

Thursday, September 2, 1920

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Laws and Regulations

From April 1920 to September 1920
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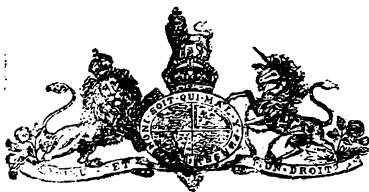
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GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

PROCEEDINGS OF THE INDIAN LEGISLATIVE COUNCIL ASSEMBLED UNDER
THE PROVISIONS OF THE GOVERNMENT OF INDIA ACT, 1915.
(5 & 6 Geo. V, Ch. 61.)

The Council met at the Council Chamber, Viceregal Lodge, Simla, on
Thursday, the 2nd September, 1920.

PRESENT :

His Excellency BARON CHELMSFORD, P.C., G.M.S.I., G.M.I.E., G.C.M.G., G.C.B.E.,
Viceroy and Governor General, *presiding*, and 51 Members of whom
42 were Additional Members.

QUESTIONS AND ANSWERS.

The Hon'ble Maharaja Sir Manindra Chandra Nandi asked :— 11 A.M.

1. " (a) Is it a fact that indebtedness on the part of a Government servant is very much discouraged, if not looked upon as a disqualification, in certain circumstances? Indebtedness of Government servants.

(b) What enquiries, if any, have the Government of India or the different local Governments made to ascertain as to whether low paid subordinate officers are able to make both ends meet under existing economic conditions,

[*Moharaja Sir Manindra Chandra Nandi ; Sir William Vincent ; Mr. Sachchidananda Sinha ; Colonel W. D. Waghorn.*] [2ND SEPTEMBER, 1920.]

or whether they are running into debt in order to maintain themselves ; and what results have such enquiries led to ?”

The Hon'ble Sir William Vincent replied :—

“(a) Yes. Attention is invited to rule 16 of the Government Servants' Conduct rules.

(b) Information is not available as to whether the question of indebtedness was specifically enquired into. The rates of pay for the establishment serving in the Imperial Secretariat under the Government of India have been revised, and most provinces also have now introduced new rates of pay for their low paid subordinate officers.”

The Hon'ble Maharaja Sir Manindra Chandra Nandi asked :—

Living wage of an Indian engaged in clerical work.

2. “(a) Have Government made any inquiries for the purpose of fixing the minimum living wage for an Indian engaged in clerical work with reference to the minimum human needs of an average Indian family in the different provinces ; or are Government aware of any such inquiries having been made in recent times by any of the local Governments ?

(b) If so, will Government be pleased to place on the table all papers embodying the results of such inquiries ?”

The Hon'ble Sir William Vincent replied :—

“(a) The Government of India have made enquiries of this nature for the purpose of dealing with the establishment of the Imperial Secretariat. They are not aware whether such enquiries have been made by local Governments.

(b) An extract* from the report of a committee appointed to consider the memorials of the Government of India establishment regarding pay and allowances is laid on the table.

The Hon'ble Mr. Sachchidananda Sinha asked :—

Enhancement of passenger traffic rates on railways.

3. “(a) Is it in contemplation to enhance the rates of passenger traffic on any of the railways ? If so, on which of them ?

(b) What are the lines which have already raised their passenger traffic rates since August, 1914 ? And to what extent have they done so ?

(c) When is the personnel of the Railway Committee which is to be appointed likely to be announced ?

(d) What are the subjects that are to be referred to the said Committee for their consideration ? Will the question of the recent increase in the passenger traffic rates be one of them ? If not, why not ?

(e) Do Government propose to have representatives of non-official Indian public opinion on the Committee ? If not, why not ?”

The Hon'ble Colonel W. D. Waghorn replied :—

“(a) Maxima and minima rates have been sanctioned by Government for all classes of passenger traffic and within these limits railway administrations have the power to vary passenger rates. No information has been received from railway administrations that they propose to enhance passenger rates further.

*Not included in these Proceedings.

[2ND SEPTEMBER, 1920.]

[Colonel W. D. Waghorn; Mr. Sachchidananda Sinha; Sardar Bahadur Sunder Singh.]

(b) A statement* showing the passenger rates in force in July 1914 and in August 1920 respectively is placed on the table.

(c) The Government of India are in correspondence with the Secretary of State on the subject of the proposed Railway Committee, and an announcement will be made shortly.

(d) The terms of reference will probably include the following:—'The relative advantages of the different possible methods of management of the Indian State-owned railways, the functions, status and constitution of the Indian Railway Board and the system of control exercised by the Government of India over railway administrations, the arrangements for the financing of railways in India, the present system of control by the Government of rates and fares, and the machinery for deciding disputes between railways and traders.'

The Hon'ble Member will see from the proposed terms of reference that only general questions of policy will be submitted to the Committee.

(e) Representatives of non-official Indian public opinion will be asked to sit on the Committee."

The Hon'ble Mr. Sachchidananda Sinha asked:—

4. "(a) Has the attention of Government been drawn to an editorial note headed 'Racial Bar' in the *Searchlight* of Patna, dated the 1st August last? Retiring rooms on certain railway lines in South India.

(b) Is it correct, as stated in the note that on certain railway lines in South India the use of retiring rooms is not permitted to Indians and is confined to Europeans only?

(c) If so, what are the railways which still perpetrate such a distinction and what is their justification, if any, for doing so?

(d) Do Government contemplate taking any steps for the removal of this distinction? If not, why not?"

The Hon'ble Colonel W. D. Waghorn replied:—

"(a) The attention of Government has not previously been drawn to the note referred to.

(b) The reply is in the affirmative.

(c) On the Madras and Southern Mahratta and South Indian Railways retiring rooms at certain stations are provided for European passengers. The usual practice is to allot waiting or retiring rooms to 1st and 2nd class passengers, and Indian passengers holding tickets of these classes are entitled to the use of these rooms according to the class of ticket they hold.

(d) The Madras and Southern Mahratta and South Indian Administrations are not under the control of the Railway Board in regard to these matters, but I shall be very glad to point out to those Administrations that this practice is not in accordance with that prevailing elsewhere in India."

The Hon'ble Sardar Bahadur Sardar Sunder Singh Majithia asked:—

5. "(a) Has the attention of Government been drawn to a note in the editorial columns of the *Tribune* dated 10th August last under the heading 'Profits of the Burma Oil Company'? Sale of kerosene oil at pre-war rates.

(b) Do Government intend to take any steps to induce the Burma Oil Company to sell kerosine oil at pre-war rates or at much cheaper rates than it is being sold nowadays?"

*Not included in these Proceedings.

[*Sir Thomas Holland ; Sardar Bahadur Sundar Singh Majithia.*]

[2ND SEPTEMBER, 1920.]

The Hon'ble Sir Thomas Holland replied :—

“(a) Yes.

(b) As will appear from the last Report by the Directors, the large profits made by the Burma Oil Company during the past year are largely attributable to the advance in the value of the rupee, the other principal contributing factors being reduced fuel consumption and greater yields of the more valuable products of crude petroleum as the result of improvements at the Refineries.

The attention of the Hon'ble Member is also invited to the Press Communiqué issued by the Burma Oil Company of the 30th June 1919. It is true, as there stated, that the Burma Oil Company have been selling their Victoria brand oil and oil of similar quality at the same price since 1905. The quantity available of this oil was however entirely inadequate to meet the Indian demand and in order to secure adequate supplies the Company undertook, with the approval of Government, to supplement its Burma output by supplies from outside sources. The Company, however, arranged to fix the price of their own output as well as of the imported oil at a figure which was calculated to bring to them no more profit than they would have made by continuing to sell their Burma output only at their old rates. The following quotation from the Report referred to above will be of interest in this connection :—

‘ Freer imports of foreign kerosine to India were resumed with a gradually improving tonnage situation in the year under review, but the Company's entire output of this, its largest product, was readily absorbed by the market which had been on short commons for the later years of the war. By means of the pooling of the foreign supplies of the Asiatic Petroleum Company, Limited, with the indigenous supplies of the Burma Oil Company, Limited, and of the British Burma Petroleum Company, Limited, kerosine continued to be available to the Indian consumer at prices on a considerably lower basis than those enjoyed in any other market in the world, a result possible only from the Burma Oil Company's adherence to the maximum price which it voluntarily fixed for its “Victoria” kerosine in 1905 and which it has never since exceeded.’

In view of the fact that the local output fell far short of the demand for kerosine, there was an obvious danger that increased prices would be charged by retail dealers. It was therefore considered by the Company to be fairer in the interests of the small consumer, to admit a supplementary quantity of foreign kerosine and to charge a proportionately higher rate for the mixture, as obviously the independent sale of high-priced imported oil and of low-priced local oil of roughly the same quality would result in the charge by the dealer of one price, namely, the highest, for both.

