Statute-book. The second part is the administration of that law.

Now the question is whether any improvement can be effected with respect to the law as it is and whether it is possible to amend and consolidate the law on the subject. *Prima facie*, it means this—as was suggested by the Honourable the mover—that we must try and define contempt. The House is aware that the law of contempt is as old as “law” itself. At any rate for the last two centuries it has been understood as a part of every Code that there is an inherent power in a Court to punish for contempt and yet no country in the world has ever attempted successfully to define what contempt is. Indeed in England attempts were made for the first time in 1883 to define what contempt was. That proved abortive. Subsequently investigations were undertaken in 1892, 1894, 1896 and 1898 and every time when the matter came up before the public at large, the lawyers and the Parliament, it was considered very difficult to define it. Finally they gave up the attempt to define it completely. Since then no attempt has been made in England. In India also various attempts have been made. The first attempt was made in 1911 and a Bill was ultimately introduced in 1914, when provision was made to define this expression. There was such a hue and cry all over the country against this attempt that Government ultimately had to drop it altogether. Another attempt was made in 1925-26 and Government came with a Bill giving a definition of “contempt of court” and I would like to tell the House what the attitude of the non-official members of the then Council was. Sir Chimanlal Setalvad, who was a member of the House, observed as follows :—

“Mr. President, while I am of the view that it is necessary to legislate in order to remove all doubt as to the present powers of the High Courts in this matter, I confess that the Bill as drafted is a very badly drafted Bill indeed. All that was necessary to my mind was to have enacted a section or two merely saying that the High Courts shall be deemed to have always had the power of punishing contempts of subordinate courts without attempting to define ‘contempt’ leaving it to the High Courts to decide what was contempt according to the established traditions and practices of the High Courts. In that case you would have avoided all the controversy that has taken place”.

Another eminent lawyer, the leader of a very big Party in the House, Pandit Motilal Nehru, ridiculed the idea of a definition of contempt of court. He said :—

“The attempt to achieve the impossible, namely, to define ‘contempt of court’, which has not yet been defined in any part of the world is, I think, a fruitless attempt”.

Sir Alexander Muddiman, who was in charge of the Bill in the House, had to withdraw this definition with an apology explaining as to why he had attempted to define it. He said that he had inserted the definition only because, if it had not been done, Government would have been attacked on the ground that the Bill was vague, doubtful, ambiguous, and no guide to the courts. The result was that the definition was dropped in the Select Committee and found no reference to it in the Act itself.

[Sir Sultan Ahmed.]

The third attempt was made by Mr. A. C. Dutta, who is Deputy President of the Legislative Assembly at present. This was in 1937. It had two distinct objects : (1) attempt to define contempt of court and (2) to prescribe the procedure. The definition suggested by him was almost on the same lines as the definition attempted by the Government in the previous Bill. There were very slight differences, but not very much. This Bill was circulated and opinions were received from Provincial Governments, High Courts and non-official public men. There was almost unanimity that no such attempt should be made. Under those circumstances, the definition was again dropped. No further attempt has been made and it needed the courage of a stalwart like my Honourable friend Dr. Kunzru to bring this matter again before the House. I submit to the House most respectfully that no ground has been shown why in the year 1942, we should try to make an attempt to define this word "contempt" which has baffled everybody in England, and which has baffled so far everybody in India. At any rate, I may tell him frankly that Government in these circumstances are not prepared to examine this question, and so far as this part of his Resolution is concerned, I am afraid I can give him no encouragement at all.

I would now come to the question whether it is possible to do anything in so far as the administration of this law of contempt is concerned. In the fitness of things, in a certain class of cases, proceedings in contempt are bound to be summary. Under the Criminal Procedure Code, there are various sections under which contempt is the subject of penalty and so on. I am not talking about these. But otherwise the jurisdiction of a Court of Record has been held to be summary from time immemorial and I would like to read a passage from the opinion of Mr. Justice Wilmot in Almon's case, which saw the light of day after his death. The House will remember that it is a very well-known case. The judgment was criticised in many cases, but ultimately is now accepted as the correct exposition of the law. The reasons for the exercise of the summary power for dealing with contempts are fully explained in the judgment in Almon's case :—

"By our constitution, the King is the fountain of every species of justice which is administered in this Kingdom. The King is *de jure* to distribute justice to all his subjects and because he cannot do it himself to all persons he delegates his powers to his Judges who have the custody and the guard of the King's Oath and sit in the seat of the King concerning his justice.

"The arraignment of the justice of the Judges is arraigning the King's justice ; it is an impeachment of his wisdom and goodness in the choice of his Judges and excites in the minds of the people a general dissatisfaction with all judicial determinations, and indisposes their minds to obey them ; and whenever men's allegiance to the law is so fundamentally shaken, it is the most fatal and most dangerous obstruction of justice and in my opinion calls out for a more rapid and immediate redress than any other obstruction whatsoever, not for the sake of the Judges, as private individuals, but because they are the channels by which the King's justice is conveyed to the people. To be impartial and be universally thought so, are both absolutely necessary for the giving justice that free, open and uninterrupted current, which it has, for many ages, found all over this Kingdom, and which so eminently distinguishes and exalts it above all nations upon the earth".

This view has been cited in a very large number of decisions, both in England and in India, particularly in the case which was referred to by my learned friend, Dr. Kunzru, the *Amrita Bazar Patrika* case.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Will the Honourable Member mind raising his voice ?

THE HONOURABLE SIR SULTAN AHMED : I am sorry. I thought I was perhaps speaking louder than I should.

THE HONOURABLE THE CHAIRMAN (Sir David Devadoss) : The acoustic properties of the Chamber are bad.

