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**THE
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LEGISLATIVE ASSEMBLY, 1921



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LEGISLATIVE ASSEMBLY.

Tuesday, 27th September, 1921.

The Assembly met in the Assembly Chamber at Half Past Ten of the Clock. The Honourable the President was in the Chair.

QUESTIONS AND ANSWERS.

PRICE OF RICE AND WHEAT.

640. **Khan Bahadur Mir Asad Ali:** Will Government be pleased to state in a tabular form for each of the last three years and for the current half year the average price per maund of different sorts of (a) rice, and (b) wheat in each Indian Province?

Mr. J. Hullah: The information asked for is being collected and will be supplied to the Honourable Member.

MURDERS IN BRITISH BALUCHISTAN AND UPPER SIND FRONTIER DISTRICT.

641. **Mr. S. C. Shahani:** (a) Will Government be pleased to state the number of murders committed (i) in British Baluchistan and (ii) in Upper Sind Frontier District (Jacobabad) on account of the surrender of chastity on the part of women during the last five years?

(b) Is it a fact that while in British Baluchistan under the provisions of Baluchistan Criminal Law Justice a woman seduced is punishable as an abettor, she is not so punishable under the Penal Code in the adjoining Upper Sind Frontier or Jacobabad District?

(c) Is it true that there are more murders of the kind mentioned in part (a) on an average in Jacobabad District than in British Baluchistan?

(d) Will Government be pleased to consider the advisability of amending the law in British India or at least in Non-Regulated Provinces, such as Upper Sind Frontier District, so as to make the woman consenting to surrender her chastity punishable as an abettor?

The Honourable Sir William Vincent: In British Baluchistan, so far as Pathans and Baluchis are concerned, a married woman who knowingly and by her own consent has sexual intercourse with a man who is not her husband may be punished with imprisonment for a term which may extend to five years under Section 80 of the Frontier Crimes Regulation, 1901.

In Jacobabad District also under Section 7 of the Sind Frontier Regulation, 1872, a married woman who knowingly and by her own consent has sexual intercourse with a man who is not her husband may be punished with imprisonment for a term which may extend to five years.

As the acts referred to can be punished in both areas with the same punishment, the remaining arguments, suggestions and requests for information in the question do not arise. I would add for the Honourable Member's information that requests for information as to the number of crimes of a particular character committed over an extended period for a particular reason must always be so difficult to comply with that the information cannot usually be supplied.

UNSTARRED QUESTIONS AND ANSWERS.

PRIVATE SECRETARIES TO MEMBERS OF THE EXECUTIVE COUNCIL.

62. **Dr. H. S. Gour:** (a) Is the Government aware that the Llewelyn Smith Committee's Report has recommended the appointment of Private Secretaries to Members of the Executive Council?

(b) Has this recommendation been given effect to and if so, to what extent? If not, why not?

The Honourable Sir William Vincent: (a) Yes.

(b) The recommendation has not been given effect to, as no Member of the Executive Council has hitherto expressed a desire for the appointment of a Private Secretary.

OFFENCES UNDER SECTION 498 OF THE I. P. C.

63. **By Mr. W. M. Hussanally:** Do Government contemplate making offences under Section 498 of the I. P. C. non-bailable and the errant wife equally punishable with her seducer?

The Honourable Sir William Vincent: No.

SYSTEM OF TEST BY THE STAFF SELECTION BOARD.

64. **Mr. S. C. Shah ni:** Is it a fact that the Army Department has addressed a Memorandum to the Home Department deprecating the action of the Central Staff Selection Board in examining their existing temporary clerical staff for permanent vacancies and that they have denounced the procedure as to how the Board system of test is conducted?

The Honourable Sir William Vincent: Government are not prepared to make any statement as to the contents of confidential communications between one Department and another.

DISPOSAL OF SURPLUS WAR STORES.