The Government of India are not aware of any recent change in the arrangements notified by the Company last year.”

The Hon'ble Sardar Bahadur Sardar Sundar Singh Majithia asked :—

Pay and prospects of sub-overseers serving in Mesopotamia.

6. (a) Will Government lay on the table a statement showing the pay of sub-overseers of the different provinces who volunteered their services to the Military Department for employment in Mesopotamia in the Irrigation Branch in response to the urgent call of Government during the war?

(b) Are Government aware of a memorial submitted by Punjab Sub-overseers serving overseas to assimilate their pay and prospects to those of their compatriots from other provinces?

(c) If there is any difference of pay and prospects, do Government propose to ask the Punjab Government to give the same emoluments to Punjab Sub-overseers and thereby remove this difference in pay?

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[*Sardar Bahadur Sundar Singh Majithia; His Excellency the Commander-in-Chief; Mr. Srinivasa Sastri; Sir William Vincent; Mir Asad Ali Khan Bahadur.*]

(d) Has any memorial been submitted by Sub-overseers from Punjab serving in Mesopotamia at the end of 1919 to the Government of India and, if so, what orders, if any, have been passed thereon ?

His Excellency the Commander-in-Chief replied :—

(a) A statement* showing the rates of pay admissible to sub-overseers of all Provinces employed in the Irrigation Directorate, Mesopotamia, is placed on the table.

(b) and (d) The answer is in the affirmative. The reply given to the memorials is contained in paragraph 1 of the Government of the Punjab, Public Works Department, Irrigation Branch letter No. 3615-E-I., dated the 19th November 1919 to the address of the Revenue Secretary, Baghdad, of which a copy* is also placed on the table.

(c) The reply is in the negative in view of what has been stated in the orders passed by the Government of Punjab on the memorials."

The Hon'ble Mr. Srinivasa Sastri asked :—

7. (a) Will Government be pleased to state, as fully as may be possible, the information in their possession regarding the operation of the Indian Arms Rules, 1920, in the various provinces so as to show how far in actual practice—

Operation of the India Arms Rules, 1920.

(i) the distinction between races has been abandoned :

(ii) the facilities for the obtaining and possession of fire-arms have been increased ; and

(iii) the local Governments have improved their methods of inquiry into the Arms Act and Arms Rules so as to remove any causes of dissatisfaction with the orders of District Magistrates and other officers concerned with their working ?

(b) If Government have no information on the subject, will they be pleased to collect it and lay it on the table ?"

The Hon'ble Sir William Vincent replied :—

(a) (i) Distinction between races has been abandoned by all local Governments.

(ii) The grant of licences is controlled by the rules themselves, but a statement* is laid on the table showing further facilities provided by certain local Governments.

(iii) Local Governments report that complaints have not been received against the orders of District Magistrates and other officers concerned with the working of the Arms Rules and that therefore there is no occasion at present to make any further alterations in the methods of enquiry. Any person feeling aggrieved has the right of appeal to the local Government and any such appeal will receive prompt and careful attention."

The Hon'ble Mir Asad Ali Khan Bahadur asked :—

8. (a) Are Government aware of the economic distress of the middle classes of the Indian population, especially those with fixed incomes, on account of the high food prices ?

Food-stuffs.

(b) Do Government contemplate any proposal to restrict, if not altogether to prohibit, the export from India of surplus grains such as wheat and rice, until their prices in India appreciably go down ?

(c) Do Government propose to enact immediate measures to fix the maximum prices of foodstuffs with a view to check profiteering ?"

*Not included in these Proceedings.

[*Rao Bahadur B. N. Sarma* : *Mr. Surendra Nath Banerjea* ; *Colonel W. D. Waghorn* ; *Rai Sahib Seth Nathmal*.] [2ND SEPTEMBER, 1920.]

The Hon'ble Rao Bahadur B. N. Sarma replied :—

" (a) Government are aware that some hardship exists on account of high prices of food-stuffs, but the rise in food prices in India is far less than in many other countries and is to some extent compensated for by an increase in wages.

(b) The export of all foodgrains from India, including wheat and rice, is already prohibited, and only small rations are allowed to be exported to places, mostly with large Indian populations, which are dependent on India for their maintenance. The Burma Government have recently represented that there is a larger exportable surplus of rice in the Province than was originally estimated and pressed for permission to export a part thereof. The Government of India have, after consulting the Provincial Governments chiefly concerned about their requirements permitted an export of the small quantity of 50,000 tons. The question as to what modifications if any in the existing system of the trade in rice are possible, with a view to increasing the supplies thereto and reducing the prices therein, are at present under consideration.

(c) The reply is in the ^enegative. "

The Hon'ble Mr. Surendra Nath Banerjea asked :—

Mograhat-Kulpi-Khari Railway line.

9. " (a) Is it a fact that, with the permission of the Railway Board, Messrs. McLeod and Co. completed a reconnaissance survey of the Mograhat-Kulpi-Khari Railway line in the District of 24-Pergannahs?

(b) If so, will Government state why the Eastern Bengal Railway made another reconnaissance survey of a line from Mograhat to Kakkdip?

(c) What decision (if any) has been arrived at in respect of the two schemes?

(d) Have Government in contemplation the opening of a Railway line to serve the Sunderban area? If so, will they consider the question of expediting the matter?"

The Hon'ble Colonel W. D. Waghorn replied :—

" (a) The reply is in the affirmative.

(b) and (c) In 1916 the Eastern Bengal Railway were instructed to make another reconnaissance survey for an extension of the Diamond Harbour Branch of the Eastern Bengal Railway to Kakkdip owing to a petition which was received suggesting this extension. As a result of the various reconnaissance surveys made in this area two alternative alignments are now suggested; one, a broad gauge line from Mograhat passing through Joynagar, Bistopur, and near Kulpi to Kakkdip; and the alternative proposed by Messrs. McLeod and Company for a narrow gauge line from Mograhat via Saligurh and Belleadanga to Kulpi, with a branch from Bistopur to Khari. It is doubtful if this narrow gauge line would meet the requirements of the area. The Agent has, however, since been directed to investigate the traffic possibilities of the two lines on the supposition that they are to be constructed on the broad gauge, and the results of this investigation are awaited.

(d) Government would be glad to see the possibility of railway construction with a view to opening up the Sunderban area. It is feared, however, that for some time to come all money available for construction purposes is likely to be absorbed by more urgent projects."

The Hon'ble Rai Sahib Seth Nathmal asked :—

Travelling Allowance for Government servants on transfer.

10. " (a) Are the rules for the grant of travelling allowance on transfers to Government officers being revised?

(b) Is it proposed to grant to gazetted officers of the 1st and 2nd class travelling expenses for their families also?

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UNIVERSITY BILL; THE INDIAN PASSPORT BILL;
THE INDIAN LIMITATION AND CODE OF CIVIL PRO-
CEDURE (AMENDMENT) BILL.

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[*Rai Sahib Seth Nathmal; Mr. W. M. Hailey; Mr. Shafi; Mr. H. R. C. Dobbs; Sir William Vincent*]

(c) Is it proposed to exclude from the category of family, for purposes of travelling allowance, parents, sisters and minor brothers, even though dependent on the officer concerned.

(d) If so, do Government propose to modify these rules so as to include in the term 'family' parents, sisters and minor brothers, dependent on the officer concerned?

The Hon'ble Mr. W. M. Hailey replied:—

“The rules regarding the grant of travelling allowance to Government officers on transfer have recently been revised with the sanction of the Secretary of State and a copy* of the revised Article 1094 of the Civil Service Regulations is placed on the table. It gives all the information asked for by the Hon'ble Member in his questions (a) to (c), but he will notice, with regard to question (b), that travelling expenses for families are now admissible not to gazetted officers of the 1st and 2nd classes only, but to all officers in superior service, i.e., 1st, 2nd and 3rd class officers and whether gazetted or non-gazetted.

As to question (d), the proposal was considered in connection with the revision of the rules and it was decided that the obligations of the State could not be extended so widely and that parents, sisters and minor brothers should not be included in the term 'family' for the purpose of these rules.

THE ALIGARH MUSLIM UNIVERSITY BILL.

The Hon'ble Mr. Shafi:—“My Lord, I beg to present the ^{11-10 A.M.} Report of the Select Committee on the Bill to establish and incorporate a teaching and residential Muslim University at Aligarh.”

THE INDIAN PASSPORT BILL.

The Hon'ble Mr. H. R. C. Dobbs:—“My Lord, I beg to present the Report of the Select Committee on the Indian Passport Bill.”

**THE INDIAN LIMITATION AND CODE OF CIVIL
PROCEDURE (AMENDMENT) BILL.**

The Hon'ble Sir William Vincent:—“My Lord, I move that the Bill further to amend the Indian Limitation Act, 1908, and the Code of Civil Procedure, 1908, be taken into consideration.