THE HONOURABLE SIR SULTAN AHMED : I was submitting to the House that the summary jurisdiction of courts to punish for contempt has been recognised from time immemorial and I was referring to the case of *R. v. Almon*. That was reported afterwards in the Law Reports and has been the accepted law of England and the reasons have been given why this summary jurisdiction is absolutely essential. At the same time I fully appreciate that there may be cases—and there are cases—where it may be necessary to provide for a right of appeal. I do not say for a moment that any case has so far arisen which would justify our holding straightaway that a right of appeal has been established. But, considering the principles laid down in the case which was referred to by my Honourable friend Mr. Sapru, the Trinidad case, one does sometimes feel inclined to think that such a provision is one which should be carefully examined. I do not know whether there will be statutory difficulties in providing for a right of appeal. I have not considered it as the matter was mentioned to me just now, but I am prepared to give this assurance to the House that I will carefully examine this question, and that is what is requested by the Resolution, and if I find that it is possible to provide the right of appeal in a certain class of cases perhaps it may be possible to do it.

The next question—and it is of vital importance—is that the judge who has been scandalised should not be the judge in his own cause, to use the language of my friends on the other side. I can safely say that the Government are prepared to investigate into this matter and see whether any immediate provision can be made. When I say immediate, I mean the Legislature will have to be approached about it in the ordinary way, which means it will take a little time. In the meantime we propose to consult the different Courts and the different Governments on the subject, and so far as we are concerned we will consider this matter most sympathetically. It should of course be understood that anything which I have said does not apply to that class of contempt which is *in facie curiæ*, that is to say, committed in the presence of the Court. That stands on a different footing and must be dealt with by the judge in whose court that offence is committed. What has influenced me to come to this conclusion is that, while I find in certain sections of the Criminal Procedure Code that a magistrate who has a personal interest in any ordinary trivial case even is disqualified to try it, it does look a little odd that in a case where he himself has been scandalised he should himself as a judge try that case. Well, as I say, I am prepared to go into this question and after consultation with the different Provincial Governments and the High Courts if I find that substantial opinion is in favour of it I shall certainly take the course which is open to me. But in giving this assurance on the two points, I should not be understood that I have been influenced very much by recent proceedings in certain courts of law. What I am influenced by is the general principles which should be applicable to such cases, and also to a certain extent by the views expressed by different classes of people both in the House as well as outside. With this assurance I hope and trust that my friend Dr. Kunzru will not press his Resolution. If there is any delicacy about it, I am prepared to accept his Resolution subject to the observations that I have made.

* **THE HONOURABLE SAIYED MOHAMED. PADSHAH SAHIB BAHADUR** (Madras : Muhammadan) : Sir, it would have been more gratifying if the Honourable the Law Member had consented to examine the law about this matter again. However, in view of the history of the case which has just been mentioned, in view of the fact that these attempts have been made both in England and in India a number of times and all have failed to find a satisfactory definition of contempt, it is quite understandable why the Government is not willing to embark on this question at the present moment. However we are glad that the Honourable Member has expressed his intention to examine the question of the same person combining the offices of judge and prosecutor, which can hardly be reconciled with each other, and to see if that procedure can be modified. We welcome his assurance. As the House is aware even the fact that in some places the functions of an executive and a judicial officer have been combined has caused a hue and cry in the country to have the two functions separated. Therefore it is all the more necessary when the judge happens to be the one whose own conduct has been questioned and who has got an animus against the person whom he tries as judge, it is necessary that he should not have power to decide the guilt or otherwise of the accused. Therefore, Sir, I feel that the House must be grateful to the Honourable the Law Member for having at least consented to examine this part of the question and satisfy himself with regard to it.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Sir, I am grateful to the Honourable the Law Member for having expressed his approval of the two main operative suggestions that I made. I made some three or four suggestions, but if the present law can be so changed as to prevent a judge who has been scandalised from being a prosecutor and a judge in his own cause, and if a right of appeal is granted, then perhaps the definition of what constitutes contempt will cease to have the importance that it has at the present time. I am glad to know that my Honourable friend will consider these two points carefully.

THE HONOURABLE SIR SULTAN AHMED : One point sympathetically ; the other carefully.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : He will obtain the opinions of the Judges and I take it of the legal profession. I think he said that if he found that a majority of those who were consulted were in favour of the main reforms which I suggested and which he thought it might be practicable to give effect to, he would try to get the law changed. That it is proper that he should consult the Judges and the legal profession no one here will doubt, but that he should make his own opinion depend on the opinion of the majority of the persons, whose views are asked for, is something that I personally am not prepared to—

THE HONOURABLE SIR SULTAN AHMED : I did not say that. I did not say that I will be bound by them. I will consider the matter in the light of the observations made by them. I cannot commit the Government of India finally to anything yet.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : I am thoroughly satisfied then. I hope therefore that the Honourable Member will accept my Resolution. We shall understand that he accepts it subject to what he has said this afternoon.

*Not corrected by the Honourable Member.

THE HONOURABLE THE CHAIRMAN (Sir David Devadoss) : Resolution moved :—

“ This Council recommends to the Governor General in Council to undertake an immediate examination of the law of Contempt of Court as administered in British India and to take such measures as may be found necessary to amend and consolidate the law on the subject, with a view to its improvement and better administration.”

Question put and Motion adopted.

RESOLUTION *RE* EXPANSION AND SPEED UP OF THE MANUFACTURE OF WAR MATERIALS.

THE HONOURABLE THE CHAIRMAN (Sir David Devadoss) : With regard to the next Resolution, I will ask Mr. Kalikar to move it, so that he may not lose priority. But as the Honourable Sir Homi Mody who wants to reply to this is unable to be present here owing to some private reasons, this Resolution will be further considered on the 31st instant. I will now ask Mr. Kalikar to move his Resolution.

THE HONOURABLE MR. V. V. KALIKAR (Central Provinces : General) : The Resolution that stands in my name runs thus :—

“ This Council recommends to the Governor General in Council to take immediate steps to convene a conference of industrial and labour leaders to expand and expedite the manufacture of war materials in India and to secure such machinery as may not be available in India for this purpose from abroad.”

Government want my Resolution to be taken up on the 31st. I am agreeable to that, Sir.