65. **Sir P. S. Sivaswamy Aiyer:** Will the Government be pleased to state:

- (a) Whether with regard to the disposal of surplus war stores the procedure of calling for tenders by advertisement was invariably adopted at least in the case of items the book value of which exceeded ten lacs of rupees?
- (b) Whether it was the practice in Calcutta to consider such tenders with the help of an Advisory Committee?
- (c) Whether in the matter of the sale of flannels to Mr. Halasya, tenders were called for and considered by such committee?

(d) The total quantity of flannels sold to Mr. Halasya, the book-rates of the said flannels and the rate or rates at which they were sold to him ?

(e) The minimum or upset prices for the same fixed by or on behalf of the Government, the market prices prevailing on or about the date of the sale in Calcutta for goods of similar description, and the rates at which such flannels were being sold by the Government in lots of 500 yards ?

The Honourable Mr. C. A. Innes : These surplus stores are the property of His Majesty's Government, and it would be improper for the Government of India to give the details asked for in this question. I may, however, say that the particular sale of flannel referred to was negotiated by the Chief Controller (Surplus Stores) only after communication with and with the approval of His Majesty's Government.

CATTLE PROTECTION BILL.

66. Babu Ambica Prasad Sinha : (a) Will the Government be pleased to lay on the table the last letter, if any, addressed to Lala Girdharilal Agarwala, M.L.A., regarding the Cattle Protection Bill, which is printed at pages 1626, 1627 of the Assembly Debates, Volume I ?

(b) Was permission granted to him to introduce the said Bill as required by law ?

(c) What action, if any, was taken upon his note, dated 3rd March 1921, printed at page 1630 of the Assembly Debates, Volume I.

The Honourable Dr. T. B. Supru : (a) A copy of the letter referred to is laid on the table.

(b) and (c). I would refer the Honourable Member to that letter. As required by Section 67 (2) (4) of the Government of India Act, Lala Girdharilal Agarwala applied for the previous sanction of the Governor General to the introduction of his Bill. The application was most carefully considered by the Governor General who was unable to accord the previous sanction asked for.

No. 2522-A.C., dated Simla, the 19th May 1921.

From—The HONOURABLE MR. H. MONCRIEFF SMITH, C.I.E., I.C.S., Secretary,
Legislative Assembly,

To—Lala Girdharilal Agarwala, Member, Legislative Assembly.

With reference to the correspondence ending with your letter dated the 12th March, 1921, regarding your Bill to provide for protection of milch and agricultural cattle, I am directed to inform you that His Excellency the Governor General is unable to accord the previous sanction to the introduction of the Bill for which you have applied under Section 67 (2) (b) of the Government of India Act.

REVISION OF PAY OF ALL SERVICES.

67. Khan Sahib Mirza Mohamad Ikramullah Khan : (a) Is it a fact that the Government of India revised the pay of all services with retrospective effect from the date of the Secretary of State's sanction ?

(b) Did the Government consider this point in sanctioning the Punjab Munsiffs' scheme ?

(c) Will the Government please state the date on which the Secretary of State sanctioned the inclusion of Punjab Munsiffs in the Provincial Civil Service?

The Honourable Sir William Vincent : (a) Pay was revised from the date of the Secretary of State's sanction or in some cases from an earlier date.

(b) No. The matter was one for the provincial Government to decide.

(c) The 20th April, 1920.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

Secretary of the Assembly : Sir, in accordance with Rule 25 of the Indian Legislative Rules I lay on the table a Bill further to amend the Code of Criminal Procedure, 1898, by providing for the issue by Courts in British India of commissions for the examination of witnesses to such Courts of Princes and Chiefs in India as are notified in this behalf and for the execution by Courts in British India of commissions issued by such Courts, which was passed by the Council of State on the 26th September 1921.

THE INVALIDATION OF HINDU CEREMONIAL EMOLUMENTS BILL.