“I explained the object of this Bill and the effect of the various clauses when I introduced it and I have received no suggestions or amendments from any Member of this Council. I can only conclude that the Bill has therefore met with general acceptance.”

The motion was put and agreed to.

The Hon'ble Sir William Vincent:—“My Lord, I move that the Bill be passed.”

The motion was put and agreed to.

*Not included in these Proceedings.

126 THE INDIAN MOTOR VEHICLES (AMENDMENT) BILL; THE INDIAN PATENTS AND DESIGNS (TEMPORARY RULES) AMENDMENT BILL; THE INDIAN PATENTS AND DESIGNS (AMENDMENT) BILL; THE ROUBLE NOTE BILL.

[*Sir William Vincent; Sir Thomas Holland.*]

[2ND SEPTEMBER, 1930.]

THE INDIAN MOTOR VEHICLES (AMENDMENT) BILL.

The Hon'ble Sir William Vincent :—“ My Lord, I move that the Bill further to amend the Indian Motor Vehicles Act, 1914, be taken into consideration.

“The position in regard to this Bill is exactly similar to that with which I have just been dealing, and I will not therefore ask the Council to listen to any further discussion of it.”

The motion was put and agreed to.

The Hon'ble Sir William Vincent :—“ My Lord, I move that the Bill be passed.”

The motion was put and agreed to.

THE INDIAN PATENTS AND DESIGNS (TEMPORARY RULES) AMENDMENT BILL.

The Hon'ble Sir Thomas Holland :—“ My Lord, I move that the Bill to extend the operation of the Indian Patents and Designs (Temporary Rules) Act, 1915, be taken into consideration.

“In accordance with the decision of Council the Bill was published in the Gazette of India and the only comments that have been received have been favourable.”

The motion was put and agreed to.

The Hon'ble Sir Thomas Holland :—“ My Lord, I move that the Bill be passed.”

The motion was put and agreed to.

THE INDIAN PATENTS AND DESIGNS (AMENDMENT) BILL.

The Hon'ble Sir Thomas Holland :—“ My Lord, I move that the Bill further to amend the Indian Patents and Designs Act, 1911, be taken into consideration.

“This Bill was also published, in accordance with the orders of Council, in the Gazette of India and the only comment that has been received has been, in the same way, favourable.”

The motion was put and agreed to.

The Hon'ble Sir Thomas Holland :—“ My Lord, I move that the Bill be passed.”

The motion was put and agreed to.

THE ROUBLE NOTE BILL.

The Hon'ble Sir William Vincent :—“ My Lord, I move that the Bill to prohibit the possession and import of rouble notes be taken into consideration.

“In this case also I have received no criticisms or notice of any amendments.”

The motion was put and agreed to.

The Hon'ble Sir William Vincent :—“ My Lord, I move that the Bill be passed.”

The motion was put and agreed to.

THE REPEALING AND AMENDING BILL; THE POST OFFICE CASH CERTIFICATES BILL; THE INDIAN ARMY (AMENDMENT) BILL.

[2ND SEPTEMBER, 1920.]

[*Sir George Lowndes; Mr. W. M. Hailey; His Excellency the Commander-in-Chief; Sir Umar Hayat Khan.*]

THE REPEALING AND AMENDING BILL.

The Hon'ble Sir George Lowndes:—"My Lord, I have the honour to move that the Bill to amend certain enactments and to repeal certain other enactments be taken into consideration. 11-15 A.M.

"I think I need only follow the excellent precedent set in regard to the last five Bills. I have nothing further to say."

The motion was put and agreed to.

The Hon'ble Sir George Lowndes:—"I have the honour to move that the Bill be passed."

The motion was put and agreed to.

THE POST OFFICE CASH CERTIFICATES BILL.

The Hon'ble Mr. W. M. Hailey:—"My Lord, I beg to move that the Bill to amend the Post Office Cash Certificates Act, 1917, be taken into consideration.

"I also wish to follow the excellent example set me this morning. We have received no comments or criticisms on the Bill."

The motion was put and agreed to.

The Hon'ble Mr. W. M. Hailey:—"My Lord, I beg to move that the Bill be passed."

The motion was put and agreed to.

THE INDIAN ARMY (AMENDMENT) BILL.

His Excellency the Commander-in-Chief:—"My Lord, I beg to move for leave to introduce a Bill further to amend the Indian Army Act, 1911. 11-17 A.M.

"The object of this Bill is very clearly stated in the Statement of Objects and Reasons and I have little to add to the explanations given therein.

"The most important of the changes proposed is the abolition of flogging. I stated, some time ago, that Government would, on the termination of the war, consider the question of abolishing flogging as a punishment on active service. The power to award a sentence of flogging, in the field, has in many cases enabled Courts Martial to inflict this punishment in circumstances which would otherwise have necessitated the infliction of the death penalty.

"Nevertheless, the time has now come, I think, to abolish a punishment which is not altogether consonant with present day ideas, and which has been done away with in other armies.

"To replace flogging, it will be necessary to introduce a new form of punishment for offences committed on active service. It is proposed to follow the English Army Act in this respect, and so bring the British and Indian Armies into line. The effect of the Bill will be to put the Indian soldier on the same footing as the British soldier as regards immunity from corporal punishment for military offences.

"The other amendments proposed are comparatively unimportant and call for no special remarks."

The Hon'ble Sir Umar Hayat Khan:—"My Lord, I heartily congratulate the Government and specially His Excellency the Commander-in-Chief for having decided to introduce this Bill, which will be the greatest monument which could be raised for the services of the Indian

[*Sir Umar Hayat Khan; Mr. S. N. Banerjea: 12ND SEPTEMBER, 1920.*
His Excellency the Commander-in-Chief;
Mr. W. M. Hailey.]

soldiers done during the last world war by abolishing whipping as a punishment, and will always be coupled with the name of that illustrious and great soldier, the father of the Bill. The need for this reform was keenly felt by the Indian Army and knowing it, I put the matter before some of the authorities in India Office in the first year of the war, when I went with the funeral of Lord Roberts, may his soul rest in peace. Since then whenever I have had the time or opportunity, I have always pressed the necessity of the above to many a high official. Now as the change has come about it is not only a matter of great satisfaction throughout the Army but it is equally such amongst the martial classes from whom it has generally been drawn and on whose behalf I tender my heartfelt thanks. I consider the abolition of whipping as a punishment is one of the most unique and historic events in the history of the Army, for which not only those who are soldiers but the whole of India should be exceedingly grateful."

11-20 A.M.

The Hon'ble Mr. Surendra Nath Banerjea :—" My Lord, I am not a representative of the martial classes as my Hon'ble friend, Colonel Umar Hayat Khan, is and I have no right to speak on their behalf. I come from a comparatively non-martial population in the valley of the Ganges, and on their behalf and I may say on behalf of the civil population with non-martial tendencies and peaceful instincts, I desire to congratulate the Government on the abolition of the punishment of flogging from the Indian Army. I am sure it is a step in the right direction and will be accepted by the country with great satisfaction."

The motion was put and agreed to.

His Excellency the Commander-in-Chief :—" My Lord, I beg to introduce the Bill, and to move that the Bill, together with the Statement of Objects and Reasons relating thereto, be published in the Gazette of India in English."

The motion was put and agreed to.

THE INDIAN INCOME-TAX (BUSINESS PREMISES) BILL.

11-21 A.M.

The Hon'ble Mr. W. M. Hailey :—" My Lord, I beg for leave to introduce a Bill to terminate certain doubts which have arisen in connection with the Indian Income Tax Act, 1918.

" This Bill, my Lord, is of an explanatory or declaratory nature, and I should like to remove at once any apprehensions that exist in the minds of Members of this Council by stating that it is not intended to raise fresh revenue or to increase our taxation. I will explain to the Council as briefly as possible what the nature of the difficulty which has arisen is.

" Under section 9 of the Act—a section which taxes the profits of business—a reduction to owner occupiers of business premises, equivalent to the rental of such premises. Now, I do not desire to detain the Council by explaining the steps by which this deduction has got into the Act. Although I am not aware of the practice which has been followed in all parts of India, yet it is clear that in many parts of India it has been considered by our assessing officers that the fact that a reduction is made under section 9 has warranted them and for obvious reasons in making an equivalent assessment under section 8. The Allahabad High Court, however, by a Judgment which is not entirely unanimous but which will probably be considered as binding by our revenue authorities, has ruled that assessment cannot be made under section 8 owing to the present wording of that section. If we have to follow that ruling throughout India, it is clear that we and the Provinces will lose a very considerable sum of money. We therefore desire to obtain a declaration in the form in which it is put forward in this Bill, that an assessment of this nature can be made under section 8. It is possible that later on we may have to undertake a complete revision of our Income Tax Act. We are now engaging in increasing numbers a special staff

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[Mr. W. M. Hailey; Mr. A. R. Murray.]

for the assessment of income-tax, and the problems which they bring to light make it clear that a very considerable number of revisions of the Act is required. It is possible indeed that with the growing industrial development of the country, and the taxation problems which arise from it, we may have to undertake those numerous revisions of our Income-tax Act which are so common in England. However that may be, we wish to avoid the present loss with which we are threatened owing to the Allahabad ruling; and for that reason we have put forward the Bill in its present form. The wording of it is very simple, and I have not therefore proposed to refer it to a Select Committee; but at the same time I should like to assure the Members of this Council that we shall telegraph the full details of the Bill down to all Chambers of Commerce and invite their opinion before we proceed further in the matter.