RESOLUTION *RE* INQUIRY INTO PROPRIETARY RIGHTS OF LAND-OWNERS IN CANTONMENTS, ETC.

THE HONOURABLE MR. P. N. SAPRU (United Provinces Southern : Non-Muhammadan) : Sir, the Resolution that I desire to move runs as follows :—

“ This Council recommends to the Governor General in Council to institute without delay an inquiry into the proprietary rights of land-owners in cantonments and to take early steps to place cantonment tenures on a statutory and satisfactory basis.”

I propose to put the Resolution shortly. The position as it has crystallised itself after the decision of the Privy Council reported in 36 Bombay page 1 and 58 Calcutta page 81 is that there is in law a strong presumption that land situate in a cantonment is Government land and that the occupiers of it are mere licensees with no higher rights than those of a mere licensee. Thus in case of cantonment lands there is a presumption of State ownership and unless the occupier is able to procure a lease or other satisfactory evidence establishing the character of his land, his position is in law no higher than that of a licensee, that is to say, a person who can be ejected at will by Government. The point that I wish to press is that the law as it stands is extremely defective. It has been held that in order that an occupier might establish his right to the cantonment lands, he has got to establish private property in the land and he has got to show that his predecessors were owners of the land

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at the time the cantonment was established and that nothing had happened since then to vest the title in the Government. The onus of proving the ownership of land is thus on the occupier. Private individuals are given no records of rights and in course of time with change of circumstances whatever records they possessed had been lost in some cases. The resources and means of private owners are limited and it should occasion no surprise that they failed to discharge a very heavy burden that the law casts upon them. When the Cantonment Bill was before the Legislature in September, 1936 Mr. Tottenham, then Defence Secretary, made the following statement on behalf of the Government :—

“ Government have decided not to bother any more about their claim to be the owner of land in cantonment bazaars ”.

THE HONOURABLE SIR GURUNATH BEWOOR : Can the Honourable Member say from what he is quoting ?

THE HONOURABLE MR. P. N. SAPRU : I am quoting from the Assembly Proceedings of September, 1936

THE HONOURABLE SIR GURUNATH BEWOOR : What is the date ?

THE HONOURABLE MR. P. N. SAPRU : I could not give you the exact date, but you will find it in September, 1936. So far as bazaars are concerned—

“ Government have decided not to bother any more about their claim to be the owner of land in cantonment bazaars. They are going to remove their Military Estates Officers entirely from bazaars and they are going to hand over their rights in land in bazaars to Cantonment Boards to make what they like of them—and when I say Cantonment Boards, I mean naturally the Bazaar Committees of those Boards ”.

Sir, the Cantonment Act was passed in 1924. Then it was amended in 1936 and there are no provisions in regard to the ownership of land in the Cantonments Act. There is an office known as the Military Estates Office. Its function is to manage cantonment lands. Six years have elapsed since the assurance was given in 1936 and the complaint is that no steps have been taken to implement that assurance. There are complaints also that the Military Estates Officers continue to be somewhat high-handed in their treatment of those living in cantonment areas. For months together, so the cantonment area people say, plans submitted for erection and re-erection of buildings are not passed. A deputation, I think, waited on Colonel Patterson from the Karachi landowners in July, 1939, and the report of this deputation will be found in the *Daily Gazette* of Karachi of August 20th, 1939. At the time of sale or transfer of property the Military Estate Officers have started asking for signature on certain acknowledgment letters. Now, Sir, these acknowledgment letters are supposed to say that the owners hold the property under the Regulations of 1936 and that these conditions are binding on them. I understand, Sir, that these letters were demanded from Messrs. Poocha of Poona Cantonment. They were unwilling to sign these acknowledgment letters as they thought that the presumption of ownership was in favour of the Crown and the letters were therefore quite unnecessary. The matter I think is still hanging fire. Owners who cut down old trees in their compounds are now being required to pay the price of the wood on the theory that the land belongs to the State.

Now, Sir, all this is because of the uncertainty attaching to the manner in which property in cantonment areas is treated and also in the matter of the free development of cantonment areas and cantonment bazaars which are necessary for the supply of essential articles of food and other necessary articles for the army living in cantonment areas. The remedy, therefore, Sir, would seem to lie in the framing of proper rules and regulations or laws directing the manner in which the Land Estate Officers should conduct themselves, defining the limits in precise language within which they may interfere with the rights of private owners and framing a proper body of record of rights available as public documents and framed after due inquiry, in which the parties are represented and capable of being utilised in cases of litigation; that is to say, there should be a proper record of rights. Also, Sir, there is need for laying down rules for equitable compensation for resumption of buildings in case of military necessity. The principles on which the assessment is to be made should be clearly defined. They should conform, generally speaking, to principles embodied in the Land Acquisition Act under which the market value of property is taken into consideration. There is a feeling among house-owners that they are not being fairly treated in this matter.

Another grievance to which I would draw the attention of the Honourable the Defence Secretary is that formerly the Cantonment Boards used to get the entire income but under the recent arrangements they have been deprived of such income. Before 1924 and from 1924 to 1937 Boards used to be given three-fourths of the income and Government used to be given one-fourth of the income. Now the whole income from the land is appropriated by the Government. The result is that the finances of the local bodies in cantonment areas suffer and it is not possible for them to provide amenities for their citizens. Another grievance to which I would invite attention is that too little land has been given to the Cantonment Boards with the consequent result that bazaars have no scope for further development. There would, therefore, seem to be a case for legislation regulating the division of income between the local bodies in a cantonment and the Central Government as well as vesting more areas in Boards for development purposes. I would invite attention of the Defence Secretary to the recommendations of the Cantonment Reforms Committee of 1921 at page 24 :—

“ We are informed that there are no less than seven kinds of land which we classify as under ”

and then they classify these lands under (a), (b), (c), (d), (e), (f) and (g) and they say under (c)—

“ Land inside cantonments which is privately owned ”

and then they say :—

“ Legislation should thus cover all these cases, and we, therefore, recommend to Government that either sections 60 and 61 of the Cantonment Code, or the Home Department Resolution, or both, be amended so as to cover the question of contracts and leases in the case of all these various lands, otherwise the present system is apt to be very conflicting and it may give rise to undesirable controversies between the military, civil and Cantonment Authorities ”.