Mr. A. B. Latthe : I beg to move :

'That the Bill to amend the law relating to the emoluments claimable by Watandar Hindu priests be referred to a Select Committee consisting of the Honourable the Law Member, the Honourable Sir William Vincent, Mr. N. M. Samarth, Mr. N. M. Joshi, Mr. K. G. Bagde, Dr. H. S. Gour and myself.'

The principle of the Bill is very simple. As Honourable Members who belong to the Bombay Presidency and the Maharashtra portions of the Central Provinces know, the High Court of Bombay and the Judicial Commissioners of the Central Provinces have held that the hereditary priests have a right to claim emoluments from Hindus who do not even ask those priests to officiate at their ceremonies. That state of things is very peculiar to those parts of the country and it would be very hard for people living in other parts to realise what this situation means. Fortunately for the remaining portions of India, the High Courts of Calcutta, Madras, Allahabad and the Punjab have held consistently that no such right exists and nobody can force himself as a priest against the wishes of the laymen and if a Hindu does not want a certain priest to go to him to officiate at his ceremonies, that priest has no right to go to a Civil Court and claim any emoluments. That has been the view of the various Courts, and people living under the jurisdiction of these various Courts will find it very hard to understand what the law in the Bombay Presidency and certain parts of the Central Provinces, means. What it means is this. In the villages in the Marathi-speaking territories there are hereditary priests, priests not because they have got the qualifications of a priest, not because their qualifications are tested in any way, but simply because they are born in certain families. They hold certain lands in many cases. This Bill does not affect these lands, and it is not the purpose of this Bill to affect the rights of those priests in these lands. That must be borne in mind by all Honourable Members. But when there is a ceremony like marriage, or funeral ceremony and ceremonies of that kind, the priest says that, although the Hindu may not require his services and may be quite opposed to the priest going to his house

and serving him, he can go to a Civil Court and ask for a rupee or two as his damages. The evils of this state of things are very great. According to the principles of Hindu religion, the duties of a priest are to be performed by a man with certain qualifications. Under the system as it exists, no qualifications are required for the priests. Simply the priest should be born in a particular family and he has the right to officiate. The duties of a priest according to the Hindu Shastras are to minister to the spiritual good of man, but the Shastras also lay down that for a priest to be able to minister to the spiritual good of man, he has to possess certain spiritual qualifications. Well, in this case, the priest may be a man of no character, a man of no learning, and yet he has the right to say that he must officiate at a certain ceremony, and if he is not invited to do so, he must at least be paid certain emoluments. Now, the peculiarity of the Provinces concerned is that the priests belong to one caste generally and the laymen belong to other castes, and the priests also look down upon these other castes as inferior castes. This is not all. The other castes, as the Hindu Members of this House may be aware, very often claim to have certain particular ceremonies performed in their houses. For instance, many Hindus claim that they are Kshatriyas or Vaisyas, that is to say, they belong to the privileged twice-born community. Well, in our part of the country, the priests say that there is no Hindu who is anything but a Sudra, that is to say, they could not recognise the right of anybody to be either a Kshatriya or a Vaisya. Honourable Members who are Hindus, I address these remarks especially to Hindus, will remember that even the Great Sivaji, the founder of the Maharashtra Empire, was refused the right of being a Kshatriya by the Brahmin priests of Maharashtra, and his descendants even to this day have to fight very hard for their being recognised as belonging to the twice-born community. What is the result? The twice-born communities say that they should have the *Vedoktha* ceremony—the priests say, 'You will not have it, and we shall impose upon you the ceremonies which are performed at the house of Sudras,' that is to say, the lowest class of the Hindus. Well, in this way many differences have arisen and the relations between the two communities become unnecessarily strained on account of this claim of the priests to officiate at the ceremonies performed by the Hindus. The Bombay High Court has fortunately held that no priest can force himself personally upon anybody who is not willing to have his services, but he can claim certain emoluments through a Civil Court. That is the view which the High Court has taken, and it is to declare that this view is wrong that this Bill has been introduced.