"I beg for leave, my Lord, to introduce the Bill."

The Hon'ble Mr. A. R. Murray:—"At the last meeting of ^{11-26 A.M.} this Council, the Hon'ble Mr. Tata moved that leave to introduce the Indian Coinage Bill should be refused on the ground that sufficient notice had not been given, and that the opinions of public bodies had not been obtained. On that occasion I found myself out of sympathy with him for the reason that I was of the opinion that ample time had been given to all parties interested to formulate their views on the subject. Unfortunately I now find myself in the position that my Hon'ble friend was the day before yesterday, appealing to the Hon'ble Finance Member to have this Bill circulated for the purposes of eliciting opinion thereon before it is taken into consideration by the Council. The night before last I received a List of Business to be brought forward at this meeting of Your Excellency's Council, and along with that list I received copies of Bills which Hon'ble Members in charge were to move for leave to introduce—copies of all the Bills in the list with one exception and that a very notable one. Item 18 on the list reads—'The Hon'ble Mr. Hailey to move for leave to introduce a Bill further to amend the Indian Income-tax Act, 1918.'

"Now, incometax matters have always appealed to me, and I wondered why the Hon'ble Finance Member desired to amend the Indian Income-tax Act, 1918.

"Late last night I received a copy of this Bill. As a matter of fact some of us received it only this morning. Now, as we all see it is a very short Bill and the Hon'ble Member in charge may repeat what was said to the Hon'ble Mr. Tata at our last meeting, namely, that its shortness is an excuse for not asking for an expression of opinion on it. Indeed he may be tempted to make the old excuse that because it is a very small Bill, there cannot be much harm in it.

"It certainly starts off innocently enough. It is entitled a Bill 'to terminate certain doubts which have arisen in connection with the Indian Income-tax Act, 1918'; and the preamble reads:—

'Whereas doubts have arisen and may arise as to the meaning of the expression 'house property' in section 8 of the Indian Income-tax Act, 1918; and

'Whereas it is expedient to terminate such doubts and to prevent certain double allowances under the said Act; It is hereby enacted as follows:—'

"Now, if I, a plain business man, were drafting this Bill, I would have entitled it 'A Bill to rope within the scope of the Indian Income-tax Act, 1918, income that has never been taxed before.' And my preamble would read something to the following effect:—

'Whereas we find doubts have arisen as to what may or may not be a good deduction under the Act; and whereas there is the possibility that we may lose money under this head; and whereas it is expedient that we make up for this loss by roping within the scope of the Act revenue that has not been taxed before; Therefore be it hereby enacted that 'house property' shall be deemed to include 'business premises.'

"Now, I have had an intimate knowledge of the working of the Indian Income-tax for over 20 years, and it is news to me to learn that Government can introduce a Bill which is to increase the scope of the Income-tax Act at any meeting of the Council without previous notice of any sort. My Lord, I see perfectly the object the Hon'ble the Finance Member has in view, but I object to the method by which he proposes to attain the desired end. If a mistake has

[*Mr. A. P. Murray; Sir D. P. Sarbadhikari; Mr. S. N. Banerjee.*] [25th SEPTEMBER, 1920.]

been made as to the deductions to be allowed, then the method of calculating the deductions should be altered,—that is to say, the debit side of the account should be properly adjusted. In my opinion, it is wrong to permit more income to be brought within the scope of the Act than was contemplated when the Act was passed. For that reason, my Lord, I would ask that this Bill be circulated before it is passed through this session."

11.50 A.M.

The Hon'ble Sir D. P. Sarbadhikari:—"My Lord, I desire to support the Hon'ble Mr. Murray in his objection. In doing so, a Bengalee adage comes back to my mind: 'the cow-dung laughs when the dried cow-dung is being consumed as fuel.' The Hon'ble Mr. Murray will probably be more careful in future in acting in the way that he has indicated towards the Hon'ble Mr. Tata.

"My Lord, I have been more unfortunate than he, for it was only this morning that I had an opportunity of going through the Bill, and, since coming into this Council, I asked the Department for a copy of the Allahabad judgment referred to in the Statement of Objects and Reasons, but I could not obtain it.

"We should like to consider all the questions, raised in this Bill small as they may appear to be, in greater detail and with more care. I do not think, my Lord, that telegraphing the text of the Bill together with the Statement of Objects and Reasons to the Chambers of Commerce will answer the requirements of the case. Business premises are owned not only by members of the chambers of commerce but by many more business men who do not happen to be members of any chamber of commerce in existence or that may come into existence later. This will affect the small business man as well as the big Clive Street merchant prince who owns his own premises, lets out a portion and carries on his business in another. The reason why the Bill should be delayed has been furnished by the Hon'ble Member in charge himself. There are various other matters in connection with the Income-tax Act which will have to be gone into in detail in the immediate future, and the Bill before the Council to-day might well be one of the matters covered by the legislation that will have to be undertaken. Passing the Bill this session will I think make no practical difference in the working of the Act, because between now and the time when the more comprehensive Bill may come in, these matters may be considered more in detail and with care. My Lord, the Allahabad High Court has expressed a doubt with regard to one class of income; the Calcutta High Court recently has expressed a doubt with regard to another class of income—agricultural income for example. As the Hon'ble Member in charge has himself stated various matters like that will have to be gone into; and a seemingly small measure like the one we are discussing if passed now will really make no difference between now and when the other matters may be taken up. For this reason, my Lord, and having regard to the very short notice we had and the lack of opportunities of considering the matter in all its aspects, I desire to support Mr. Murray's objection."

11.55 A.M.

The Hon'ble Mr. Surendra Nath Banerjee:—"My Lord, I think I speak the sense of this side of the House when I say that this Bill should not be hurried through in this session and that it should be postponed for consideration until the time of the budget. As my friend behind me, the Hon'ble Dr. Sir Sarbadhikari, has pointed out there is no occasion for hurrying this Bill through this session; and as my Hon'ble friend has also observed the requirements of legislation will not be met by telegraphing the contents of this Bill to the various chambers of commerce. There are other local bodies interested in the matter and my Hon'ble friend, the Finance Minister has overlooked the great position of the profession to which I have the honour to belong, namely, the newspaper press. They may have something to say about it too, and therefore it is a matter of the first importance that this Bill should be postponed, that it should be published, that the various local bodies should be addressed, that the press should have an opportunity of discussing the matter and that public opinion should be in a position to make its pronouncement; and then it will be time enough for this legislature to take it up. There is no hurry; the interests concerned will not in the slightest degree suffer by delay; and I do hope and trust that my Hon'ble friend will see his way to give us an assurance that this Bill will not be passed during the present session."

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[Sir George Lowndes.]

The Hon'ble Sir George Lowndes:—"My Lord, I do not think the Council should be under any misapprehension as to this Bill. I repudiate entirely the suggestion of the Hon'ble Mr. Murray that we are now trying to catch income that we did not intend to catch before. What we are proposing to do by this Bill is to correct what I believe to have been a mistaken view of the law by two Judges of the Allahabad High Court. We think that there ought to be no doubt about such questions. If we left the matter there and waited till we got the decision of another High Court, we think our view would be upheld; but in a matter of income-tax we cannot afford to allow things to go on like that. We think the matter ought to be settled beyond doubt in the sense in which the Act was passed by the Council. The point of the Bill is this, and I cannot help thinking that the Hon'ble Members who have spoken have not really appreciated it. Under the Income-tax Act we charge different classes of income under different headings. The object of the Act as is shown by the earlier section is that all income-producing property is to be taxed. It then proceeds to divide income up under different heads for convenience of taxation. We tax professional income under one head; we tax income from securities under another head; we tax income from what is called house property under another head; we tax income from business under another head. In taxing income from business, in order to be fair to business firms, and following to a certain extent the English income-tax law, we have provided that where a business firm rents premises to carry on its business in it is to be allowed to deduct the rent it has to pay for its premises from the profits. Of course that is a sum which it has to pay in order to earn its profits. But where a firm owns its own premises, that is to say, has invested part of its capital, the capital being the thing upon which the income-tax is based—where it has chosen to invest part of its capital in its own premises, we say it has got to pay the tax on the income of that capital, whether you invest it in Government paper, in shares, or in anything else. So if you choose to invest it in your business premises you have got to pay income-tax on it; but for the convenience of business firms where they own their own business premises we have allowed them to deduct it from their business profit with the definite intention when the Act was passed that it would be roped in under the other section as house property. It was to the advantage of business firms that we should give them this allowance which is given in the same way as in the English Act—only it is there put differently owing to the special shape of the Act. Now, the effect of this decision, if it is allowed to stand, will be that if you hire business premises you deduct the rent that you pay but the owner will pay it under the house property section, but if you own the premises, i.e., choose to invest part of your capital in premises, no income-tax will be payable on the income of that capital at all. Naturally, perhaps, business firms who own premises, would wish that. But what we intended was that the interest of the capital invested in the ownership of business premises should always be taxed under section 8, that is under the heading 'house property' and not under section 9 'business profits'. It is obvious that it must be so. We are only putting aside what we consider to be a wrong interpretation that has been placed by a majority, only a majority, of a High Court, on this section. And is it unreasonable to say that house property does include business premises? The Hon'ble Mr. Murray seems to suggest that it could not do so. I think one of the commonest terms of use is to talk of business 'houses'; it is surely a well-recognised commercial term, and we assumed it would be understood in that sense, that house property would include property which is used as business premises. Why it should not have been understood like that I do not know; but here a High Court have said so. We do not propose to make any change whatever in what we originally proposed to tax, but merely to tax this particular interest on capital under a particular heading and not under any other. Surely no one in Council will suggest that there is any injustice in that.