I find, Sir, that the All-India Cantonments Association's Resolution, which was passed on the 2nd of April, 1939, is on the same lines as the recommendation of the Cantonment Reforms Committee of 1921.

I hope, Sir, that even though the Defence Department is very busy at this moment with defence matters, the Government will devote some time to this matter as it is one which affects nearly one million people, because the population of those who are living in cantonment areas is nearly one million.

[Mr. P. N. Saprū.]

Shortly put, my case is that there should be a proper record of rights, that leases should be granted to the occupiers of these lands and that they should cease to be regarded as mere licensees. Some security of tenure should be assured to them as otherwise the cantonment areas will not prosper. That is the crux of the question and I hope the Honourable the Additional Defence Secretary will be able, even though he is engaged with questions of a very important and urgent character, to devote some attention to this problem which affects nearly one million people living in cantonment areas.

With these words, Sir, I move my Resolution.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU (United Provinces Northern : Non-Muhammadan) : Mr. Chairman, I give my full support to the Resolution which has been moved by my Honourable friend Mr. Saprū. He has explained the legal position of the house owners in cantonments at the present time. The old grants of land are covered by Regulations issued as far back as 1836, but at present the lands in cantonments are governed by the rules made by Government under the Cantonments Act. One or two questions arise in this connection of which I have some experience and which I should therefore like to place before the House. I do not want to deal with general principles as they have been very well dealt with by the Honourable mover. But I wish to refer for a moment to what is taking place at Poona, to which a reference was made by my Honourable friend. The situation there has changed to the detriment of the house owners in recent years. Formerly, in the event of the sale or mortgage of any property in the Poona Cantonment, the vendor or mortgagee had to apply to the military authorities for sanction to sell or mortgage the same, and the permission was granted without the imposition of any terms and conditions. For some time, however, I understand the authorities have been adopting the practice of asking from the purchasers and mortgagees an undertaking in writing, subscribing to certain terms and conditions stating *inter alia* that the land belongs to the Government and that in the event of its resumption, arbitration will be resorted to under the separate General Order of 1856 for evaluating the compensation to be paid and that the purchaser or mortgagee should be bound not merely by all existing rules and regulations but also those that may be passed regarding the cantonment tenure *in future*. There are two or three questions that arise in this connection. In the first place, as I have already said, I understand that the old practice has been changed. I should like to know why a change in the previous practice has been found necessary? Whatever the rules and regulations may be at the present time it seems to be a fact that they were not quite strictly enforced in the past and that the transfer of bungalows in the Poona Cantonment at least to the heirs of the owner was not questioned. At the present time it appears that even if a man transfers a bungalow to his son or nephew, he would have to get the previous permission of the military authorities. Then there is the question of arbitration. Formerly, the civil courts were asked to determine the amount of the compensation payable, but the military authorities have now taken this matter into their own hands. There is the Land Acquisition Act which was used formerly, but for some reason they fight shy of it now, and they want therefore to award compensation only in accordance with their own evaluation. It is obvious that the procedure that has been adopted at the present time will give rise to grievances. If the military authorities should resume a particular land or take over a house, and if they are themselves

to decide what compensation they should give for it, the house owner has no security that he will be dealt with fairly. I should, therefore, like to ask my Honourable friend, the Additional Defence Secretary, why the Land Acquisition Act is not made use of when Government want to acquire a house, and why they are adopting a new procedure now in respect of the award of compensation.

The other question that I shall refer to is that the purchasers and mortgagees are asked to give an undertaking in writing that they would accept not merely the conditions already imposed but also any regulations that may be passed regarding cantonment tenure in the future. I do not know, Sir, what the justification there is for this attitude. I asked some questions on this subject in April last. The answers to them were placed on the table of the House on the 17th November, 1941. I have been told in these replies that—

“ purchasers are asked to give an Admission Certificate which merely summarises the conditions on which the site is held. The certificate which in 4.5 P.M. its present form summarises the provisions of various rules, regulations and orders in force from time to time is under the existing orders of Government only to be taken when the transferee agrees ”.

It appears from this reply that Government do not wish at present to force the house owners to give the admission certificates that the Military Estates Officers are demanding. But there is no guarantee that the attitude of the Government on this point will not change. However, I have been told that the admission certificate is to be taken under the existing orders of Government only when the transferee agrees to give it. Now this is an important matter. Why should a man when he sells his property be compelled to tell the purchaser that if he purchases it he will be subject to certain disabilities from which he himself was free? Government can well demand that the purchaser should not purchase any property under conditions more favourable than those which apply to the existing owner, but that they should place greater restrictions on the purchasers does not seem to me to be justified by considerations of equity.

Again, Sir, although the reply given by Government so far as the existing state of things goes is quite clear, I understand that the Military Estates Officers in Poona have not changed their attitude and are still insisting that if a house is transferred the purchaser must sign an admission certificate of the kind referred to by me. How do Government justify this?

There is just one more point, Sir, which I should bring to the notice of the House in this connection. It has been already referred to by my Honourable friend Mr. Sapru, but I wish to bring out an aspect of it which may not be known to many members. When the Cantonment Bill was under consideration in 1936 the Defence Secretary, dealing with the dissatisfaction that prevailed among the owners of property in cantonments, said—

“ All I can say is that I have done my very best to reach such a solution (that is, a solution which would be acceptable to all), and I think that we are in a fair way to success. We have done two things. In the first place, Government have decided not to bother any more about their claims to be the owner of land in cantonment bazaars. By that I do not mean that Government hereby formally relinquish their claim to be the owners of such land any more than they relinquish their claim to be the owners of land in cantonments generally. What I mean is that Government do not intend to enforce their claims in bazaars. They are going to remove their Military Estates Officers entirely from bazaars, and they are going to hand over their rights in land in bazaars to Cantonment Boards to make what they like of them, and when I say Cantonment Boards I mean naturally the Bazaar Committees of those Boards if, as I hope, these Committees function successfully ”.

