

*Monday,
27th January, 1913*

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. LI

April 1912 - March 1913

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OF

THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA

ASSEMBLED FOR THE PURPOSE OF MAKING

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GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

**PROCEEDINGS OF THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA
ASSEMBLED FOR THE PURPOSE OF MAKING LAWS AND REGULATIONS
UNDER THE PROVISIONS OF THE INDIAN COUNCILS ACTS, 1861
to 1909 (24 & 25 Vict., c. 67, 55 & 56 Vict., c. 14, AND 9 Edw. VII, c. 4).**

The Council met at the Council Chamber, Imperial Secretariat, Delhi, on
Monday, the 27th January, 1913.

PRESENT :

The Hon'ble SIR GUY FLEETWOOD WILSON, G.C.I.E., K.C.B., K.C.M.G., VICE-
PRESIDENT, *presiding*,

and 61 Members, of whom 55 were Additional Members.

OATH OF OFFICE.

The following Additional Members, before taking their seats, made the
prescribed oath or affirmation of allegiance to the Crown :

- The Hon'ble Mr. Edward Earle Meugens.
- The Hon'ble Mr. Alexander McLaurin Montcath.
- The Hon'ble Mr. Abdul Karim Abu Ahmed Ghaznavi.
- The Hon'ble Maharaja Manindra Chandra Nandi.
- The Hon'ble Mr. Duncan James Macpherson, C.I.E., I.C.S.
- The Hon'ble Mr. Fazulbhoy Currimbhoy Ebrahim.
- The Hon'ble Mehrban Sardar Khan Bahadur Rustomji Jahangirji Wakil
of Ahmedabad.
- The Hon'ble Sir Ibrahim Rahimtoola, Kt., C.I.E.
- The Hon'ble Sir Charles Herbert Armstrong, Kt.
- The Hon'ble Mr. Ramaraya Venkataranga Bahadur, of Panagallu.
- The Hon'ble Mr. Chakravarti Vijjaraghavachariar.
- The Hon'ble Nawab Saiyid Muhammad Sahib Bahadur.
- The Hon'ble Mr. Reginald Childers Culling Carr, I.O.S.
- The Hon'ble Mr. Arthur Meredith, C.S.I., I.C.S.
- The Hon'ble Sardar Daljit Singh of Jullundur.
- The Hon'ble Honorary Lieutenant-Colonel Raja Jai Chand, C.S.I.
- The Hon'ble Malik Umar Hyat Khan, M.V.O., C.I.E., Tiwana.
- The Hon'ble Major Denys Brooke Blakeway, C.I.E.
- The Hon'ble Rai Sitanath Ray Bahadur.
- The Hon'ble Mr. Sigismund Raynor Arthur, I.O.S.
- The Hon'ble Mr. Qumrul Huda, Bar.-at-Law.

- The Hon'ble Maharaj-Kumar Gopal Saran Narain Singh of Tikari.
 The Hon'ble Mr. Madhu Sudan Das, C.I.E.
 The Hon'ble Mr. Walter Maude, I.C.S.
 The Hon'ble Raja Saiyid Abu Jafar of Pirpur.
 The Hon'ble Raja Sir Muhammad Ali Muhammad Khan, K.C.I.E., Khan Bahadur, of Mahmudabad.
 The Hon'ble Raja Kushalpal Singh, M.A., I.L.B., of Kotla.
 The Hon'ble Rai Sri Ram Bahadur, C.I.E.
 The Hon'ble Pandit Madan Mohan Malaviya.
 The Hon'ble Mr. Arthur Leslie Saunders, I.C.S.
 The Hon'ble Mr. Herbert Lovely Eales, C.S.I., I.C.S.
 The Hon'ble Srijut Ghanasyam Barua.
 The Hon'ble Sir Gangadhar Madho Chitnavis, K.C.I.E.
 The Hon'ble Rao Bahadur Vasudeo Ramkrishna Pandit.
 The Hon'ble Mr. James Walker, C.I.E., I.C.S.

[At this stage the Vice-President left the Chair which was taken by His Excellency BARON HARDINGE OF PENSHURST, P.C., G.C.B., G.C.M.G., G.C.V.O., G.M.S.I., G.M.I.E., Viceroy and Governor General.]

- The Hon'ble Sir William Henry Hoare Vincent, Kt.
 The Hon'ble Major-General William Riddell Birdwood, C.B., C.S.I., C.I.E., D.S.O.
 The Hon'ble Mr. Robert Woodburn Gillan, C.S.I.
 The Hon'ble Sir Edward Douglas MacLagan, K.C.I.E., C.S.I.
 The Hon'ble Mr. Henry Sharp, C.I.E.
 The Hon'ble Mr. Reginald Edward Enthoven, C.I.E.
 The Hon'ble Mr. Henry Wheeler, C.I.E.
 The Hon'ble Lieutenant-Colonel Sir Arthur Henry McMahon, G.C.V.O., K.C.I.E., C.S.I.
 The Hon'ble Mr. Walter Henry Michael.
 The Hon'ble Surgeon-General Sir Charles Pardey Lukis, M.D., F.R.C.S., K.C.S.I.
 The Hon'ble Mr. Webster Boyle Gordon, C.I.E.
 The Hon'ble Mr. William Maxwell, M.V.O., C.I.E.
 The Hon'ble Sir Charles Stewart-Wilson, K.C.I.E.
 The Hon'ble Mr. George Harry Blair Kenrick, K.C., LL.D.
 The Hon'ble Mr. Charles Henry Kesteven.
 The Hon'ble Mr. Alexander Kinney.
 The Hon'ble Sir Trevelyan Rashleigh Wynne, K.C.S.I., K.C.I.E., V.D., M.I.C.E.

OPENING OF THE FIRST SESSION OF THE LEGISLATIVE COUNCIL IN DELHI.

His Excellency the President:—“Although I have not yet recovered from my wounds, and have been compelled under doctor's orders to abstain from all public business of every kind, I have felt not only a desire, but that it is my duty, to come here to-day to open the first Session of my Legislative Council in Delhi, and to give a cordial welcome to the newly elected and newly appointed Members of my Council. I am sure that at the same time none of you will begrudge me an expression of regret for those who have not returned; since after two years' loyal and active co-operation with my Government in the legislative work of the Government of India, I regard them not only as former Colleagues in Council but also as friends. I am delighted to see some of the former Members of my Council again in their places, and I am confident that they will again bring to our Council the same spirit of harmony, goodwill and legislative ability as during the past two years that I have had the honour of presiding over their deliberations. As regards the new Members of my Council, I bid them a cordial welcome, and I am sure that I can count on them to maintain the same high

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[*The President.*]

standard of dignity in debate as has so markedly distinguished our deliberations in the past.

“ I feel deeply grateful to you all for the warmth of your reception here to-day. I always knew that I could count on your sympathy in the suffering that has been my lot during the past few weeks; and if there has been one thing that has tended to alleviate those sufferings, it has been the knowledge of the sympathy shown towards me by all classes, creeds and communities throughout the length and breadth of India. I should like to take this opportunity when addressing my Council, who represent the whole of British India, to express my profound gratitude for the genuine outburst of sympathy, the devout prayers and good wishes that have been heard on every side; and if I may be allowed to say so, I feel convinced that those prayers have not been unanswered. When five weeks ago I had recovered consciousness and was able to think over what had passed, my feelings were, in the first instance, those of profound gratitude to Almighty God for His merciful protection of Lady Hardinge, and myself, of real grief for the poor man who had lost his life in the performance of his duty, of very deep disappointment that it were possible that such misguided men as those who plotted and committed such a useless crime could now be found in India, and of sorrow at the thought of the injury to the sentiments of the whole of the people of India who would, I knew, regard with horror and detestation the perpetration of a crime which is contrary to their own precepts and instincts of humanity and of loyalty, as well as to their religious principles. The gratitude that I felt at the miraculous preservation by the Almighty of Lady Hardinge and myself from the hand of the assassin was, I know, also deeply felt throughout India, but words fail me when I think of the cruel murder of those humble people who were ruthlessly killed, and I deeply deplore the loss which their families have sustained. In my desire for kindly intercourse with the people and accessibility to them, I have always discouraged excessive precautions, and I trusted myself and Lady Hardinge more to the care of the people than to that of the police. If it was an error, it is an error that I am proud of, and I believe it may yet prove not to have been an entirely mistaken confidence, for out of evil good may come. Is it too much to hope that the storm of public indignation evoked at the outrage may give Indian terrorists cause for sensible and humane reflection and repentance? It is difficult to believe that these individuals are a class apart, and that they do not belong to communities and mix with their fellow-beings. Are they really susceptible to no influence and no advice? Have they no contact with moderate and wiser men? Still, whatever I may feel on the subject of the crime itself, I only wish to assure you and the whole of India that this incident will in no sense influence my attitude. I will pursue without faltering the same policy in the future as during the past two years, and I will not waver a hair's breadth from that course.