"I think my Hon'ble friend, Sir Debaprasad Sarbadhikari, said that it would not make any difference if you left it over until next year. Well, I do not know what the exact figures are; but our estimate is that it would make a difference of half a crore of rupees in the income-tax receipts. Does the Council wish to remit, to make a present to the richest firms in this country of half a crore of income-tax that they ought to pay? Will it make no difference to our revenues? I always thought that we were running our expenses rather close to our income, and that we should be very glad to have a little bit more material—not less—out of which to cut our coat during this revenue year.

[*Sir George Lowndes ; Mr. A. H. Froom ;* [2ND SEPTEMBER, 1920.]
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"There is only one other point to which I wish to refer. We are not asking the Council to pass this Bill to-day; we are only asking for leave to introduce, and Hon'ble Members will have at least a fortnight for consideration before it is necessary to pass it. Does the Hon'ble Mr. Murray suggest, or any other Members of this Council suggest that in a fortnight they will not have time to consider this small point which I have propounded to-day? Surely a fortnight's time will enable my Hon'ble friends from Calcutta to make up their minds, not only whether they want to have this amendment, but whether they ought to have it."

11-40 A.M.

The Hon'ble Mr. A. H. Froom:—"My Lord, in spite of the explanation we have heard from the Hon'ble Sir George Lowndes in connection with this Bill—in addition to the explanation we first had from the Hon'ble the Finance Member—I cannot help supporting the Hon'ble Mr. Murray especially on his first point, that this Bill should have been in our hands sometime before we actually got it. Personally I received it at a late hour last night. We do not question the statement in the Statement of Objects and Reasons that there is an ambiguity in section 8 of the Indian Income-tax Act, 1918, but what I think the public are entitled to is that they should have an opportunity of studying and possibly of criticising proposed legislation to remove the ambiguity.

"If there is sufficient time to receive replies from the various commercial communities and the replies convey no objection to the Bill, no doubt it will go through this session. In referring to the time we require the Hon'ble Sir George Lowndes remarked that surely a fortnight would be sufficient to get the opinions of the commercial communities and of the public generally. I would point out here that a longer time than a fortnight has elapsed in placing this Bill in our hands. It is not easy to get round all the commercial communities in big cities like Calcutta and Bombay in a very short period, they do not sit in one office, you have to circularise them. Still I hope we shall receive in time replies to the telegrams which the Hon'ble the Finance Member proposes to send."

11-42 A.M.

The Hon'ble Mr. W. M. Hailey:—"My Lord, my Hon'ble Colleague has been given a specific answer to the objections taken and I feel it is unnecessary on my part to take up these points again. But there are two points to which I shall refer. I think that the charge Mr. Murray has brought against those concerned with the Bill, that there has been insufficient time allowed for consideration, is one that ought to pass unanswered. I forget the exact date of the Allahabad judgment, but I can fix it best in my mind by the fact that it coincided with my last visit to Calcutta. We did not obtain a copy for some time—it takes a considerable time to get copies of High Court judgments; and in the circumstances it has been difficult to get through the necessary drafting of this Bill. We were not therefore able to circulate it as we should have desired to do before the Council met. Nor may I say it is really necessary under our usual procedure to circulate Bills for any length of time in advance. All that we are now doing is asking for leave to introduce and nothing more. If the Hon'ble Mr. Froom would prefer as an alternative that we should, as I think both he and the Hon'ble Mr. Murray expressed it, correct the credit instead of the debit side of the account, that is not an impossible solution. We should then remove the provision for this reduction from section 9. If this is the sense of the commercial community, we should be quite prepared to do so; it would indeed be far simpler and easier from our point of view. After all, there is no great reason for diversity of opinions on the Bill. There was only one definite point before the Allahabad High Court, namely, whether business premises were included in the scope of section eight or not. That doubt would never have occurred to anybody before it was brought up before the High Court. When the matter was brought before the High Court it ruled that they could not be so included; we propose to say that they can.

"My Hon'ble friend said it would cost the country 50 lakhs of rupees if this Bill were not passed. I would like to amend that. It was an estimate which we obtained from one province only. I cannot give the Council an accurate estimate of what the amount would be, if we did not take the Bill into consideration and pass it this session; but it would obviously be very considerable."

The motion was put and agreed to.

THE INDIAN INCOME-TAX (BUSINESS PREMISES) BILL; 135
THE INDIAN PAPER CURRENCY (AMENDMENT) BILL.

[2ND SEPTEMBER, 1920.]

[Mr. W. M. Hailey.]

The Hon'ble Mr. W. M. Hailey :—" My Lord, I introduce the Bill and move that the Bill, together with the Statement of Objects and Reasons relating thereto, be published in the Gazette of India in English."

The motion was put and agreed to.

**THE INDIAN PAPER CURRENCY (AMENDMENT)
BILL.**

The Hon'ble Mr. W. M. Hailey :—" My Lord, I move for leave to introduce a Bill further to amend the Indian Paper Currency Act, 1910. The Bill which I now beg leave to introduce is to outwardly appear a somewhat complicated and technical measure. I hope that Members of this Council will not on that account view it with repulsion. It contains within it somewhat crumbed sections matter of great importance to the country, and I shall make no excuse for delaying the Council while I explain their main provisions. The Council will remember that in March last we came before it with proposals for temporary legislation for constituting the Paper Currency Reserve to meet the exceptional circumstances with which we were then faced. That temporary legislation gave us power to maintain at 120 crores the maximum amount of securities which should be held in that Reserve. The legislation comes to an end on the 1st October. After 1st October therefore we must turn to the Act of 1910 to see how our powers stand. By the Act of 1910 we have power to hold only 14 crores of securities. Our present position is that against 162 crores of notes issued we have a metallic backing of 93 crores, the backing of the balance of 69 crores being against securities. It is clear therefore unless some legislation is undertaken this session the Paper Currency Reserve will as from the 1st October not be in conformity with the law. I am sure that no Member of this Council, certainly no commercial Member, would ask us to go back to the provisions of the Act of 1910 and thereby be compelled to reduce the note circulation by 55 crores, from 69 to 14. Doubt only begins to arise when we have to decide whether we should introduce permanent legislation for the constitution of the Paper Currency Reserve or temporary legislation of the type with which the Council was familiar during the war. We have taken the bolder course, and propose to introduce a Bill for the permanent constitution of the Paper Currency Reserve, taking at the same time those transitory powers which are necessary until we can introduce the permanent constitution of the Reserve. The Bill therefore which I now propose to introduce falls into two parts, a permanent and a transitory part. The provisions which deal with the permanent constitution will be found in clauses 12, 14 and 15. There is in this portion one clause which will attract the attention of all those who are interested in the subject, I mean the clause which provides that the metallic reserve shall be at least 50 per cent of the total reserve. This is an interesting departure for India. Under the law of 1910 we had a different kind of limit, that is to say, we had a maximum limit to the amount of notes we might issue on a fiduciary basis. We could issue what we liked against metal; but if we desired to issue against securities, we were limited to 14 crores. This specific limitation of the fiduciary portion of the Reserve has created a rigidity in our Paper Currency system from which it is desirable to liberate it. The Chamberlain Commission was the first of the Committees of enquiry to deal with this particular aspect of the case. They recommended that we should depart from our previous procedure and that the maximum of the fiduciary portion should be fixed not at any specific figure, but at the amount of the notes held by Government in Reserve Treasuries plus one-third of the net circulation for the time being. This proposal was under consideration when the outbreak of the war compelled us to defer further legislation on the subject. The recent Committee on Indian Currency and Exchange made a still further advance. They laid emphasis not on the limitation of the fiduciary issue, but on the proportion of metallic reserve. Their suggestion was that a percentage of 40 per cent to the gross circulation should be adopted as the minimum for the metallic portion, leaving automatically the fiduciary portion to rise as high as 60 per cent. Now I do not think that any suggestion will seriously be made that we should return to the