Now the assurances that were given by the Defence Secretary have I understand not been carried out. The Bazaar Committees have been set up, but their business only is to make recommendations in cases of transfers to the

[Pandit Hirday Nath Kunzru.]

Cantonment Boards. The Defence Secretary said that full power would be given to the Bazaar Committees in this respect, but that has not been done. Government have violated the assurance that they gave through the Defence Secretary in 1936. Again, Sir, the Military Estates Officers also I understand have not been removed from the bazaars as was promised by the Defence Secretary. I have been told that they are still reporting cases to Cantonment Boards and asking them to take action against house owners in bazaars. Why have not the undertakings given by Government been carried out? There was a great deal of discussion between a committee of house owners and the Defence Secretary before he made the announcement that I have read out. One would have thought that the assurances that he then gave would be fully carried out, but I am surprised to learn that in both those respects—

THE HONOURABLE SIR GURUNATH BEWOOR : Could the Honourable Member say exactly in what respect the Military Estates Officers have been interfering in the bazaar area administration?

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : I understand that they are still concerning themselves with questions of transfer or encroachment on land and so on. This is what the Military Estates Officers are doing. But whatever they may be doing in bazaars I should like to know why they are there at all, and that is the point to be replied to by my Honourable friend. Now it may be said that the position of the Government may be prejudiced if the Military Estates Officers are completely withdrawn. The Defence Secretary ought to have thought of this when he made the announcement that I have referred to; but apart from this I do not see why Cantonment Boards should require the services of Military Estates Officers. If you place land under the control of the Cantonment Boards why do you not allow them to have their own officers? Why is it necessary for you to compel them to use the services of Military Estates Officers who are military officers. There was a time when the Cantonment Officers were military officers; now they are all civilians. But the military officers are now being used as Military Estates Officers. Three of them are Indians and civilians, but the rest of them to the best of my belief are British military officers. I should like to know why it is necessary to have these officers at all, and why Government cannot appoint civil officers in order to help the Cantonment Boards in the discharge of their duties? If this is done, perhaps some of the friction that exists at the present time will subside. This is a very important matter and I hope that the Defence Secretary will be able to give some satisfactory explanation on the point.

Sir, there is just one other thing concerning the Regulations of 1836 which I shall deal with before sitting down. Now according to these Regulations the conditions governing the resumptions of land mortgages and transfers are four in number. It is said in the third condition that—

“ if a plot of ground has been built upon the buildings are not to be disposed of to any person, of whatever description, who does not belong to the army, until the consent of the Officer Commanding the station shall have been previously obtained under his hand ”.

One may agree or not agree with this, but one can see that this Regulation is of a perfectly general kind and applies to all persons. I now pass on to condition 4 which relates to transfers of property to Indians. This Regulation says—

“ When it is proposed, with the consent of the General Officer, to transfer possession to a native, should the value of the house, buildings or property to be so transferred exceed

Rs. 5,000, the sale must not be effected, until the sanction of Government shall have been obtained through His Excellency the Commander-in-Chief".

Why is this Regulation necessary? Why should the permission of His Excellency be required only in the case of transfer of property to an Indian? The reply will be that the procedure is not as dilatory as on reading of the Regulation one may think it to be and that the Military Estates Officers are allowed in practice to act as if they had the authority of His Excellency the Commander-in-Chief to give the necessary sanction. But as I have already said, Sir, the position is being altered; the old practice is being changed. Discontent is being created among the house owners. It is necessary, therefore, Sir, that the points that have been placed before Government should be carefully considered by them. Whatever power they may have under the law and regulations, they should be exercised with fairness and moderation. I hope, therefore, that the Government will be able to accept the Resolution moved by my Honourable friend Mr. Sapru. It will give them an opportunity of going fully into the matter and arriving at a settlement, which will give satisfaction to all the parties concerned.

THE HONOURABLE SIR GURUNATH BEWOOR (Nominated Official): Sir, the Resolution asks Government to institute without delay an inquiry into the proprietary rights of land-owners in cantonments. That is the first part of the Resolution. The second part asks Government to take early steps to place cantonment tenures on a statutory and satisfactory basis. I shall deal with each of these two parts of the Resolution. As regards the first part, Sir, the position of Government is this. It has already been established by a number of court decisions, including some by the Privy Council, that the mere possession or occupation of land in cantonments confers no right of ownership, and in the absence of specific proof to the contrary all land in cantonments must be presumed to belong to the Crown and that the house owners possess no more than occupancy right on their sites. This attitude of Government has been maintained for a number of years and it was maintained when the discussions between the Cantonments Association and the Secretary of the Department took place in 1936. Sir, the position with regard to occupation of land in cantonments may be divided into two periods. One I call the pre-1899 period and the other the post-1899 period. Since 1899 when the Cantonments Code was instituted, the grant of land in cantonments has been governed by definite rules and regulations and leases. Prior to 1899 land had been granted under rules or regulations which existed from time to time. I understand that documents are available with certain owners giving the exact terms of these old grants and in the case of others no such documents are available. The position which Government take is this, that where a man has been occupying land before 1899 the presumption is, unless he produces any definite document to the contrary, that he is holding the land according to the rules and regulations which prevailed at the time the first occupation of the land began. As regards the post-1899 period, I have already mentioned that there are definite terms and conditions on which these lands are held. Therefore there should be no doubt as to the rights of Government and the rights of the occupier. At present we have a set of rules which are known as the Cantonment Land Administration Rules, 1937. These have been issued under the rule-making power conferred upon Government by section 280 of the Cantonments Act. Section 281 states that all rules so made shall be published in the official Gazette and shall have effect as if enacted in this Act. Therefore, Sir, these rules have statutory authority. Under these rules it is necessary to maintain in every cantonment a general land register and in this register are entered all lands which are in the occupation either of Government itself or of the Board or of private persons. We have therefore a record