“ What I have said so far has been somewhat of a personal character, but I have one word more to say to the people of India which I say with a profound sense of the gravity of the import of my words. I need hardly recall to the memory of anybody that the recent incident is not an isolated episode in the history of India, but that during the past few years both Indians and Europeans, loyal servants of Government and of India, have been less fortunate than I have been, and undeserving of the cruel fate meted out to them, have been stricken down by the hand of the assassin. These deplorable events cast a slur on the fair name of India and the Indian people, to whom I know they are thoroughly repellent; and I say to the people of India—not merely as a Viceroy intensely jealous of the honour of the country that he has been called upon to govern, but as one of the many millions in India of the fellow-subjects of our King-Emperor, and one who loves India and the Indian people amongst whom he is living—I say that this slur must be removed, and the fair fame of India must be restored to a high and unassailable plane. Knowing, by the kindly and genuine manifestations of sympathy, received from every side, how profoundly repulsive such crimes are to the people of

[*The President ; Sir G. M. Chitnavis.*] [27TH JANUARY, 1913.]

India, it may be asked what remedy can be applied to prevent their recurrence. To this I would reply that such crimes cannot be dismissed as the isolated acts of irresponsible fanatics, and that they are in most cases the outcome of organised conspiracies in which the actual agent of the crime is not always the most responsible. The atmosphere which breeds the political murderer is more easily created than dispelled. It can only be entirely and for ever dispelled by the display and enforcement of public opinion in a determination not to tolerate the perpetration of such crimes and to treat as enemies of society, not only those who commit crimes, but also those who offer any incentives to crime. Amongst such incentives to crime should be included every intemperance of political language and methods which are likely to influence ill-balanced minds and lead them by insidious stages to hideous crimes. The universal condemnation throughout the whole of India of the crime of the 23rd December, and the anxiety shown for the detection of the criminals, have however filled me with hope for the future, and have inspired me with confidence in the determination of the people of India to stamp out from their midst the fungus growth of terrorism and to restore to their beautiful motherland an unfurnished record of fame. Imbued as I am with this hope and confidence, my faith in India, its future, and its people remains unshaken ; and if, as I confidently anticipate, the realization of my faith is confirmed, then I may add that the two innocent lives so sadly lost on the 23rd December will not have been sacrificed in vain."

The Hon'ble Sir G. M. Chitnavis:—"My Lord, on behalf of the non-official Members of this Council, I crave leave to say how sincerely gratified we all are, after the wicked attempt made upon Your Excellency's life, to see Your Excellency presiding over the first meeting of this Imperial Legislative Council in the new Capital of the Indian Empire. My Lord, never was the country more deeply shocked and stirred than when it heard of the dastardly outrage perpetrated on the occasion of your State entry into this Imperial city. Equally deep and wide-spread was the feeling of relief and thankfulness at the news that by the interposition of a merciful Providence the attempt of the miscreant had happily failed of its object, and Your Excellency's valuable life spared to the people and to the Empire. My Lord, millions of hearts have ached daily for one whole month to hear of the suffering to which Your Excellency has been so cruelly subjected and of the agony which Her Excellency Lady Hardinge has had to undergo. The daily bulletins have been anxiously awaited and closely scanned, and, as rightly said by Your Excellency, millions of men of all creeds have prayed from day to day and week to week, in different tongues and in diverse forms to the Father of all for Your Excellency's speedy restoration to health. Great has been the anxiety of the people for Your Excellency's recovery. Equally great will be the sense of relief and thankfulness and joy with which they will receive the reassuring tidings that Your Excellency has so far recovered as to be able to cheer us by your presence here to-day.

"My Lord, the calm and heroic courage which Your Excellency and Lady Hardinge displayed in the most trying circumstances, coupled with the knowledge that Your Excellency has not allowed this detestable crime to affect in any way your well-known sympathy and solicitude for the well-being of the people committed to your care, has deepened their grateful admiration and affectionate esteem for you. The noble words which have fallen from Your Excellency's lips to-day—your kindly appreciation of the sympathy which has been felt for Your Excellencies throughout the country and your large-hearted and statesmanlike declaration of your determination to adhere to your beneficent policy of administration and your solicitude for the families of the people who lost their lives will be received throughout the country with feelings of profound satisfaction and gratefulness.

"My Lord, I voice the feelings not only of the members of this Council but of the whole country in wishing that Your Excellency may soon be restored to perfect health and continue for the full term of your office—and more—to

[27TH JANUARY, 1913.] [*Sir G. M. Chitnais; Sir C. H. Armstrong; the President; Sir Harcourt Butler; Maharaj-Kumar Gopal Saran Narain Singh of Tikari.*]

guide the destinies of the teeming millions of this great Empire, and we hope that before long the culprits will be found out and that this crime will be uprooted and the fair fame of India will be re-established."

The Hon'ble Sir C. H. Armstrong :—"Your Excellency, on behalf of the European members of this Council, I venture to say how very pleased and thankful we are to see you here to-day, restored to health, after the awful crime perpetrated upon you on the day of the State entry. We have watched with the very greatest interest the daily reports of your health, and congratulate you most heartily on your wonderful recovery and escape. We earnestly hope that you may be spared to continue your good work amongst us, and that you may soon be restored to that perfect health without which the great work you have undertaken cannot be carried on. We deplore more than I can say the awful crime that was perpetrated against you, and can only hope that by firm and good government, deeds of this character will be completely wiped out. Let me assure you again what a very great pleasure it is to see you here again to-day."

His Excellency the President :—"I fear I shall not be able at present to preside further over your proceedings. I should have liked to shake you each personally by the hand, but you see my arm is still in a sling, so I am sure you will take the will for the deed, and will also forgive me for leaving you so soon on this occasion of my first public appearance."

[HIS EXCELLENCY THE PRESIDENT then withdrew, and the Hon'ble the VICE-PRESIDENT again took the Chair.]

STATEMENT LAID ON THE TABLE.

The Hon'ble Sir Harcourt Butler :—"Sir, I beg to lay on the table a further statement^a showing the number of Fellows, members of Senate and members of the Syndicate in each University in India, whether elected or nominated, giving details of their nationality, which was promised in my reply given to the question put by the Hon'ble Raja Sir Muhammad Ali Muhammad Khan Bahadur, of Malinudabad, at the meeting of the Legislative Council held on the 18th September, 1912.

QUESTIONS AND ANSWERS.

The Hon'ble Maharaj-Kumar Gopal Saran Narain Singh of Tikari asked :

"Will the Government be pleased to state what steps, if any, are being taken to build up the capital of Bihar and Orissa at Bankipore ?

- (a) Have any plans of the buildings required for the purpose been yet approved of, and, if not, what are the causes of the delay ?
- (b) Has any amount of money been sanctioned for the purpose ? If so, what is the amount and in what time is it to be spent ?
- (c) Do the approved or proposed plans, if any, of the new capital include buildings for a High Court for Bihar and Orissa and a separate University for the Province ?

"With reference to the reply given on the 18th September, 1912, to Mr. Sinha's question regarding the establishment of the capital of Bihar and Orissa at Patna, is it a fact that the delay in the building operations has caused grave apprehension in Bihar that the question of the capital of the Province has not been finally settled, and that it is yet possible that the capital may be located in some place other than Patna.

"Will the Government be pleased to make a definite statement of their intention on this head ?"

^a See Appendix A.

[*Sir Robert Carlyle; Maharaj-Kumar Gopal* [27TH JANUARY, 1913.]
Saran Narain Singh of Tikari; Sir Reginald
Craddock; Sir Harcourt Butler; Mr. Clark.]

The Hon'ble Sir Robert Carlyle replied :

"The answer to the first paragraph of the Hon'ble Member's inquiry is that a scheme and preliminary estimate for the establishment of the head-quarters of the Government of Bihar and Orissa at Bankipore were submitted to the Secretary of State on the 19th December last. His Lordship was asked to communicate his orders by telegram, in order that the work may proceed without delay. The orders of the Secretary of State are awaited.