As I have already told the House, the other High Courts have been consistently holding that no such right can exist. I will quote a few decisions of certain Brahmin Judges of the Madras High Court, because, as they are Brahmins, nobody can say that they are prejudiced against the Brahmins. Mr. Justice Seshagiri Ayyar who is now a Member of this House, as a Judge of the Madras High Court, declared that such a monopoly to officiate as a priest should not be recognised by law.

It was against the spirit of the Hindu religion, and it was against public policy, and it ought not to be recognized. That is what he said in one of his judgments. The same view has been taken by the Judges of the Calcutta High Court, the Judges of the Allahabad High Court, and the Judges of the Punjab High Court. So Honourable Members will see that the view which I propose that the Bombay High Court should adopt is a view which has

[Mr. A. B. Latthe.]

been accepted throughout the country, and that there is nothing new in the legislation which is being introduced now. Even the Bombay High Court has seen, has realised, to a very large extent, the injustice of the course which they have adopted. Honourable Members will ask how was it then that they laid down this view. The state of things was this. In the beginning, before the High Court was established, during the days of the Saddar Diwani Adalat, suits came on between one priest and another, and the claim of one of the priests was that the intruder—the other priest—who had gone and officiated should be prevented from doing so, or should be compelled to restore the emoluments that he may have received. So Honourable Members will see that in those days what the High Court—the Saddar Diwani Adalat had to decide was whether the intruder should be allowed to encroach upon the rights of the watandar priest, and the view on the side of the layman was never allowed to affect the intention of the Courts in those cases. Later on, in the first case—the first reported so far at least as I know—which came on before the High Court between a layman and a priest, the High Court thought that it was bound by the decisions which had been arrived at by the Saddar Diwani Adalat. I am referring to L. L. R. 3 Bombay, page 9. In the first reported case between a layman and a priest the High Court relied only upon one ground, and that was that they were bound by authority, by the decisions in the previous cases. They could not take any other view on account of the decisions which had been already arrived at. So in this way the thing went on only as a matter of tradition as it were, and the High Court is holding that the priest has this right. Later on, in a recent decision Mr. Justice Batty went even so far as to say that if the Hindus introduced any change in the ritual, in the ceremonial, then the priests' right ceased. He said that if a Hindu wanted to have a ceremony which was not Brahmanical then, this right does not exist, and the Hindu is freed from the exactions of the priest. This is one way of getting out of the difficulties created by these rulings of the High Court. But, as has been pointed out by a District Judge whose opinion has been obtained by the Government of India, Mr. Dixit, this leads to unnecessary litigation. The priest says that a certain ceremony was performed; the other man says that that ceremony was not performed—it is only a question of fact; litigation thus becomes necessary; but the great disadvantage of this course is that a Hindu who wants to avoid the payments to the priest has to say that he has given up the ceremonies of his family,—the traditional ceremonies. That many Hindus do not like to do. They claim that in order to avoid these exactions, they should not be compelled to give up the ceremonies which have been performed in their house from time immemorial. That is the great difficulty which is given rise to by the decision of Mr. Justice Batty. The view which I have introduced in this Bill proposes that a priest whose services have not been requisitioned should not have the right to come before a Civil Court and to claim any emoluments.

One amendment which has been proposed is intended for the purpose of moving that the Bill should be circulated for opinion. But the Honourable Member who has given notice of that amendment does not seem to have known that the Government of India in the Home Department have been pleased to circulate the Bill to the various Local Governments, who have also in their turn circulated the Bill to the various authorities, the various District Courts, the High Courts, and Bar Associations, and those opinions have been obtained and

they are now at the disposal of the House. From these opinions it appears that in the Bombay Presidency sixteen officers had been asked for opinion, and out of those sixteen, twelve approve of the Bill. One does not express his opinion clearly, and only three are opposed. Of the five Judges of the Bombay High Court who have expressed any opinion on this Bill, four approve of the Bill, and only one is opposed, and that too on grounds which are not quite judicial. Mr. Justice Kincaid says, that the Bill may lend support to the view of many people who think that the non-Brahmin movement has been supported by the Government, and so forth. Some such reason has been assigned. But it is clear that five Judges of the High Court, including the Chief Justice and Mr. Justice Shah, approve of the principle of this Bill.