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of the exact rights which are possessed by the different occupiers of land. Now, Sir, what the Honourable Pandit Kunzru apparently desires, from the manner in which he criticised the old conditions, is that he would like to see the old conditions under which the land was granted to various occupants revised and a present made to the present occupiers of rights much higher than what they possess. Whatever may be the rights or wrongs of the conditions which were prescribed in the old days the fact remains that the land belongs to Government and that the occupier was given the right to occupy the land and to build upon it subject to certain conditions, and those conditions must necessarily be enforced, otherwise we would be unfair to the taxpayer of the country. Why should we make a gift to the occupiers of the land? In this connection I may perhaps draw attention to what the Defence Secretary stated in 1936 :—

“ As a class, house owners in cantonments have done exceedingly well out of Government during the last one hundred years or so, and it is an undoubted fact that during that period very very large sums of money have passed into their hands from the pockets of the general taxpayer in this country ”.

Now, Sir, the other criticism that was made was about the bazaar area. In this connection the Defence Secretary again in his speech of the 4th September, 1936 clearly stated :—

“ Government have decided not to bother any more about their claim to be the owner of land in cantonment bazaars. By that I do not mean that Government hereby formally relinquish their claim to be the owners of such land, any more than that they relinquish their claim to be the owners of land in cantonments generally. What I mean is that Government do not intend to enforce that claim in bazaars. They are going to remove their Military Estates Officers entirely from bazaars ”.

I understand, Sir, that actually Military Estates Officers have nothing to do with the administration of the bazaar area and that they are under the management of Cantonment Boards. I do not know whether Cantonment Boards have in any case utilised the services of the Military Estates Officers in connection with any suits that they may have to file because it must be remembered when a suit has to be filed that Government is the owner of the land and the Cantonment Boards are managers of the land. In that connection perhaps the Military Estates Officers come into the picture but I understand that so far as management is concerned the bazaar areas are left to the Cantonment Boards.

Then coming to those who hold lands under what is called “ old grants ” the Honourable Pandit Kunzru criticised the demand made by certain authorities for obtaining an acknowledgment when a transfer is made. Now, Sir, all that is apparently aimed at—I cannot vouch for it because I have not had time to examine this particular complaint made and moreover I was not aware that it would be raised—is that every transfer which is made must be subject to the conditions of the old grant, that is to say the new transferee cannot expect to have higher rights than the old transferor ; and it is apparently in that connection that such acknowledgments have been asked but here again I regret I have not got any definite information. I asked my friend the Honourable Mr. Sapru to let me know some of the points he was likely to raise but he was unable to give me any indication, otherwise I would have studied this particular point, and even now if he will give me any points which he wants to be examined I shall be very glad to go into them.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : If my Honourable friend wants an instance I will mention one. I have already said that I

understand that in Poona the Military Estates Officer is asking intending purchasers to sign an admission certificate which he demands from them acceptance not merely of present conditions but of any conditions that may be laid down in future.

THE HONOURABLE SIR GURUNATH BEWOOR : I am grateful to the Honourable Member but I should like to have the actual instances instead of a general allegation, or, if he could tell these people to appeal to the Government of India complaining against the Military Estates Officer's demand which he considers is illegal, I shall certainly look into the matter.

So far as the owners of houses on land outside bazaars granted prior to 1899 are concerned the matter was decided in the same speech to which the Honourable Mr. Sapru referred. Mr. Tottenham stated :—

“ The result of the discussion with the All-India Cantonments Association is that if the house-owners on their side are now prepared formally to forego their claim to be the owners of the soil, if they are willing to do that, we on our side are prepared to deal with them in the most generous way consistent with the necessity for safeguarding our own contingent interest in the land and the necessity for preserving the amenities of the cantonment and preventing over-building and over-crowding ”.

As a result of this announcement there were further discussions and a form of lease was drawn up and the present rules issued in 1937 provide for the grant of leases to the occupiers of lands, and that I think, Sir, satisfactorily solves the problem which has been raised by the Honourable the mover of this Resolution.

I am afraid, Sir, that I cannot accept this Resolution because it starts off by saying that we should institute an inquiry into the proprietary rights of land-owners. Sir, the proprietary right lies in Government. It is for the land-owner to prove his right if any. If any land-owner is able to prove his right it will be acknowledged but there cannot be any inquiry into the proprietary rights of land-owners in cantonments as a whole.

As regards the placing of cantonment tenures on a statutory and satisfactory basis, I have already stated that these tenures are governed by the rules which I have mentioned, the rules issued in 1937, which being issued under the Act, have a statutory force.

We have always been prepared to deal with generosity with the occupiers of lands in cantonments, but I must make it clear, Sir, that cantonments are intended for the residence of the military ; they are not intended as desirable suburbs of the town. It is always our aim to prevent cantonments developing into congested areas and not to bring in any large civil population, and it is from that point of view that the various safeguards have been provided in connection with transfers, in connection with building or in connection with prescribing the conditions of tenures. This is not the time, when we are all busy with the war, when our troops have expanded very greatly, when we do not know what is going to be the strength of the army at the end of the war, to undertake this detailed inquiry which the Honourable the mover of this Resolution has asked Government to do.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Will the Honourable Member tell us why the Bazaar Committees have not been given the power that was promised by the Defence Secretary? Why is it necessary for them still to make recommendations to the Cantonment Boards in case of transfer and mortgage of houses ?

THE HONOURABLE SIR GURUNATH BEWOOR : I understand that the bazaars are under the management of the Cantonment Board within which they are situated. I do not know which particular speech my Honourable friend is referring to.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Surely it is the one that he quoted himself—the Defence Secretary's :—

“ They are going to remove their Military Estates Officers entirely from bazaars and they are going to hand over their rights in land in bazaars to Cantonment Boards to make what they like of them—and when I say Cantonment Boards, I mean naturally the Bazaar Committees of those Boards if, as I hope, these Committees function successfully ”.