"The answer to sub-clause (a) of paragraph 1 is that no plans of buildings have as yet been approved, nor can they be approved until the general proposals have been sanctioned by the Secretary of State.

"The answer to sub-clause (b) of paragraph 1 is that so far the only expenditure that has been sanctioned in connection with the scheme is a sum of Rs. 13½ lakhs on account of the acquisition of the land required. The expenditure will no doubt be incurred as soon as the formalities connected with the land acquisition have terminated.

"The answer to part (c) of paragraph 1 is that the scheme submitted to the Secretary of State does not include provision either for a High Court or for a University building. Provision has, however, been made for the acquisition of land for the former in case it should hereafter be decided to construct a High Court.

"The Government of India are not aware of the apprehension referred to, and have no intention of locating the capital of the Province elsewhere than at Patna."

The Hon'ble Maharaj-Kumar Gopal Saran Narain Singh of Tikari asked :

"Are the Government able to declare if the question of a separate High Court and University for the Province of Bihar and Orissa has yet been decided, and, if not, will they be pleased to state when these important questions are likely to be decided?"

The Hon'ble Sir Reginald Craddock replied :

"So far as the High Court is concerned the question of constituting a separate High Court for the Province of Bihar and Orissa has not yet been decided, and the Government of India are unable to say at present when a decision will be come to."

The Hon'ble Sir Harcourt Butler replied :

"The question of a University in the Province of Bihar and Orissa is under consideration by the Local Government. The Government of India are not aware when its recommendations may be expected."

INDIAN COMPANIES BILL.

The Hon'ble Mr. Clark moved that the Bill to consolidate and amend the law relating to trading companies and other associations be referred to a Select Committee, consisting of the Hon'ble Mr. Syed Ali Imam, the Hon'ble Mr. Enthoven, the Hon'ble Mr. Kenrick, the Hon'ble Mr. Kesteven, the Hon'ble Mr. Meugens, the Hon'ble Mr. Carr, the Hon'ble Mr. Arthur, the Hon'ble Mr. Eales, the Hon'ble Mr. Macpherson, the Hon'ble Mr. Saunders, the Hon'ble Mr. Monteth, the Hon'ble Sir Ibrahim Rahimtoola, the Hon'ble Sir Charles Armstrong, the Hon'ble Mr. Fazulbhoj Currimbhoj Ebrahim, the Hon'ble Mr. Chakravarti Vijiaraghavachariar, the Hon'ble Rao Bahadur Vasudeo

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Ramkrishna Pandit, the Hon'ble Rai Sitanath Ray Bahadur and the mover. He said :—“ At this stage in our legislative procedure, as Hon'ble Members are aware, debate is restricted mainly to the discussion of the questions of principle underlying a Bill. The main principles which we have followed in framing this measure are simple enough. They are, first, the avoidance so far as possible of direct interference by Government in the management and control of Companies, and, secondly, to endeavour to safeguard the interests of investors and creditors principally by providing for a full measure of publicity regarding the promotion and operation of trading Companies. The only other basic principle involved is one of drafting rather than of policy, namely, to follow as closely as possible the English law as set forth in the Consolidation Act of 1908. In all the very voluminous opinions and suggestions which we have received in relation to the Bill, no one of these principles, I am glad to say, has been the object of animadversion or challenge. Indeed, only one question affecting fundamental issues has been raised, and that cuts deeper, for it questions the desirability of legislation at all. The Orissa Association, writing from Cuttack, consider that the Bill, if passed into law, will seriously hamper the formation and growth of indigenous trading Companies, and they ask Government to stay its hand. No doubt all regulative legislation is to some extent a restriction on the freedom of commerce. But society is not yet perfect; there are rogues, probably, even in the Arcadian groves of Orissa, and swindlers who are able to rob the ignorant with impunity form a far greater impediment to industrial progress than the trivial amount of trouble and expense involved in complying with the formalities imposed by a Bill of this kind. What is specially required now for the commercial development of India is that her people should gain confidence and learn to invest freely instead of hoarding. There are signs that the ancestral habit of hoarding is beginning to give way before modern influences, and to my mind it is a most important duty of Government that they should do what they can to prevent any shock to credit and any consequent set-back to that tendency. This Bill is a measure which will increase the security of shareholders and investors, and as such I see every reason to hope that its influence will be all in the direction of promoting genuine commercial enterprise in this country. I fear the Orissa Association must go disappointed.

“ We have received, as I said just now, a very large number of opinions on the Bill. They relate to specific points which will be considered in Committee, and with which I cannot now deal; but I should like to take this opportunity of expressing on behalf of Government our appreciation of the amount of voluntary labour which has been expended on this measure. In particular Government owe their thanks to the two great Chambers of Commerce of Bengal and Bombay who have each appointed special committees and exhaustively examined all the provisions of the Bill. These Committees were also good enough to meet the Hon'ble Mr. Euthoven and myself during our recent tour, and to discuss very fully the points on which we required further elucidation. Many of the suggestions which we have received, not only from the Chambers but from other quarters, are of great value, and Government hope to be able to recommend not a few of them for the acceptance of the Select Committee.

“ There are only two other points, Sir, to which I need refer to-day. When I introduced this Bill in Council last March, I mentioned two matters of great importance with which we had not at that stage attempted to deal. I mentioned that the question had been pressed upon us whether we could not include in the Bill some special provisions in relation to Banks, provisions calculated to afford an additional safeguard not only for the shareholders in Banking Companies but for the depositors. I referred to the very serious difficulties which surround legislation on the subject, but I said that Government would be very willing to consider any suggestions which might be made while the Companies' Bill was in circulation. Since then we have given the matter very careful examination, and have discussed it with many important authorities in different parts of the country. The dangers involved in the present indiscriminate use of the word 'Bank' by Companies engaged in all kinds of activities, working often on a preposterously small paid-up capital, while a

[*Mr. Clark.*]

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large nominal capital is held out as a bait to depositors, are a very serious menace to credit. Government fully recognise these dangers, but they have come to the conclusion that it would be unwise to attempt to deal with the question in the present Bill. Though the subject is cognate with Company law, it can scarcely be said to fall within the scope of general Company legislation, and my Hon'ble Colleague, the Law Member, has pointed out that there are weighty technical objections to including it in a Companies' Bill. I need not enter into those now, but there is also the very serious practical objection that to attempt at this stage to include special provisions in regard to Banks would almost certainly render the passage of the Bill impossible during the present Session. That is, I think, very undesirable, and Government therefore have decided not to attempt to deal with any legislation for Banking Companies during this Session. They will not, however, lose sight of the matter, and now have under examination the question whether a special Act can and should be framed dealing with the evils which it is desired to repress.

"The other question to which I referred as one which we had to omit when the Bill was introduced, is the very important problem of Managing Agents and their relationship to the Companies they serve. I explained last year why we had not been able to deal with the subject prior to the introduction of the Bill, and at the same time I said that we had no desire to shut the door against legislation, if practicable suggestions were made to us before this Bill was passed into law. We have now received, as will be seen from the papers, a considerable body of opinion on the subject, and Government have given very careful consideration to the question in light of these opinions and in light of the unofficial information and advice which I obtained when on tour. While the importance and necessity of Managing Agents in this country is freely recognised on all hands, the opinion has been expressed pretty strongly in some quarters that their powers over the fortunes of the Companies they manage are insufficiently controlled, and that opportunity at least is afforded for their exercise to the detriment of the shareholders. It is clearly not for Government to step in and to say what arrangement a Company is to make with its Agents, which is what some of the suggestions made to us would amount to; but short of excessive interference of that kind, I do think, on the fuller information now before us, that there is scope for the legislature to assist in defining and regularising the relationship. We shall have, therefore, certain proposals to lay before the Select Committee, and I think it would be useful if I were to say something now as to the principles underlying them. Apart from the question of protecting the managed Company from the possibility of Managing Agents taking improper advantage of their position, some adjustment of the law would in any case appear to be necessary in order to fit in Managing Agents under this Bill. It must be remembered that the system of a Company being managed by a firm of Managing Agents is one which is to a large extent peculiar to this country. Consequently, it does not altogether fit in with the prescriptions of a law framed in England, with a view to English commercial custom. It is true, as I said last year, that in some cases Managing Agents, when this Bill becomes law, would be assimilated to Directors, and therefore would come under the provisions prescribing the various safeguards and penalties which apply in the case of Directors. But their relationship to the Company they manage is clearly not the same as the relationship of a Director to his Company in England. Circumstances frequently arise in which the interests of the Managing Agents and of some of the businesses they manage are not necessarily identical. I hope I shall not be misunderstood. I do not mean to suggest that in such a case Managing Agents as a body would be likely to sacrifice the interests of the Company they manage to those of their own firm. I merely cite the fact as indicating how difficult it is to fit them in within the scope of this Bill. In England, the Courts have laid down that a Director should not be placed in a position in which his interests might be prejudicial to those of his Company; in India, as I have said, it is clear that, in the case of Managing Agents who are also Directors, such a position might easily arise.