Now, so far as the Central Provinces are concerned to part of which this Bill applies, I shall read what the Government of that Province says. In their letter they say, that out of five opinions enclosed, two accept its general principles, two hold that it is unnecessary, and one is strongly against it. Honourable Members will see that out of seven or eight opinions that have been obtained by the Central Provinces Government, five are in favour of the Bill, one only is opposed, and two accept the general principles of the Bill. In a supplementary list of opinions submitted by the Central Provinces Government there are three or four opinions from certain Brahmin gentlemen of that Province which are also opposed to it. For the rest of the country, there is a practical unanimity, and the principle of the Bill is approved. Various public bodies in the Punjab, in Bengal, in the United Provinces and so forth have accepted the principle of the Bill and have approved of it. So Honourable Members will see that public opinion has been sufficiently elicited, and substantially, public opinion supports this Bill. Well I may go so far as to admit that the priests themselves as a class may be opposed to the introduction of this legislation; I admit that. And I may even go so far as to say that certain Brahmin gentlemen who advocate the cause of these priests are also opposed to this Bill. But the question for this House to consider is whether they would allow their own Courts to enforce a right which is against public policy, which is really not sanctioned by the Hindu religion, which is, really speaking, an oppression upon those people who do not want to use these priests. The question is whether the Courts ought to be allowed to enforce this right. It may be said that this is an interference with the religious customs of the Hindus, but I submit that it is the rulings of the High Court that are really interfering with the religious rights of the people, and the Bill which I propose only seeks to prevent this interference with the religious liberties of the people. If a man likes to have the present hereditary priest, he is perfectly at liberty to employ him and pay him anything he likes. The Bill does not prevent that man from following that course. But if a man does not want a particular priest, the only question is whether the Courts should compel him to pay that man any emoluments. The principle of the Hindu religion is that he should pay the priest only as a matter of charity. There is not a single authority in the whole literature of Hinduism which could be cited to support the views that the priest has got any right to these emoluments. It is only the wrong, the misguided view of the Bombay High Court and certain Courts in the Central Provinces which is supporting the claim of the priests. The Hindu religion does not support that claim and the Bill seeks to give Hindus the freedom to which every citizen is entitled. I therefore move that this Bill be referred to the Select Committee which I have named.

Mr. B. S. Kamat: I have great pleasure in supporting this Bill. In doing so, however, I am not concerned with the controversy of Brahmins *versus* non-Brahmins. I support it on a broad general principle. I believe, Sir, that in these days the time has come when we ought to liberalise the Hindu customary law. If a man wants to choose his religion, let him choose his religion according to his own conscience; and if a man can choose his religion, he ought also to be able to choose the priest or the minister who will minister that religion, whatever his denomination may be.

The second point I wish to draw the attention of this House to is the so-called hereditary right upon which the Bombay High Courts and other High Courts have laid emphasis. Now in answer to that I must say that this question of hereditary right has been kept alive, as it were, by the Brahmin priesthood itself. The days were when the Hindu Brahmin priest had a right to certain emoluments, because, owing to the social structure of those days, he led a very simple life, and had open to him only one calling, namely, the priesthood. He devoted himself entirely to learning and it was only just and necessary that other members of Hindu society should support him by these emoluments. But in these days the Brahmin no longer confines himself to the priesthood, but follows various other callings. He can be a pleader, he can be a doctor, he can open a shop or he can even open a leather factory. He has thus himself extinguished his own vested hereditary right. If that is the case, I do not understand why Hindu society should continue, as a matter of right, to give him emoluments to which he was entitled. As he has, of his own accord, given up his right to the priestly calling, I certainly think the time has come when we should give to the priest his liberty to choose any calling he likes, and to those to whom he used to minister religion the right of choosing any minister of any denomination that they like. On these grounds I support the motion.