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old system. Apart from the condemnation of this system which is implied in the recommendation of the two Commissions which sat and considered it, it is our own practical experience that there are many drawbacks inherent in a system so inelastic as that which prevailed up to 1914. When there was an expansion of the currency which the seasonal demands of the trade called for at the time of export, there arose a stringency in the money market which could only be cured by the acquisition on behalf of the Paper Currency Reserve of gold or silver; indeed it was only through the expansion of the metallic reserve that we could provide the trade with the currency it desired. The case, therefore, for abandoning the previous basis on which the Paper Currency Reserve was constituted is clearly justified. In one respect—and I expect that I shall have the Council with me here—in one respect we have gone beyond the proposals of the late Currency Committee, that is to say, that whereas they recommended a metallic reserve of 40 per cent we have recommended a metallic reserve of 50 per cent. Now it is possible that opinions may differ as to the suitability of this percentage. There will be no doubt some, I fancy, who will ask that it should be increased; but there will be many who will suggest that so high a percentage as we propose is unnecessary. I should like to enter briefly here into the principles which should guide us in determining the strength of any such Reserve. In the first place, it must be sufficiently large to secure that we are in a position to honour the demands made from time to time on us for the encashment of our notes. Well, our experience has shown that our notes now command sufficient confidence to ensure that in normal times at all events, only a considerable portion will be presented for encashment into metal. Secondly, our metallic reserve must be sufficient to provide the necessary amount of coin to move and finance the crops up-country. Here again it is quite obvious that for this function it is unnecessary to maintain in the Reserve the full amount of metal necessary to provide for the encashment of the whole or even the greater part of our notes. I think the Council will gather from the figures that I have already given that the present amount of metallic reserve is 57 per cent of the total note circulation. Now it is interesting to note the history of our metallic reserve. In the past there have been occasions when a higher percentage of metal was held in the Reserve than that which we propose should form its permanent constitution; but it is a point not only of interest but of very direct relevance to the present Bill that this has not universally been the case. Between 1872 and 1893 the metallic backing was less than 50 per cent in 0 years; it was between 50 and 60 per cent in 8 years in this period, and it was only towards the latter end of that period that the percentage of silver to the total reserve rose to above 60 per cent. With a note circulation expanding as it has been in recent years, to hold a high percentage in metal would involve the locking up of vast quantities of coin—an expensive and unnecessary luxury. We recognise, however, that there is a strong feeling in India that our metallic reserve should be stronger than in other countries. We also recognise that what might be sufficient in ordinary banking practice would not be a safe guide in dealing with central reserves of this nature. It is for this reason that we propose to go above the 40 per cent recommended by the Committee.

“ So much for one component of our Reserve. The second portion is that consisting of securities. We propose that with the exception of rupees 20 crores securities held in India the remainder of our securities should be held in England, and they should be short-term securities only. Here again we are following the recommendations of the Committee. Our own experience confirms the view held by the Committee, that we must avoid that immobility which comes from locking up our securities in any investment of a long term nature. It is essential that such securities as are held for backing our paper currency should be easily realisable, and easily convertible into silver or gold. Taking now the 20 crores which we propose to hold in India, we propose that 12 crores shall be securities created by us for issue to the Reserve. These therefore will stand on a different footing to the 8 crores which we already hold and which have been purchased in the open market. I know that in March last, when we had our temporary legislation under discussion, some doubts were expressed as to the propriety of our holding rupee securities. It was suggested that these have but a small potential value as assets in that that they cannot be readily converted into bullions for increasing the metallic reserve. Now I am anxious to explain fully to the Council

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our reason for thinking that an investment of 20 crores constitutes no danger to our currency issue. This sum represents practically that portion of the note circulation which is in our own hands, lying in our own treasuries or at our credit at the Presidency Banks. They can suitably be regarded, therefore, as a permanent lock-up since under no circumstances it is likely that we should present these notes ourselves for encashment into metal.

"But even apart from this consideration, which is of great weight, I feel that we should be justified in holding as much as 20 crores in our own securities, that is, against the general credit of Government. As against these securities it must be remembered that the Government would hold assets in the nature of productive works constructed out of their proceeds. I will give the Council here part of a memorandum which was placed before the Currency Committee.

"The stability of any paper currency system as a whole must necessarily be dependent in the ultimate resort on the credit of the Government adopting it; in so far as the Government of India hold their own paper, this is tantamount to an improvement of their income and credit by the avoidance of debt, since the funds taken from the Reserve are, in fact, utilized to increase the assets of Government."

"I go further, and would ask the Council whether, with the credit we can command, with the great material assets which we possess, with all our productive investments to back us, we could not safely rely at any time on obtaining on our note of hand alone, at least 20 crores of bullion for the purposes of supporting our currency issue.

"I come now to a provision which is a new one as far as our own legislation is concerned, although there are precedents in the legislation of other countries. We have frequently been told that our currency note system is not sufficiently elastic; that though we may introduce improvements which will allow for the ordinary growth of note issues by the increase of investments against securities, yet it is not sufficiently elastic to allow for the fluctuations in the seasonal demand for currency. When the Committee considered this problem, they also felt the force of this criticism, and suggested that the note issue should be based in part upon commercial bills of exchange. That system, I may say, has been employed on a large scale in connection with the Federal Reserve note system obtaining in the United States of America. The Committee recommended that it should be tried experimentally in India on a small scale as the basis of a special power of expansion. I would like the Council to note that the expansion thus contemplated is not and cannot be a permanent expansion of the note issue; it is based on the fact that a self-liquidating Bill has a self-retiring note as its concomitant. With the necessary safeguards, such an issue cannot lead to any permanent inflation of the issue. Our Bill provides for power to authorise the Controller of Currency to issue notes up to an amount not exceeding 5 crores of rupees against Bills of Exchange of a maturity not exceeding 90 days, the exact conditions as to the class of Bills to be accepted and the manner of holding them being laid down by the Governor General in Council.

"There is one other feature of this permanent constitution of our Paper Currency Reserve which will no doubt attract the attention of our currency critics, but I think on this occasion I can flatter myself that the notice it will attract will not be unfavourable to us. Hitherto our legislation has not laid down any limit on the amount of gold bullion that may be held as security in England. We have, in order to meet those previous criticisms on this subject, provided in the Bill that the Secretary of State shall not hold more than £5 million in gold bullion in London. That again is in accordance with the general recommendation of the Committee. In their paragraph 81 they suggested that a certain amount of gold should be held in London either because it has been purchased there and is awaiting shipment, or because it would be available for the purchase of silver. That, I think my Lord, concludes what I have to say on the permanent constitution of the Paper Currency Reserve.

"I now turn to what I before described as the transitory provisions. The Council will of course recognise that in the circumstances in which we stand at present, we cannot introduce at once, or for some little time, the permanent constitution of our Paper Currency Reserve. I will give the facts again to the Council in order that they may judge of the circumstances in which we find ourselves to-day. On the 24th of August total circulation was 162 crores of rupees. Calculated on the Rs. 15 parity our coin and bullion Reserve stood at 93 crores of rupees, or 57 per cent. Our securities held in India amounted to

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47 crores and in England to 21½ crores. The proposals which I placed before the Council two days ago will involve a re-valuation of the gold portion of our Reserve, both coin and bullion, and the English portion of our securities on the Rs. 10 parity. Re-calculated on this basis, against 162 crores of rupees of notes in circulation we should have gold coin and bullion and silver coin and bullion of 79½ crores, and securities of just over 82 crores, of which we should hold in rupee securities 67 crores. Now while our metallic reserve on this re-calculation would come nearly up to the 50 per cent which we have provided for in the permanent constitution of our Reserve, it is clear that our holding of securities as between England and India will not conform to that standard. We should have an excess of 47 crores of rupees securities. We need therefore such transitory provisions as will enable us to carry on the operations of our Paper Currency system until we can attain to the proportions given in the permanent constitution. There is, however, one feature of satisfaction in this situation. Our present statutory powers of holding Indian securities, given to us under the law which lapses on October 1st, allowed us authority to take up to 120 crores. The Council trusted us with those powers in reply to a definite guarantee that we would utilise them with the utmost caution, and that we would do as little as we possibly could to add to the rupee securities created for the special purpose of the Currency Reserve. We are now content to ask that our transitory powers should be limited to 85 crores instead of 120 crores, and this 85 crores, the Council will note, will refer not entirely to rupee securities created specially for this purpose, but will include the permanent holding of rupee securities purchased by us in the open market, and also our remaining English securities.