THE HONOURABLE SIR GURUNATH BEWOOR : Sir, that is a matter between the Board and the Bazaar Committee.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Have you made it clear to the Bazaar Committee that they are entitled to take over this power ?

THE HONOURABLE SIR GURUNATH BEWOOR : I presume that—

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : It is not a question of presumption. When a definite complaint is brought to the notice of Government they ought to inquire into it.

THE HONOURABLE MR. P. N. SAPRU : Sir, I am frankly dissatisfied with the unsatisfactory character of the reply that the Honourable Sir Gurunath Bewoor has given to this Resolution. He says that the wording of my Resolution is defective because I have asked Government to institute without delay an inquiry into the proprietary rights of land-owners in cantonment areas. He points out that proprietary rights in cantonment areas belong to Government and that a series of decisions of the Privy Council has settled that proposition. As I read those decisions of the Privy Council, what they have done is to say that there is a presumption in favour of ownership of land in Government in the cantonment areas. They do not say that in all cases the ownership resides in Government. They merely say that there is a presumption of ownership of land in Government in cantonment areas. Therefore, the Honourable Sir Gurunath Bewoor is not right in claiming that they have held Government to be the owner of all land in cantonment areas. Really the question is one of burden of proof. All that they have done is to cast the burden on to the person who claims to have an absolute title in the land. Under the law as it stands I do not see how and why it is not possible for Government to institute an inquiry into the rights of all these people. A record of rights can be prepared, because whatever the position may have been before 1899, and whatever may be the position after 1899, all that can be recorded after a proper inquiry—

THE HONOURABLE SIR GURUNATH BEWOOR : Further on I said, Sir, that there is such a register which records the rights of all persons who occupy land, and when this thing has been done, I do not see why Government should hold such an inquiry at all. The Government has no doubt on the point at all.

THE HONOURABLE MR. P. N. SAPRU : My Honourable friend says that the practice was changed after 1899 and that there is a register now. How was that register prepared ?

THE HONOURABLE THE CHAIRMAN (Sir David Devadoss) : Could we go into that now ?

THE HONOURABLE SIR GURUNATH BEWOOR : The register is maintained under the Cantonment Land Administration Rules by the Military Estates Officers.

THE HONOURABLE MR. P. N. SAPRU : I should like to know whether, before an entry is made in the register, the person concerned is given adequate opportunity of proving his case. All these are merely *ex parte* entries made without the knowledge of the person concerned and without any reference to the person concerned, and not open to inspection by the person concerned.

THE HONOURABLE SIR GURUNATH BEWOOR : The registers are open to inspection, and the person concerned can get an extract from them to see what is recorded there, and if he has got any other proof, he can produce it to change the entry.

THE HONOURABLE MR. P. N. SAPRU : The Honourable Sir Gurunath Bewoor would also say that the register has the position of a record of rights ?

THE HONOURABLE SIR GURUNATH BEWOOR : That is a matter for law, Sir ; it is a register prepared under rules made under a certain section of the Act.

THE HONOURABLE MR. P. N. SAPRU : Sir, my information is—and the Cantonment Association is my authority for it—that the register has not been prepared after any inquiry from the occupiers or owners of land and they do not even know of its existence because the Land Estate Officers or the people concerned with the management of these areas look upon this register as a sealed book to be reserved only for their own use and not to be shown to the occupiers of land.

THE HONOURABLE THE CHAIRMAN (Sir David Devadoss) : You can get a copy of it.

THE HONOURABLE MR. P. N. SAPRU : I make this statement because I was instructed to make this statement, if I may say so, by those who saw me in connection with this matter, and I should be glad if the Honourable Sir Gurunath Bewoor will contradict the statement and say that the Land Estate Officers keep the register open for inspection and that the registers are prepared after due inquiry.

THE HONOURABLE SIR GURUNATH BEWOOR : I understand that the register is open for inspection ; the man can get a copy, so far as he is concerned, of his entry, and if he is not satisfied, he can apply to have the thing revised by producing the necessary evidence to the Military Estates Officer and the mistakes, if any, will be corrected.

THE HONOURABLE MR. P. N. SAPRU : If any case is brought to the Honourable Member's notice where the Land Estates Officer has taken a different line in regard to the register, I hope he will deal with the Land Estates Officer in a proper manner.

THE HONOURABLE SIR GURUNATH BEWOOR : The occupier has a right of appeal to a higher authority against the decision of the Military Estates Officer.

THE HONOURABLE THE CHAIRMAN (Sir David Devadoss) (addressing the Honourable Mr. Sapru) : I do not think you can go further into this question.

THE HONOURABLE MR. P. N. SAPRU : Passing on to another point I pointed out that on 1st September, 1936, Sir Richard Tottenham gave certain assurances in regard to the ownership of land in cantonment bazaars. He said :—

“ In the first place, Government have decided not to bother any more about their claim to be the owner of land in cantonment bazaars. By that I do not mean that Government hereby formally relinquish their claim to be the owners of such land, any more than that they relinquish their claim to be the owners of land in cantonments generally. What I mean is that Government do not intend to enforce that claim in bazaars ”.