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[*Mr. Clark.*]

“The general principles that we propose to follow are these. We propose to adopt a very valuable suggestion made by the Bengal Chamber of Commerce, that it should be compulsory for all Companies to have Directors. We propose, at the same time, to provide that, if members of the Managing Agents' firm are also Directors of the Company they manage, they shall be in a minority on the Board. Managing Agents will, at the same time, be included in a definition of 'Manager' which will be inserted in the Bill. The effect of these proposals will therefore be that a Company managed by Managing Agents will have an independent Board, to whom Managing Agents will be responsible. I cannot think that anyone would dispute the reasonableness of such an arrangement. In the case of many Companies it exists already. It will, at one and the same time, safeguard the interests of the Company, and relieve Managing Agents of a degree of responsibility which should not be placed upon them. We also propose that the utmost publicity should be given to the provisions governing the relations between the Company and the Agents who manage it. If these relations are specified, as in many cases they are and as it is very desirable they should be, in the articles of association, there is no difficulty about the matter. If they are governed by a contract formed before the issue of the Company's prospectus, the contract would under the Bill have to be disclosed in the prospectus. We also propose to provide that, should they be governed by a contract made after the issue of the prospectus, or should they be subsequently modified by other contracts, the terms of all such contracts must be communicated to the shareholders. Lastly, we propose to deal with one other very important matter of principle. As things stand at present, it is open to a firm of Managing Agents to deal in the market, in some commodity in which their clients are also interested, and to treat the transaction subsequently, according to its success or failure, either as their own or as made on behalf of some business which they manage. It is open to them for instance to buy cotton or jute on a given day, and if the price rises to resell to their own profit, or if it falls, to transfer it to some mill they manage at the price at which they bought. I do not say that these things are often done, but no one familiar with business in India will deny that they do occur, and every one, I think, will agree as to the desirability of making their occurrence as difficult as possible. What we propose is that, when a Managing Agent makes a purchase on behalf of the Company he manages without disclosing the name of his principal, he shall record a memorandum of the transaction and forthwith communicate it to the company. The memorandum would be filed with the accounts, and would form a record of the transaction. Taking the case which I mentioned just now, this provision would render it impossible for the Managing Agent, after a fall in price, to transfer the cotton or jute to the managed Company at the price at which he bought, unless he were prepared to run an almost certain risk of detection. The provision, I should say, is taken *mutatis mutandis* from a similar provision in the English Stamp Act of 1891, which prescribes under penalty that a broker purchasing on behalf of an undisclosed principal shall forthwith communicate his action to his principal. The principle, it will be seen at once, is absolutely identical in both cases. So far as I can see compliance with this requirement will not impose any very serious burden on Managing Agents, especially as it will only be applicable in cases of purchases on behalf of an undisclosed principal. It can be avoided altogether if a Managing Agent buys as some of them do—specifically in the name of the Companies they manage, a practice which, in my humble opinion, is conducive to sound management and might well be more common. That, Sir, is what we propose in regard to Managing Agents, and let me repeat once more that these precautionary and regulative measures are in no way intended as a reflection on the great body of firms engaged in this particular type of business. They are no more a reflection on Managing Agents as a whole than our Life Assurance Act of last year was a reflection on the many admirably managed Insurance Companies who do business in India. So long as any malpractices exist, it is to the interest of the best and most scrupulously-managed firms that they should be put down, and I am sure that we shall have their support. I do not think that what we propose should interfere with legitimate business—that, of course, will be thoroughly threshed out in Committee—but I do think that it will do

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something to place the relationship between managers and managed on a more satisfactory footing."

The Hon'ble Sir C. H. Armstrong:—"I welcome the introduction of this Bill, and hope it will be passed very much on the lines on which it has been drafted. Many small alterations, to fit the special conditions in this country, are no doubt necessary, but on the whole, subject however to one or two alterations and additions of a more or less material character, the framers of the measure have done very well to follow on the lines of recent English legislation from which there should be as few variations as possible.

"An Act of this character can be looked at from two points of view; as a measure on the one hand fair to all concerned, neither hampering unduly promoters, Managing Agents and others whose initiative and industry ought to be encouraged in the interests of the community generally, or, on the other hand, putting shareholders and depositors, who are supposed to be men with a certain amount of common sense, in such a position of security as to make the lives of Directors and Agents almost a burden, and the difficulties of carrying on a joint-stock company so great as to discourage enterprise and so limit the field of investment, which at the present time in India ought most certainly to be encouraged in every way possible. The Bill now under discussion seems to take a middle course, and as it stands it will, I think, be generally approved by those whose judgment is not perhaps warped in favour of one point of view or the other.

"Many suggestions will no doubt be made to enlarge the scope of the Bill for the protection of shareholders and depositors who may be reckless in their investments—and unfortunately there are always many such—but I hope all attempts in this direction will be resisted and that the Bill will eventually emerge as a sound and prudent measure under which company management and the rights of shareholders and depositors will be more clearly stated and defined. It would be a mistake, I think, in a measure of this kind to legislate on the assumption that a large majority of Directors are careless or incapable, and that Managing Agents are seeking only their own good and are not studying the interests of their shareholders.

"Black sheep there will always be in every community, and in the nature of things losses will be incurred at times even by the most prudent investor; but this does not mean that the law should be so stringent that honest and well-managed concerns will be hampered in their management to the detriment of the business generally and of the shareholders in particular. The Bill as drafted meets with my approval because it is a moderate measure in every way, and this in my opinion is an essential characteristic of a Bill of this nature. It is certainly in my opinion and in the opinion of the Chamber I represent of first importance that the Indian Law should, as nearly as circumstances will admit, be uniform with the English Law, and if this is admitted additional clauses such as I understand may be suggested, severely regulating the status and position of Agents and Managing Agents and giving undue protection to unsecured creditors must be thrown out.

"The Bill as framed defines a clear course of management for Companies which, if adhered to, will form a sufficient protection to depositors and shareholders. In speaking as I do, I understand however that a Bill may shortly be introduced to deal specially with banking in this country, and if so there ought to be a clause in this measure dealing with the appointment of Officers and Managers and not permitting, as I noticed the other day in a prospectus of a new bank in Bombay with a large capital, the appointment of a particular firm as Agents and Managers for a term of several hundred years. A provision of this kind is so ridiculous that it ought to deter the general public from investing a single rupee, but unfortunately in this as in many other countries conditions of management and so forth are not studied by the ordinary investor, and the press as a rule does not keep the public fully informed on such matters.

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"A depositors' protection clause, which I understand may be suggested, is to the effect that no pledge charge mortgage or any interest in the moveable or immoveable property of the company can be created when the company has debts without the written consent of the creditors or without paying up those creditors who do not consent.

"Now the object of this clause, if suggested, is to protect imprudent lenders and under certain circumstances to give them security for their advances which at the time they were made they were content not to require; but what would be the position of companies if they could not promptly raise money on mortgage, often for temporary purposes, except with the practical certainty of having to pay off unsecured lenders. I am positive that under such circumstances company management in many cases would be quite unworkable, and I feel pretty certain that before very long it would be absolutely necessary to repeal any clause of this character.

"The question of Managing Agents and similar appointments will no doubt give rise to some discussion, but I submit that if the term 'Managers' is made to include persons actually managing, whether under the control of Directors or not, as also any person, firm or company appointed or acting as Agents of a company, it will provide sufficient protection to the investing public and that any extension regulating in greater detail their status and position would go beyond the scope of the proposed legislation. The Hon'ble Member has made certain suggestions in this matter with which so far as I can judge at the moment I quite agree.

"A clause I should be very glad to see inserted is one relating to company advertisements and to the amount of capital stated which should always clearly indicate the amount paid up, if the authorised or subscribed capital is also stated. I am quite aware that no similar clause exists in the English Act, and the reason probably is, that the need for it has not arisen, but in this country I have noticed in the last few years many advertisements of a very misleading character, and I think it very advisable that this objectionable practice should be stopped. It is a clause relating principally, no doubt, to banking advertisements, and if a Banking Bill is to be introduced later on, a clause of this character should also appear in it; but in the Companies' Bill it is also very desirable; and as this view is very generally held, I hope the Hon'ble Member in charge of this measure will introduce a clause of this nature when the Bill is before the Select Committee.