“Those Members of Council who have followed these figures so far, and who have the knack of rapid calculation, will see that, as a matter of fact, as against that 120 crores, we have so far only exercised our powers up to 67 crores, namely, 47 crores in excess of our permanent provision. At the same time the Council must not suppose we are merely taking now a Pisgah sight of the Promised Land and are content to await on the course of events or an act of Providence to enable us to reach the standards given in our permanent constitution. Far from that; we propose to hasten the arrival of the appointed day by setting aside every year for the purposes of our Reserve, the whole of the interest on our English and Indian securities held specially for the Reserve, and, further, in order that there will be a full guarantee that we have done so, there will be an annual attestation to this effect by the guardian of our official conscience—the Auditor General in India. Roughly this interest will amount to £2 million annually. We shall go further than this although we have not provided in the Bill for this measure; and when our Gold Standard Reserve amounts to £40 million, it is now £37½ million, we shall take all the interest from that and place it to the credit of our Currency Reserve.

“This concludes, my Lord, all the matters of real importance or moment comprised in the Bill. The remaining provisions concern purely technical matters with which I need not further detain the Council. There is one provision, however, of more or less importance and that is the section which relates to the method which we propose to deal with lost or mutilated notes. We have been advised that under the existing law full payment should be made on all lost or destroyed notes on a sufficient indemnity being given, but since we have abolished the system of registering notes below and including Rs. 10, Government can derive no security from such an indemnity against double payments.

“In order therefore to place on a legal footing the existing practice, we have provided in the Bill that no person shall as of right be entitled to recover from Government the value of any lost, mutilated, or imperfect currency note, provided that the Governor General in Council may by rule prescribe the circumstances and conditions under which the value of such notes may be refunded as of grace.

“The agenda of to-day will show that I propose subsequently to ask that this Bill be referred to a Select Committee. It is possible however—in fact after what I have heard this morning I feel it is exceedingly likely—that Members of this Council and some members of the public may feel that those interested should have fuller opportunities of considering this measure. If that is the feeling of the Council on the subject, I shall merely ask that the matter be referred to the Select Committee on the understanding that we shall not proceed further with the legislation until it has been more fully considered.

THE INDIAN PAPER CURRENCY (AMENDMENT) BILL, THE 139
CUTCHI MEMONS BILL.

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Of course the Council will understand that as our present powers lapse on the 1st of October we must have some legislation such, for instance, as is comprised in the transitory provisions of this Bill. That we must have; but as regards the permanent legislation, I think I may say that Government is fully prepared to leave itself in the hands of the Council and of the Select Committee as regards the course to be taken.

“ I now beg, my Lord, for leave to introduce the Bill.”

The motion was put and agreed to.

The Hon'ble Mr. W. M. Bailey :—“ My Lord, I now introduce the Bill and move that the Bill be referred to a Select Committee consisting of the Hon'ble Sir George Lowndes, the Hon'ble Mr. Muddiman, the Hon'ble Sir Dinshaw Wacha, the Hon'ble Mr. Sastri, the Hon'ble Mr. Nathmal, the Hon'ble Mr. De, the Hon'ble Mr. Innes, the Hon'ble Mr. Murray, the Hon'ble Mr. Froom, the Hon'ble Mr. Gubbay, the Hon'ble Mr. O'Donnell, the Hon'ble Mr. Tata and myself, with instructions to report on or before the 16th September 1920.”

The motion was put, and agreed to.

THE CUTCHI MEMONS BILL.

The Hon'ble Mr. Haroon Jaffer :—“ My Lord, in moving 12-35 L.D. that the Cutchi Memons Bill which I introduced at the last session of the Council, be referred to a Select Committee, I am expected to deal with the criticisms which it has evoked and with the views which have been expressed regarding it by Provincial Governments, by judicial and legal authorities, and by other persons interested in the question. As I had anticipated, my task has been rendered very easy by the favourable reception the Bill has met with at the hands of almost all those who have given thought to it, and have expressed an opinion on it and by the warm support the proposed piece of legislation has received from those who will be most deeply affected by its application.

“ There is practically a complete unanimity as to the necessity of placing the law of succession and inheritance in the case of Cutchi Memons, on a satisfactory footing. The legislature may indeed well hesitate in making a wholesale change in the customs, and in the laws which have governed the Cutchi Memon community in matters of succession and inheritance for generations together. But the test to be applied in the case of a question like that is, does the community as a whole, what the change, and is its demand, reasonable? A perusal of the opinions which have been elicited from a large body of people whose views are entitled to the greatest respect, will leave no doubt in the minds of Hon'ble Members on this crucial point. The Hon'ble the Judges of the High Court of Madras have all adopted the above line of reasoning. The Hon'ble Mr. Justice Krishnan, for instance, observes, that ‘the question is entirely one for the community concerned and, if the members of it are agreed the Bill should be passed.’ The Hon'ble Mr. Justice Kumaraswami Shastri says that ‘if a large majority of the community desire that Mahomedan Law should be applied, I see no objection to legislation on the lines of the Bill.’ Mr. Justice Coutts-Trotter agrees that ‘the Cutchi Memons should be freed from the fetters of Hindu Law.’ Mr. Justice Sadashiva Ayyar is ‘very glad that the Cutchi Memons are anxious to see that the Law which they follow is not separated from their noble religion by a watertight compartment.’ Mr. Justice Abdur Rahim is of opinion that ‘the present condition of things, must be misleading to those who deal with them as it is embarrassing to the Court.’

“ The principle that the community is the best judge of what laws it would have regarding inheritance and succession which are based upon its religious injunctions and sentiments, is unequivocally endorsed by the Hon'ble the Chief Justice and Judges of the Bombay High Court who observe that they do not wish to express an opinion on the question, ‘this being purely a matter for the Cutchi Memon Community.’ The Government of Bombay have remarked

[*Mr. Haroon Jaffer.*]

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that 'comprehensive inquiries have been made among all sections of the community, and as a result it has been ascertained that the community in general is practically unanimous in desiring that the Bill should become Law.' The Government of Bengal approve of the Bill generally and state that people who sent replies to its inquiries are generally in favour of it. The Hon'ble Justice Nawab Sir Syed Shams-ul-Huda is of opinion that 'the question of the proposed extension of the Law should depend entirely on the wishes of those affected by it.' With regard to the other Provinces, the Governments there have stated either that they have no remarks or suggestions to offer on account of the absence of any Cutchi Memons in any large numbers there or that they have no objection to take to the Bill. For example, the Government of Sir Reginald Cradock who had consulted the Hon'ble Judges of the Chief Court of Lower Burma, the Judicial Commissioner of Upper Burma, the Bar Library Association, the Burman Moslem Society and the Hon'ble Sir Abdul Karim Jamal, states that it has no observations to make on the Bill and considers that the question is one which should be decided by the Cutchi Memon Community itself.

"My Lord, judicial opinion is thus entirely in favour of the passing of the Bill and the reports of Provincial Governments make it quite clear that the Bill has behind it the strong and the enthusiastic support of the community primarily affected by it. The dissentient note has indeed been struck by the handful Cutchi Memon community of Ootacamund and by one or two individuals who do not feel the necessity of applying the Mahomedan Law of inheritance and succession to Cutchi Memons. But this solitary discordant note only throws into relief the strength of the volume of support the Bill has secured throughout the country. And it will be a misfortune my Lord, it will be a misfortune which will be deeply resented and deplored by the community if such slight opposition were to endanger the passing of the Bill. It is of the utmost importance to note that the support of the Bombay Presidency which has the largest number of Cutchi Memons, is practically unanimous and peculiarly enthusiastic. The Select Committee on the last Bill twenty-four years ago was swayed in its recommendation against proceeding with the measure by the fact that the replies sent by the Bombay Government and proceeding from what was supposed to be a large number of the Memon community, were adverse to the proposals of the Bill. But what is the position today? The Government of Bombay declare that community in general is practically unanimous in desiring that the Bill should become Law. The significance of this change of view cannot be over-rated and lends special strength to the Bill now before the Council. As regards individual difference of opinion, Mr. Abdul Rahman Moledina whose view has been forwarded by the Bombay Government, the Council will be interested to know that he has recently withdrawn his opposition to the Bill.