Now, Sir, the complaint is that the Military Estates Officers have been interfering with the management of these bazaars. The Honourable Sir Gurunath Bewoor would say there is a formal right of Government, that ordinarily the Bazaar Committees are left to deal with the matter but that the Military Estates Officers can occasionally, in certain cases, interfere. But I would like him to consider the point in this way. They are going to remove their Military Estates Officers entirely from bazaars,—I should like to stress this word “entirely”—and they are going to hand over their rights in land in bazaars to Cantonment Boards to make what they like of them. And when I say “Cantonment Boards” I mean naturally the Bazaar Committees of those Boards, if, as I hope, these Committees function successfully. Unless the Honourable Sir Gurunath Bewoor can say that these Committees do not function successfully, the interpretation which the ordinary man reading Sir Richard Tottenham's statement will put is this. We are not going to interfere in any way whatever with these Bazaar Committees. We will transfer all the authority that we possess in regard to certain matters to these Bazaar Committees and there will be no interference whatsoever by us. There is a definite pledge by Sir Richard Tottenham to this effect and the precise complaint is that the Military Estates Officers have been interfering with these Bazaar Committees, and Cantonment Boards and Bazaar Committees cannot make what they like of the Cantonment Bazaar or area. The Honourable Sir Gurunath Bewoor says that cantonment areas are really military areas and people who live in those areas live subject to military regulations and so on. Quite right. He would say that the people who live there have benefited from the prosperity in those areas, and that sort of thing. But, assuming that cantonments are for military purposes, even then the development of cantonments requires that there should be some security of tenure for those who live in the cantonment areas. Now as far as I have been able to understand, the position today is that the occupier of land in cantonment areas has not only no proprietary right—if he makes any such claim he has to prove it—but he has no higher status than that of a licensee who can be evicted at will by his landlord. The question I would ask is, has any rule been framed as regards the nature, character and duration of

the tenure under which these occupiers of land in cantonment areas shall live? If there are any such rules will he point out to me what those rules are. I am not at the moment raising any question of proprietary rights. What I want to know is whether there is any security of tenure in any shape or form which will enable a person living in cantonment areas on ejection to be compensated according to rules under the Land Acquisition Act? Are there any such regulations in force or not? I confess, Sir, that the Honourable Sir Gurunath Bewoor has not been able to throw any light on this aspect of the matter at all.

Then I referred to one or two instances in which Estates Officers had been interfering with the occupiers of land in cantonment areas. I pointed out that in Poona attempts are being made by the Estates Officer to get admission or acknowledgment letters, not only in regard to the past or present rights of the occupants of land, but also in regard to the future rights of occupiers of land in the cantonment area, and I referred to a specific case, that of Messrs. Poocha of Poona Cantonment. I pointed out that an effort had been made by the Military Estates Officer to get an acknowledgment or admission letter of this type from Messrs. Poocha & Co. and that they had refused to sign any such admission letter. Therefore I should like to have a categorical answer to this question, whether the Military Estates Officers have been authorised to get these admission letters without even waiting for the preparation of a statutory record of rights from the occupiers of land? Then I pointed out that if occupiers of land cut down trees in their compound they are now being required by the Estates Officers to pay the price of the wood, on the theory that the land belongs to the State. Now I do not wish to discuss the theory of land proprietorship but I should like to know whether the uncertainty attached to the manner in which property in cantonment areas is treated hampers or does not hamper the free development of cantonment areas? It has been found by experience everywhere that if you want the free development of any area, if you want an area to become prosperous and really develop to its fullest extent, it is necessary for you to give some security of tenure. And experience has also shown that too much executive interference of this character hampers the growth of a bazaar or a cantonment or any other area. Therefore I should have thought that the Honourable Sir Gurunath Bewoor would indicate his readiness to convey in more precise language the manner in which the Estates Officers interfere with transfers and other things. I had hoped he would define the limits in more precise language than he has done. He probably wants to leave these Estates Officers a free hand to do anything they like with those who live in cantonment areas. This I think is hardly fair. As he has taken up this attitude I regret that it will not be possible for me to withdraw from the position I have taken up.

THE HONOURABLE SIR GURUNATH BEWOOR : With your permission, Sir, I would just like to clear one or two points. The Honourable Pandit Kunzru spoke of Bazaar Committees and the interference with them. I should therefore like to make it clear, that the Bazaar Committees are not independent bodies. They are constituted by the Cantonment Board under section 43A of the Act and it is open to the Cantonment Board to give what powers it likes to the Bazaar Committee or to withdraw any power, because it is clearly stated in Mr. Tottenham's speech—

“And when I say Cantonment Boards, I mean naturally the Bazaar Committees of those Boards if, as I hope, these Committees function successfully”.

If in certain areas, Cantonment Boards have withdrawn the powers from the Bazaar Committees, the inference is that they have not functioned successfully.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: Were the powers ever conferred on them ?

THE HONOURABLE SIR GURUNATH BEWOOR: That is a matter to be inquired from every Cantonment Board. I cannot give a general reply to that question. The Honourable Mr. Sapru wanted to know what exactly were the rights of occupiers. I have mentioned that in the case of those who occupied land since 1899 the rights are clear in the leases that have been given to them. Their terms are clearly laid down.

THE HONOURABLE MR. P. N. SAPRU: Are they licensees or are they lease-holders ?

THE HONOURABLE THE CHAIRMAN (Sir David Devadoss): That is a question of law. I do not think you need answer that.

THE HONOURABLE SIR GURUNATH BEWOOR: I was just going to remark, Sir, that in this House we cannot decide the legal rights of occupiers of lands in cantonments, occupiers who have been in possession from different periods, since 1835 or 1836. The Regulations have changed from time to time and the lands have been given for occupation on the terms and conditions which existed at that time. The question of trees is again a matter for legal opinion, for the decision of courts. We have taken legal opinion and we are acting on that. If any occupier is dissatisfied, it is open to him to go to the courts and obtain a decision. But Government being the owner of these lands and the rights of the occupiers being governed by the terms under which they are occupying these lands, I am afraid Government cannot undertake a regular settlement operation at this time.

THE HONOURABLE THE CHAIRMAN (Sir David Devadoss): Resolution moved :—

“ This Council recommends to the Governor General in Council to institute without delay an inquiry into the proprietary rights of land-owners in cantonments and to take early steps to place cantonment tenures on a statutory and satisfactory basis.”

Question put and Motion negatived.

THE HONOURABLE THE CHAIRMAN (Sir David Devadoss): Before I adjourn the House, let me draw the attention of Honourable Members to the fact that there is to be a photograph taken tomorrow morning at 10-45 A.M. and the Honourable the President requests Members to be here by 10-30 A.M.

The Council then adjourned till Eleven of the Clock on Thursday, the 26th March, 1942.