"Section 142, with reference to Auditors, I thoroughly approve, and regard it as one of the most important sections in the Bill. Here also I admit there is no similar clause in the English Act, but in England, with hardly an exception, shareholders take very good care that a thoroughly qualified Auditor is appointed.

"In India, it is different, but this to a large extent is probably because only a few really qualified Auditors exist, and in taking up the question as is now proposed and by agreeing to grant certificates to suitable men from amongst whom only may Auditors be chosen, the Bill is bringing into existence in this country a profession which is badly needed and which undoubtedly will be of the very greatest value and one of the greatest safeguards in the future. Schools of Accountancy should be started wherever possible, and all help should be given to those who are willing to enter this profession.

"In connection with the winding up of Companies, it should, I think, be enacted that where two or more indebted to each other, or closely connected in business whether by having the same Managing Agents or otherwise, are being wound up, either by the Court or in any other way, the same person shall not be appointed Liquidator for two or more such Companies; the reason for this being that the indebtedness of one Company to another means a clash of interests which only independent Liquidators should be allowed to deal with. I am certainly opposed to suggestions which may be put forward with reference to unduly limiting the powers of a Liquidator appointed by the Court, whose work at all times is subject to the direction of the Court. One sympathises

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no doubt with creditors, but it does not follow from this that the view of a majority is necessarily in the best interests of the whole body of creditors; nor do I think it in any way follows that an Advisory Committee would really help a Liquidator who was honestly striving to do his best for the creditors and shareholders of the firm he was winding up. I can well imagine that competent Liquidators would not act under such conditions, and if so, any material restrictions of this kind would probably in practice be very prejudicial.

"The form of balance-sheet subjoined to Table A ought also to receive attention. As it stands it is clearly a copy of an old form, and what is now wanted is information in some respects of a more definite character, though to a large extent this will come more appropriately in a Banking Bill. A point I would, however, particularly direct attention to, is the necessity for a more precise description of the character of the debts for which a company is liable, whether, for instance, they are secured on mortgages or debenture bonds or by a lien or charge on the property or assets of the company, so that it may be known at a glance what property and assets of a company are *fi ce* and available for the general body of creditors. Information of this kind is very necessary, and should not be objected to by the management of any company. A balance-sheet without giving too much information away should show, as clearly as possible, to an intending investor or depositor the general position of the company, and if it does this a creditor in most cases will only have himself to blame if he takes undue risks. Another point, but this refers perhaps more particularly to banking, is that on the credit side there should be items for debts considered good for which the company holds personal security only and also for which the company holds other security. The word 'security' now-a-days very often means only 'personal', and this is apt to be misleading to the uninitiated. It should, as far as possible, be made perfectly clear whether the security is only a personal one or something more tangible.

"The only other point I need touch on is the omission in the Bill to exempt private companies from filing their balance-sheets, and this should be rectified not only because the exception appears in the English Act, but because a private company which cannot invite the public to subscribe for its shares or debentures is practically nothing more than a partnership concern which has become incorporated as a private limited company to facilitate the arrangement of capital for various reasons, for instance on account of the death or retirement of a partner, etc. It is very advisable, I think, that the formation of these private companies should be encouraged, but if their affairs have to be submitted to the public, there will be less inclination to adopt this system, and the result will be a continuation of privately-owned firms about which it is so very difficult to get any reliable information.

"It may and probably will be argued that the balance-sheets of private limited companies should be filed, but when the alternative is considered, it will, I think, be conceded that the English exemption is preferable. It should also be enacted that there is no restriction on such companies regarding the appointment of Auditors. The matter is one which really concerns only the firms themselves, and it may be taken for granted that they will do what they consider best for the interests and security of their business. This question of the filing of balance-sheets also applies to companies established outside British India, registered for instance, as many of them are at present, in the United Kingdom. No restriction of the kind should be placed on such companies; and on those registered in other countries, it will be sufficient if they file with the registrar under the Indian Act a copy of the balance-sheet required by the law of their country of origin, provided that, in the opinion of the Government of India, the company law of such country is established on a satisfactory basis. The wording in this section, No. 310, 'which establishes a place of business' is perhaps rather vague in its application to this country; for business methods in India differ in many ways from those of Great Britain. This point is one which seems to require a good deal of consideration, and what is necessary is, that the expression 'establishes a place of business in British India' should be defined with necessary limitations.

"To revert again to the subject of private companies, I should be glad to see the inclusion of a provision enabling a public company to become a private

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company if a suitable section could be framed; as the Bill stands at present if such a course is to be carried out, it can only be done at the expense of the public company going into liquidation, which in this country it is always desirable to avoid, the public being apt to look upon a liquidation as a sign that the company concerned is unable to meet its engagements.

"These, Mr. President, are the remarks I now wish to offer on the Bill as it stands. It is a piece of legislation which has been needed for a long time, and is all the more necessary now that company promoting is making such strides in this country. If in Select Committee it is carefully borne in mind that Directors, Agents and Managing Agents must not be unduly harassed, the measure no doubt will prove a workable one and of the very greatest value to traders in this Country and to investors here and elsewhere."

The motion was put and agreed to.

INDIAN EXTRADITION BILL.

The Hon'ble Sir Reginald Craddock :—“Sir, in moving to refer the Bill to amend the Indian Extradition Act to Select Committee, I have only a very few remarks to offer. The Bill was introduced in the last Simla Session as a purely formal measure to remove a doubt that had been felt, but was not shared by all High Courts even in India, as to whether, under section 7 of the Indian Extradition Act, the Chief Presidency Magistrate had the same powers to execute warrants received from Political Agents as District Magistrates all over India have. It was not intended to introduce any change in practice, but merely to make it clear that the machinery which applies and has applied to British India generally equally applied to similar cases in the Presidency-towns.

“The Hon'ble Sir Vithaldas Thaksey came up specially from Bombay, however, to represent that the powers which this section would confer on Chief Presidency Magistrates would be open to serious objection in the case of Bombay itself.

“The Hon'ble Member was not able to cite any concrete instances where abuses or hardships had occurred, and it seemed that his apprehensions were rather due to what might occur, and what had not occurred, than to any real experience of the abuses which he feared. But it has been a well-established usage that at a Simla Session, if opposition is raised to any measure which might possibly be thought to bring it into the nature of contentious legislation, that measure is not undertaken or passed into law at Simla. We, therefore, decided to postpone further consideration of the Bill until the current Session at Delhi. During the interval the opinions of Local Governments and Agents to the Governor General and Residents have been obtained. As was expected they are able to show that this particular power has been exercised not only by District Magistrates in India generally, but also by the Chief Presidency Magistrates themselves without any question, and that no cases of hardship or abuse have ever come to their notice. Possibly the Hon'ble Member and any who may have agreed with him were unaware to what extent the action of a Political Agent issuing a warrant under section 7 is guided and controlled by rules that were framed in 1904 for the purpose of carrying out the objects of that section. In these circumstances, the Government do not propose to make any alterations in the amendment that is already before the Council, but they propose that the Bill should be referred to a Select Committee, and that will give the opportunity for any safeguards, if any are possibly necessary, to be examined. I move therefore that the Bill to amend the Indian Extradition Act of 1903 be referred to a Select Committee, consisting of the Hon'ble Mr. Syed Ali Imam, the Hon'ble Mr. Fazulbhoj Currimbhoj Ebrahim, the Hon'ble Nawab Saiyid Muhammad Sahib, the Hon'ble Sir G. M. Chitnavis, the Hon'ble Malik Umar Hyat Khan, the Hon'ble Mr. Arthur, the Hon'ble Mr. Saunders, the Hon'ble Mr. Wheeler, the Hon'ble Sir Henry McMahon, the Hon'ble Rai Sri Ram Bahadur and the mover.”

The motion was put and agreed to.

[*Mr. Syed Ali Imam.*] [27TH JANUARY, 1913.]

ADMINISTRATOR GENERAL'S BILL.