"I am glad to inform the Council that while coming here I received a telegram from the Cutchi Memon community of Ootacamund which runs thus:—

Resolved that after reconsidering in a special general meeting convened at Ooty in the premises of Meerjee Sait on the 31st instant under the presidency of Salay Mohamed Noorani the undermentioned members of the Cutchi Memon Jamath of Nilgiri Coonoor have solemnly supported the proposed Mahomedan Law Bill by Hon'ble Ebrahim Hajee Haroon Jaffer. Salay Mohamed Noorani, President of the Committee Noor Mohamed Hajee Ismail Moosa Haroon Siddiek Moulana Abdulla Ebrahim Ismail Abdul Hakim Aharat Abdul Karim Salay Mohamed Noor Mohamed Mohamed Hussain Hajee Osman Salay Mohamed Fakier Mohamed Siddiek Osman Zakaria Osman Jooner Aboobacker Osman Bahim Iyoub Suliman Abdul Kader Haroon Hasham Ebrahim Kasim Hassan Elihan Joonas Moosa Haroon Casim.'

"It will thus be seen that the Cutchi Memon community of Ootacamund have withdrawn their opposition to my Bill.

"The practical unanimity of feeling in the Cutchi Memon Community with respect to the Bill before the Council is the strongest argument in its favour and I do not think it necessary to say anything more on this point.

"My Lord, there are, however, one or two matters which require consideration. It has been stated that the proposed Law will cause hardship in cases where Memons became Shias and cannot therefore be governed by the law of the Hanafi School, and it is suggested that provision should be made to the effect that 'the law of the Hanafi School should apply except where in any case it is proved that a particular member of the Cutchi Memon community belongs to any other sect

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of Mahomedans in which case the law of that sect should apply to him.' It has also been stated that the proposed Act should not be retrospective and that vested interest should not be disturbed. Both these points require careful consideration and I appreciate the reasonableness of the suggestions made. These matters, however, can be best discussed by the Select Committee which will make suitable amendments in the Bill. The Hon'ble Sir William Vincent had likewise raised certain questions in connection with the Bill when it was before the Council in February last. I hope he now feels satisfied regarding the opinion of the Cutchi Memon community which by an overwhelming majority, amounting to practical unanimity, has supported the main principle underlying the Bill. With regard to the difficulties involved in the application of the proposed law which he referred to, the Select Committee will suggest methods to overcome them. The difficulties are not insuperable and the wording of the Bill can be modified to meet those he mentioned. My Lord, I now move that the Cutchi Memons Bill be referred to a Select Committee consisting of the following Members:—

"The Hon'ble Sir George Lowndes, the Hon'ble Sir William Vincent, the Hon'ble Mr. Shafi, the Hon'ble Mr. Asad Ali, the Hon'ble Sardar Sundar Singh, the Hon'ble Mr. Chanda, the Hon'ble Mr. Nathmal, the Hon'ble Colonel Sir Umar Hayat Khan, the Hon'ble Mr. Kincaid, the Hon'ble Mr. Shah Nawaz Bhatto, the Hon'ble Mr. Mahomed Ali and myself."

The Hon'ble Sir William Vincent:—"My Lord, I think the ¹²⁻²⁷ name of the Hon'ble Mover will always be associated in the minds of many Members of this Council with this Bill. Hon'ble Members, after the exhaustive examinations which we have heard of this Bill from the Hon'ble Member, are doubtless better informed than they were before of the characteristics and customs of this interesting and important community of Cutchi Memons and I do not think there is much left for me to add. The Home Department of course has voluminous notes and references on the subject, but I do not think that non-official Members of this Council have had such detailed information about the community placed before them with such authority before.

"The position of Government in regard to this Bill is however really somewhat difficult. There is a demand for a change in the law by a large majority of the community and although I do not accept the representation of the various opinions put forward by the Hon'ble Mover as entirely comprehensive, it is accurate so far as it goes. For some reason however he has only quoted the opinions which favour the Bill. The Government are naturally sympathetic towards a Bill, which is approved by so large a majority of the community affected and it seems indeed a very curious system of law under which, as has been said by an Hon'ble Colleague of mine, a live Muhammadan becomes a dead Hindu. That is, men are Muhammadans so long as they are alive, but as soon as they die, their property descends according to the Hindu law of inheritance. At the same time, there is not complete unanimity among the persons consulted as to the necessity for this legislation. For instance, in the Burma opinion which is quoted, Sir Abdul Currim Jamal—who is an important authority there, I believe—qualifies his opinion about the Bill by saying it ought to be permissive and not obligatory."

The Hon'ble Mr. Haroon Jaffer:—"He is not of the community."

The Hon'ble Sir William Vincent:—"I am sorry; even after the informative speech of the Hon'ble Member I was not aware of that fact. Then, Mr. Moledina, in the papers circulated on the Bill, says that for centuries these Cutchi Memons have been governed by the Hindu law of intestate property, and he contends that the application of this law does not at all interfere with their performing their religious ceremonies and states various objections to adopting the Muhammadan law of inheritance.

"There are other—not many—but a certain number of opinions which are equally opposed to the Bill. Mr. Moledina, the Hon'ble Mover tells me, has since changed his opinion on the measure. All I can say is that I have no official intimation of that fact; nor do I know the circumstances in which the

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new opinion was expressed. But the Government's feeling about this Bill is that it is drafted in certain respects in very wide terms. In the first place, though it is a comparatively minor matter, it over-rides all family customs. Now, Members of this Council will agree that this is a very dangerous thing to do, having regard to the extent to which family customs prevail in many cases. I do not know how far these family customs in the case of Cutchi Memons deal with inheritance; but the wording of the Bill is not limited to customs affecting inheritance. A more important point however is that this Bill makes it obligatory on all Cutchi Memons to adopt the Hanafi Muhammadan Law. Now, this is without any regard to the vested interests of persons already in existence. It is without any regard to the personal wishes of individuals, and I think that any lawyer in this Council will see that there are objections to a compulsory change in the personal law by which an individual is governed without giving him any option in the matter. It is all very well to say that A, B, C and D want this change but that is no reason why E and F should be made to accept it whether they like it or not. That is the position which I wish to make clear to this Council. There is of course also the difficulty to which I referred, on the occasion of the first debate, namely, that the Bill will not apply to Indian States; it is a matter of difficulty that Cutchi Memons may be subject to one law in British India and to another law in Indian States. That is a position that may well create very great difficulties in practice. But the main objection that I have to the Bill is its obligatory character. The Government of India are, however, prepared to allow the Bill to be referred to Select Committee on various specified and distinct understandings. The first condition is that it is found possible to avoid the dangers arising out of the obligatory character of the Bill. The second is that it is possible to secure vested interests, particularly with regard to family customs; and the third is this, that if the Committee think fit they have every liberty to recommend that the Bill should be republished, in which case it will have to be re-introduced in the Reformed Councils and passed there. Subject to those conditions, which I think will appeal to every one who is really not prejudiced by over-zeal in favour of the Bill, the Government of India are prepared to accept the motion of the Hon'ble Member."

12-25 P.M.

The Hon'ble Sir D. P. Sarbadhikari:—"My Lord, some of the objections mentioned by Sir William Vincent were passing through my mind as a practical lawyer when I was listening to the speech of the Hon'ble Member who introduced the Bill. At the same time, I recall to mind what has been going on in this legislature for more than thirty years. Since Mr. Ameer Ali, then a practising barrister, now a member of the Privy Council of His Majesty, took up the case of an important section of Western India Muhammadans with regard to the question of succession law. Other questions affecting Muhammadan interests have come up to this legislature. I believe, my Lord, that by the assistance the legislature has thought fit to give to the Muhammadans, the particular communities concerned have been largely benefited. If Muhammadans desire to go outside the pale of Hindu succession I do not think any Hindu can reasonably object to their continuing to be Muhammadans after death. Whether the restrictions to which Sir William Vincent has called attention and some others that would arise, will be needed or not will be considered in Select Committee. There is one aspect of the case however to which I desire to draw attention, having regard to what is going on all round at the present moment. We are told, my Lord, that an important section of the Muhammadan community is in favour of what has come to be known as non-co-operation. I desire to draw their attention to what the Council, if the community succeeds in securing its co-operation may be able to do to particular sections of the Muhammadan community. The benefits that the legislature has in this direction been able to confer on isolated sections of the Muhammadan community have been nothing in comparison to what the Hindus have been able to secure. From this point of view, I think, as a practical question it will be any object lesson to our Muhammadan fellow-subjects who desire to non-co-operate with the Legislative Councils, because there is a live agency yet vouchsafed to them to which they can come for remedy of their grievances, if only they are able to agree amongst themselves."

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The Hon'ble Mr. Haroon Jaffer:—"My Lord, as the Bill is now to be referred to the Select Committee, all the criticisms offered will certainly be considered there, therefore I do not think it is necessary for me to add anything more to what I have said already. I thank the Hon'ble the Home Member and the Government for kindly allowing the Bill to go to a Select Committee."

The motion was put and agreed to.

The Council then adjourned to Wednesday, the 8th September 1920, at 11 A.M.

A. P. MUDDIMAN,

SIMLA ;

*Secretary to the Government of India,**The 15th September, 1920.**Legislative Department.*