The Hon'ble Mr. Syed Ali Imam :--“ Sir, I have now to move that the Bill to consolidate and amend the law relating to the office and duties of the Administrator General be referred to Select Committee. Hon'ble Members are aware that the Bill was introduced by me into this Council last September, and I then submitted to the Council the various reasons which have led the Government of India to take up this measure. At that time I also explained the main features of the Bill as also the principles governing it. Since then it has been before the country, and I am gratified to find that on the whole it has been favourably received. The opinions of Local Governments, public bodies and individuals having special knowledge of the subject with which we have been favoured have considerably added to the information in our possession. They will receive every consideration when the Bill is taken up in Committee. I should be taking up the time of Council unduly if I were to attempt to deal with all of them at the present stage, but I would fain refer to a few that appear to involve important questions of principle.

“ One of the suggestions is that, as the office of the Administrator General and that of the Official Trustee are generally held by the same person, it is desirable that the law which regulates and prescribes the function of these officers should be combined in a single Act. This suggestion has received the support of no less eminent an authority than the Calcutta High Court. It will be seen from the List of Business that one of the motions standing in my name to-day is to move that the Official Trustee's Bill also should be referred to a Select Committee. The present Bill and that measure have much in common and are closely allied to each other in many respects. In matters of principle and of policy, there is a striking similarity between the two. For this reason the same members have been selected for service in both the Select Committees to report on the two Bills. In these circumstances, it is hoped that the Committees will have every facility for the careful examination of the suggestion to which I have referred.

“ Another important point which calls for a careful examination is the question whether the restrictions contained in the Bill as to persons eligible for appointment to the office of Administrator General should be retained or not. The Upper India Chamber of Commerce has put in a plea in favour of the eligibility of business men, such as bankers and chartered accountants. It will be for the Select Committee to consider the suggestion.

“ There is a point regarding the fees to be levied in respect of the duties of the Administrator General to which I should like to make a passing reference at the present stage. The Bill as drafted empowers Government to make rules prescribing the fees with the safeguard that in case of estates already in charge of the Administrator General, they shall not exceed those that are paid at present. There is also a clear provision that whatever fees are levied, they shall be prescribed with due regard to the fact that they shall not be in excess of the necessary expenditure which Government will have to incur in giving effect to the Act. In short there is no intention whatsoever to make the fees a source of revenue. A suggestion has, however, been made that a graduated scale of fees should be fixed. As against this the advantages of securing sufficient elasticity to enable Government to make rules to meet special cases arise. I feel sure that the Select Committee will approach this question with an open mind and a due regard to its importance.

“ Finally, I may say that modifications in the drafting of clause 58 of the Bill have been proposed by various authorities. That clause empowers the Governor General in Council to constitute new provinces for the purposes of the Act and to appoint separate Administrators General for such provinces. Here again is a matter of much importance that is worthy of receiving a very careful consideration at the hands of the Select Committee.

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“ With these few words I move, Sir, that the Bill to consolidate and amend the law relating to the office and duties of Administrator General be referred to a Select Committee, consisting of the Hon'ble Sir Reginald Craddock, the Hon'ble Sir William Vincent, the Hon'ble Mr. Chakravarti Vijayaraghavachariar, the Hon'ble Sir Ibrahim Rahimtoola, the Hon'ble Raja Jai Chand, the Hon'ble Raja Sir Muhammad Ali Muhammad Khan, the Hon'ble Mr. Arthur, the Hon'ble Mr. Walker, the Hon'ble Mr. Wheeler, the Hon'ble Mr. Qumud Huda, the Hon'ble Mr. Kinney, the Hon'ble Mr. Kenrick, the Hon'ble Pundit Madan Mohan Malaviya and myself.”

The motion was put and agreed to.

OFFICIAL TRUSTEES BILL.

The Hon'ble Mr. Syed Ali Imam :— Sir, I now move that the Bill to consolidate and amend the law constituting the office of Official Trustee be referred to a Select Committee. This Bill like the one which has just been discussed was introduced last September and has been before the country since then. It has been equally fortunate in having been well received. I may add that most of the opinions offered are by the same authorities that have criticised the other Bill, and on many points the suggestions made affect both the measures. Some of the common features are the suggestions regarding the amalgamation under a single Act, the eligibility of some business men to the post of an Official Trustee, and the fixing of a graduated scale of fees with all of which proposals I have already dealt in my submissions on the Administrator General's Bill. But apart from these suggestions there are some that have a particular bearing on the functions of the Official Trustee, and I propose to touch upon those which involve important questions of principle.

“ Clause 6 (6) of the Bill provides that the Official Trustee shall not act as executor or as administrator of the estate of any person. The Government of Bombay puts forward certain objections; is not in favour of this prohibition, and urges the grant of discretion to the Official Trustee to do so if he thinks fit. The question is an important one and deserves to be examined with some degree of care and circumspection. Similarly, a judicial officer of considerable experience from the Province of Bihar and Orissa is of opinion that the Official Trustee may be permitted to manage property of a religious trust if its objects are mainly of a charitable as distinguished from sectarian nature. Another judicial officer of the same Province thinks that the Official Trustee should be allowed to act as custodian trustee of religious endowments as that would ensure greater security in settling property on religious trusts. These proposals are of considerable magnitude requiring very careful examination in all their bearings. It is indeed very doubtful whether the Government of India are prepared to accept any extensive and important modification of the policy which has hitherto been adopted in regard to such endowments. The provision that the Official Trustee shall be the sole trustee and that his association with any other person as trustee is undesirable has received some adverse criticism. So also there are some other important particulars in which the Bill has been criticised in the opinions that have been received, but I do not think it is necessary to place them all before this Council at present as they have to be examined and threshed out at the Committee stage of this measure, as it is at that stage that they should be considered in the first instance. I desire, however, to acknowledge with gratitude the assistance which we have received from these criticisms, and to state that, as far as possible, the suggestions will receive the most careful consideration from Government.

“ I move, Sir, that the Bill to consolidate and amend the law constituting the office of Official Trustee be referred to a Select Committee, consisting of the Hon'ble Sir Reginald Craddock, the Hon'ble Sir William Vincent, the Hon'ble Mr. Chakravarti Vijayaraghavachariar, the Hon'ble Sir Ibrahim Rahimtoola, the

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Hon'ble Raja Jai Chand, the Hon'ble Raja Sir Muhammad Ali Muhammad Khan, the Hon'ble Mr. Athur, the Hon'ble Mr. Walker, the Hon'ble Mr. Wheeler, the Hon'ble Mr. Qumrul Huda, the Hon'ble Mr. Kinney, the Hon'ble Mr. Kenrick, the Hon'ble Pundit Madan Mohan Malaviya and myself."

The motion was put and agreed to.

WHITE PHOSPHORUS MATCHES PROHIBITION BILL.

The Hon'ble Mr. Clark introduced the Bill to prohibit the importation, manufacture and sale of matches made with white phosphorus, and moved that it be referred to a Select Committee, consisting of the Hon'ble Mr. Syed Ali Imam, the Hon'ble Mr. Montcath, the Hon'ble Sir Charles Armstrong, the Hon'ble Sir G. M. Chitnavis, the Hon'ble Mr. Arthur, the Hon'ble Mr. Carr, the Hon'ble Sir O. P. Lukis, the Hon'ble Mr. Walker, the Hon'ble Mr. Enthoven, the Hon'ble Rai Sitauath Ray Bahadur, the Hon'ble Rai Sri Ram Bahadur and the mover. He said:—"Hon'ble Members who were present in Council last year will remember the circumstances in which this Bill was withdrawn at the end of the Calcutta Session. The Hon'ble Sir Vithaldas Thackersey, whom we all regret to have no longer with us, the Hon'ble Sir Charles Armstrong and other Hon'ble Members objected that insufficient evidence had been laid before Council to justify the prohibition of the manufacture and importation of white phosphorus matches in India. Government were unable to accept this contention. I pointed out how the great majority of the important Governments of the world had found it necessary to prohibit the use of white phosphorus, and how the statistics showed that in those countries which had not prohibited, necrosis was very far from being stamped out. I also showed that other countries with a tropical rainfall, including our own Province of Burma, had proved themselves able to dispense with the white phosphorus match. The Hon'ble Sir Vithaldas Thackersey, however, made a suggestion the reasonableness of which Government at once recognised. He urged that, as the Bill was in any case not to come into force until July of this year and one section not until July of 1914, it would not be unfair that Government should postpone its passage until the present Session. Sir Vithaldas pointed out that this would not necessarily postpone the date on which the law actually came into operation, while it would give more time for the various parties interested to collect further information on the subject. In reply, I expressed on behalf of Government our willingness to agree to this arrangement. At the same time I made it quite clear that Government only agreed to this postponement, on the understanding that the Bill, if passed this Session, should come into force on the dates already specified—that is, that there should be no further delay in respect of stocks accumulated since March last. Sir Vithaldas entirely accepted this understanding, and the Bill accordingly was provisionally withdrawn. In the interval Government have acquired further information bearing on the subject which, for the convenience of Hon'ble Members, I have had printed in the Statement of Objects and Reasons.

"The main head, Sir, under which Hon'ble Members expressed doubts last year was whether the industry of manufacturing matches with white phosphorus was, under modern conditions, any longer a dangerous trade. They admitted, if I understood them correctly, that it had been so in the past and even in the quite recent past, but they contended that, at any rate in the last two or three years, it had been put on quite a different footing by the introduction of automatic machinery, the use of powerful ventilating fans, and strict sanitary control and inspection of the workmen. They swept aside the obvious conclusion to be drawn from the fact that the great majority of the important countries of the world had, either by joining the Berne Convention or on their own initiative, prohibited the use of white phosphorus within their borders. Up to last year, the latest country to take action was Austria in 1909.

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The United Kingdom, Germany, France, Spain, Italy, Denmark, Switzerland, the Netherlands, Russia, Greece, Portugal, the Balkan States, almost all the French, Dutch and British Colonies including some of the self-governing Dominions,—had, in various forms, taken action already. Unless, therefore, we are able to believe that all these countries were acting under a delusion as to the true nature of the industry, it must be assumed that the conversion of this process from the category of dangerous trades, which Hon'ble Members would have us believe has taken place, has been effected since 1909. But is this the case? Up to last year there was a small minority of countries which held out against prohibition and which were cited as proof of the innocent nature of the industry. These included the United States of America, Japan, Sweden and Norway, Belgium and Hungary—all countries which manufacture matches on a considerable scale. Now, two or more of these nations have joined the list of prohibitory countries. Within a few weeks of our debate on this Bill last March, the American Congress passed a Bill imposing prohibitive taxation on matches made with white phosphorus in their country and forbidding their importation. This Bill received the Presidential assent on April 9th, 1912. Hungary has also passed prohibitory legislation in the course of the year, leaving only Japan, Sweden and Norway, and Belgium outstanding. If the industry were not still a dangerous one, why should the United States and Hungary have prohibited it? The action of the United States of America is especially significant. In that country, as is well known, the predominant political power rests with the commercial and industrial interests. The American Senate has proved itself, time and again, more tender to vested interests probably than any other legislative body in the world. Yet this same Senate has now compelled the match-making businesses of America to scrap their machinery and incur the expense of putting in the new plant required for the manufacture of matches by other processes. Americans are not given to importing sentiment into matters relating to business. There can be only one possible explanation. It is that all the elaborate precautions have broken down, and the conscience of the American people will not allow this industry to continue longer. The great Diamond Match Factory in Ohio is said to have been one of the finest equipped factories in the world. The most improved automatic machinery was used in it; it was admirably ventilated; the lavatory facilities were excellent; and the Company employed a dentist and a physician to look after the teeth and health of the employes. Yet it has been necessary to put an end to the industry which was conducted in it. The fact speaks for itself and disposes finally of the theory that the use of white phosphorus can now be rendered innocuous. The case of Hungary is hardly less notable. It is a country which hitherto has resisted prohibition. It held out when Austria prohibited the use of white phosphorus in 1909. Yet in Hungary, as in America, the irresistible logic of facts has won the day. I will not weary Council with a recital of the other information we have collected in relation to other non-prohibitory countries. It is printed in the prefatory Memorandum, and Hon'ble Members have no doubt read it for themselves. I will only remark that it is very far from bearing out the contention that the factories in these countries are immune from necrosis. To one significant fact, Sir, I would call especial attention. Both in Sweden and Norway, on two separate occasions, the factory inspectors have announced the extinction of the disease. In each case it has shortly afterwards re-appeared. The fact is that there is only one method by which it can be stamped out, and that is by prohibiting the use of white phosphorus altogether.

"It will probably, however, be objected that, whatever may be the experience of other countries, factories in India which use white phosphorus, enjoy an apparent immunity from necrosis. We have, no doubt, an absence of recorded cases, but I think I can show that the immunity which this absence would appear to indicate, is almost wholly illusory. Let Council consider what a genuine immunity would imply. Whatever difference of opinion there may be as to the degree of risk involved in the use of white phosphorus, one point at least is universally conceded—namely that it is essential in order to minimise the dangers

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of its employment to adopt elaborate automatic machinery, to enforce strict sanitary regulations, and to have frequent and thorough medical inspection. I have already referred to the elaborate precautions taken in American factories, and similar methods are employed in Sweden and Norway, and Belgium. Now, in India, neither the perfection of machinery nor sanitary control has been carried to anything approaching the same point. Yet the result is an apparent immunity. Are we then to hold that the ordinary laws of nature have become inverted, and that the degree of risk varies with the amount of precaution taken and not inversely to it—or in other words, that the less precaution you take, the less is the risk of contagion? For that, Sir, is what it amounts to, if we are to believe that Indian factories are practically immune from infection while in the United States, to take one example, all the skill and intelligence which has been brought to bear on preventive measures have only resulted in so many cases of necrosis that it has become necessary to tax the use of white phosphorus out of existence. No one could possibly maintain such a theory. The true explanation is simple and obvious enough. The very fact of strict sanitary measures being taken involves, when they fail, detection of their failure. Where the efforts to prevent infection are less vigorous and the control is less stringent, the means of detecting disease are proportionately less efficient. In England itself, the campaign against the use of white phosphorus was much hampered in its commencement by the difficulty of obtaining evidence. Naturally the difficulty must be much greater in India. We have here a more floating factory population who, if they are ill, simply desert the factory and return to their homes; we have a far smaller and far less organized industry. We have no such perfected system of medical inspection as has been imposed on the match-making industry in other countries. In a western country, the operatives now-a-days are thoroughly alive to the nature of the disease; they are ready to complain and demand compensation, and thus aid in its detection. Nothing of this kind, of course, would happen in India, where the workmen could not be expected to have sufficient knowledge to trace the disease to its source. There is ample evidence now in the recent action of the United States and Hungarian Governments that the most elaborate preventive measures have broken down. Can we possibly rest easy that, with our far more imperfect methods, which affect detection as well as prevention, the mere absence of recorded cases is a real guarantee of immunity? No one, I suppose, would contend in so many words that white phosphorus, a deadly poison in the west, becomes an innocent component of manufacture in the east. Yet we are in effect committed to such a paradox, if we are to believe that Indian match factories, less well regulated, less well equipped than those of Europe and America, are really immune from necrosis. It has been urged that Government should delay action until some number of well-established and authenticated cases of necrosis have occurred in India. This seems to me very extraordinary doctrine. It means in plain, unvarnished language, a purely gratuitous sacrifice, if not of human life, at least of human health and welfare. There are two ways, Sir, of acquiring knowledge: one by personal experience, the other by benefiting from the experience of others. In this imperfect world, where experience is so often synonymous with suffering, there is in most cases everything to recommend the latter. Especially is it the duty of Government to adopt it, when it is a question of protecting those for whom they are responsible from the infection of a terrible disease.

“ We have then, Sir, clear and convincing evidence of the failure in other countries of all efforts to make the industry a safe one by regulation: we have further the certainty that the same causes must produce the same results in India. Against these motives for prohibition, there must be set whatever measure of inconvenience the prohibition may cause to the lower classes, especially in agricultural districts, who have become accustomed to the use of these matches—inconvenience which, it was urged last year, might amount to positive hardship during the rains and in the damper parts of India. Clearly this inconvenience or hardship if you like—is not susceptible of exact measurement. But I have had some information collected which at any rate throws some light on the subject. We have obtained figures from the Indian

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Custom houses which show the proportion borne by white phosphorus matches to the total imports of matches at each of the principal ports. The results are interesting. The figures show that the proportion of strike-any-where matches imported was, in round figures 75 per cent. at Madras, 60 per cent. at Bombay, 50 per cent. at Karachi, 25 per cent. at Calcutta, and *nil* at Rangoon. Now of the areas served by these ports clearly one of the dampest is that served by Calcutta including, as it does, Assam, which boasts of some of the heaviest rainfall in India, and the waterlogged districts of Eastern Bengal. Yet the proportion of white phosphorus matches imported at Calcutta represents only 25 per cent. of the total imports at the port, while at Karachi, which feeds the rainless plains of the Punjab and the North-West, the proportion is 50 per cent. Again the proportion at Bombay, which has for its hinterland the area of heavy rainfall in the Western Ghats, is but little in excess of that in Karachi. I venture to think, Sir, that there is very little justification in those figures for establishing a ratio between rainfall and the demand for matches made with white phosphorus. To my mind it is much more a question of custom, based on the white phosphorus match having been the first in the field, than of any absolute necessity. The change will cause some inconvenience, no doubt, but not hardship in the sense which was urged last year. I referred just now to the fact that no strike-any-where matches are imported at Rangoon. That port stands on a different footing from the others owing to white phosphorus matches having been prohibited in Burma since 1890, so that the question of personal taste does not come in. But this prohibition, which has lasted for so long, is a very significant fact; and I confess I cannot understand how any one can seriously urge that these matches are a necessity of life in a damp climate when the dwellers in the swamps of the Irrawaddy delta or the rain-swept jungles of Upper Burma, have managed perfectly well without them for the last 23 years. The Government of Burma a few years ago were invited in another connection to express their opinion on this subject. They replied that the exclusion of non-safety matches from the Province had caused no public inconvenience and had not been received by the public with any protest. Why should what is possible in Burma be impossible in Bombay? We had no answer to that question last year, for the best of all reasons, that there is no answer. If all that is wanted is a strike-any-where match, so that the raiyat may continue to follow the practice to which he is said to be addicted on the Bombay side, of carrying a few loose matches in his turban instead of a whole box, I think there is very little doubt that it will be forthcoming. Any number of brands of strike-any-where matches made without white phosphorus are now on the market. The figures quoted in the Statement of Objects and Reasons show that out of 271 brands recently tested at the English Custom houses, only 11 were found to contain white phosphorus. If the safety match does not achieve general popularity, I venture to prophesy that a strike-any-where match manufactured without white phosphorus will very soon appear and capture the Indian market.

"It is an admirable thing, Sir, to wish to save the raiyat from all possible hardships, but it is the duty of Council also to weigh in the balance the price which may have to be paid for his convenience. I cannot help thinking that, if Hon'ble Members knew more clearly the nature of the dangers to which those engaged in this industry are exposed, they would have no further hesitation about supporting this Bill. It is not a pleasant subject, nor have I any desire to shock Council with physical horrors; but after all this is a most important factor in the case, for it is precisely owing to the terrible effects of necrosis that one by one the vast majority of the greater nations of the world have decided to extirpate the use of white phosphorus in the manufacture of matches. The disorder is trifling in its beginnings and not easily distinguished from other less pernicious affections of the teeth or jaw. But as it develops, the gums fall away; the teeth become loose and drop out; portions of the jaw decay and either break off of themselves or have to be removed by the surgeon's knife. The patient is left horribly and permanently disfigured. Usually, no doubt, he recovers his health, but the risk of returning to work in a match factory is or should be prohibitive—and he has to seek

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other employment with the handicap of a repulsive disfigurement upon him. I received recently from Vienna photographs of necrosis patients who had passed through the hospital there, and if any Hon'ble Member has need of further witness, I shall be glad to show them to him. They exhibit the faces of men and women, scarred, brutalised, barely human. And all this suffering is incurred, not, which alone could justify it, for some high object of human welfare, as when men in pursuit of knowledge risk and often fall victims to some horrible disease, but simply and solely for the production of an article which is convenient no doubt, but which is in no sense a necessity, and for which adequate and efficient substitutes exist. I cannot believe, Sir, that, knowing these things, Council will be content that Indian operatives should be exposed to this contagion for so trivial and unjustifiable an end. I go further. I am confident that they would wish India to take her part in aiding other nations to put an end to this industry in their lands. Ours is one of the few markets left to bolster it up. Some countries, such as Australia, have prohibited white phosphorus matches although there is no manufacture in their own borders and their own people are not affected. In India, we have the double motive. Whatever degree of immunity our factories may be thought to enjoy at present it cannot last for long. You cannot escape from inexorable laws of cause and effect. These are the reasons, Sir, which have led Government to wish that India should join the Berne Convention. I do not regret the delay caused by the postponement of this measure from last year, since its only result has been greatly to strengthen the case for legislation, but the time has now come when it must be passed into law. I beg, therefore, to re-introduce the Bill."

The Hon'ble Sir C. H. Armstrong:—"Sir, this question has already been discussed more than once in this Council, and on this occasion I have only a very few remarks to offer. The Bill comes before us again in its original form, but with a full Statement of Objects and Reasons which I have perused with very great interest. When the Bill was first introduced in September, 1911, I contended that, owing to vastly improved machinery in Norway and Sweden, from which countries India draws its supplies of these matches from Europe—the disease of necrosis has been almost stamped out. In March last, I gave some figures in support of this statement. From the information that we have now before us it appears that in nine years in Sweden the number of admitted cases was less than two per annum, and that in Norway where there are, I admit, a less number of workers, there were two cases in three years. Now the American figures, I admit, are not so favourable, but if I am correctly informed, the match that has lately been prohibited in America differs in some respects from the match which this Bill asks us to prohibit as it is made very largely by hand. Now, that there should be any risk of disease in this or in any other industry, is of course very much to be regretted and I do regret it. But I think that after all the case of India should be considered mainly from the point of view of Norway and Sweden—mainly from the figures that we have before us for Norway and Sweden—which perhaps do not show that the risks incidental to this industry are any greater than the risks in other industries, notably those where lead and arsenic are employed, and where workers are subjected to risks fully as great as those to which the workers in match factories in Norway and Sweden are now exposed. If, however, notwithstanding this, this Bill should become law, I can only hope that at no very distant date, a 'strike-any-where' match will be made to suit the needs and climate of this country, at a cost which will not be greater than the price of those matches which have been bought so largely by agricultural and other labourers in this country for a great many years. There is one alteration I would ask the Hon'ble Mr. Clark to make in this Bill, and that is to extend the date by 12 months. I am quite well aware of the understanding that was arrived at in March last when this question was postponed for further consideration, and if this point had been realized by those who are engaged in the trade, I would not of course have referred to it. I find, however, on making inquiries at the ports that merchants had not fully realized that this understanding had been arrived at, and I am told that the usual contracts for a year or more have already been made. It would therefore be a very great convenience to all concerned if the date mentioned in the Bill

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could be extended by 12 months; and in the meantime, I can only hope that some suitable match will be made to get over the present difficulty."

The Hon'ble Sir Charles Pardey Lukis:—"Sir, I should like, with your permission, to make a few remarks on the medical aspects of this Bill. I can fully confirm all that has been said by the Hon'ble Member in charge of the Bill as regards the impossibility of enforcing in India that strict observance of personal hygiene or of securing that skilled attention which is necessary if the manufacture of white phosphorus matches is to be carried on with safety. It must be remembered, moreover, that the mere fact that cases of Phossy jaw have not been reported in this country does not justify our holding that the disease does not actually exist. It is quite possible that without any wish for or attempt at concealment such cases may have escaped notice. The so-called 'Phossy jaw', which the Hon'ble Member has described to you, is merely a severe form of necrosis. Now necrosis of the jaw is by no means an uncommon disease in India. For instance, I find from the dispensary reports that during 1913 in the districts in which at the present moment match factories are working, eight cases of necrosis of the jaw were treated, namely, three in Ahmedabad, four in Belgaum, and one in Dharwar. There is no evidence to connect these cases of necrosis of the jaw with the match-making industry, but I submit that for two very good reasons such connection might exist without having been discovered. In the first place, the Indian labourer knows nothing whatever about Phossy jaw, and it is extremely unlikely that he would ever associate the disease from which he is suffering with the occupation in which he is engaged; and secondly, owing to the fact that the match-making industry is now in its infancy, it is extremely unlikely that the medical officer would make any inquiries on this point. For these reasons, therefore, and in view of the extreme difficulty, if not the impossibility, of securing adequate safeguards, I am very strongly of opinion that from the point of view of the health of the community, the case ought to be taken in hand now, and that we ought not to wait till the danger assumes alarming proportions."

The Hon'ble Mr. W. H. Clark:—"Sir, there is only one point I need refer to, and that is, the suggestion made by the Hon'ble Sir Charles Armstrong that we should extend the date of operation of this Bill by 12 months. I shall be very glad to take what he has said into consideration before we go into Committee. The matter is one on which no doubt he will not expect me to make any statement now, but Government will consider it and the point can be discussed in Committee."

The motion was put and agreed to.

The Council adjourned to Monday, the 17th February, 1913.

W. H. VINCENT,
Secretary to the Government of India,
Legislative Department.

DELHI;

The 31st January, 1913.