Mr. P. L. Misra: Sir, I rise to oppose the Bill. I come from the Central Provinces, I do not belong to the Berars, but still I am in touch with the Berars and other portions of the Bombay Presidency also as a lawyer. In my opinion the rulings cited by the Honourable Mover do not apply to the Central Provinces and Berar. There have been cases in the Central Provinces but of quite a different nature—that is to say, when the hereditary priest was absent from the ceremony of a certain person, and another priest took his place, the hereditary priest who had jurisdiction over that person of course went up to the Civil Courts. The priest who sues a usurper or an intruder is perfectly right. His claims are quite legitimate and he can sue the intruder. But there have been no cases in the Central Provinces, so far as I am aware—and Dr. Gour will support me or contradict me if I am right or wrong—where a priest has enforced his rights on his disciples or *chelas* because they did not call him in to officiate at a ceremony. Therefore my submission is that for such a law there is not the slightest necessity in the Central Provinces or the Berars. It would, on the contrary, I submit, only create a gulf between Brahmins and non-Brahmins. We have at present no such gulf in the Central Provinces and we are very fortunate in that respect. If such a law were introduced, the results would be very unfavourable indeed. We have already non-co-operation on a large scale in every sphere of life, we don't want any non-co-operation between Brahmins and non-Brahmins.

Moreover, in the Central Provinces, including the Berars, the priest is an unavoidable institution. You know that religion is deeply ingrained in the mind of the Hindu, to however low a class he may belong. The lower class of Hindus are very superstitious at every ceremony from birth to death, even at the time of sowing and harvesting, building houses and so on, they require the services of a priest. Even when they go on a pilgrimage, they like to know the auspicious day and hour to leave the house. Therefore this institution—this ancient institution—is a very indispensable one in the eyes of the lower classes of the people, and I do not see any necessity or any reason on the part of the learned Mover of this Bill why this Bill should be made applicable to the Berars and the Central Provinces. If the Mover of the Bill cares to leave out the Berars and the Central Provinces from the scope of his Bill, I do not mind its introduction. Therefore on these grounds, I strongly oppose this motion, and I appeal to the House that they should not pass the Bill at once, because it is a very important measure, it will have very far-reaching effects in the long run and therefore it should be considered very seriously.

The Honourable Sir William Vincent : Sir, this Bill deals with a question which really only affects Hindus and the Government have therefore decided to adopt a neutral and impartial attitude in the matter, and I am quite sure that their decision in this matter will meet with the approval of this Assembly. We have no desire whatever to take part in Brahmin and non-Brahmin controversies. I mention this in spite of the fact that when I received notice of the intention to introduce this Bill,—the Assembly will scarcely credit what I say,—I was accused of deliberately not giving the Mover time on an official day because he is a non-Brahmin. I need scarcely assure the Assembly that there was no foundation whatever for that suggestion. We Civilians have often been described as official Brahmins, but I have never heard that we have any particular sympathy with the Brahmins beyond that respect which is due to their intelligence, authority, learning and wisdom. Although, however, we are adopting this attitude in regard to this matter, I think the Assembly should have some impartial statement of what the opinions on the Bill are in order that the Members may judge for themselves whether or not the motion before the Assembly should be accepted. There is, among the provinces that are not affected generally, a general feeling in support of the Bill, although one eminent Judge of the Madras High Court suggests that it should in the first instance be made applicable only to the Bombay Presidency and to those parts of the Central Provinces where the evil is said to exist. *Prima facie* the Government of India are inclined to consider that this view is a sound one.

Now I propose first to deal with the opinions outside the two provinces mainly affected. These are generally, as I have said, in favour of the Bill, but, there are individual Judges who say that the Government should be very cautious in its attitude towards the proposed changes. For instance, I cite from a Judge from Umballa who says that he is apprehensive that the Bill may seem too sweeping an invasion on the privileges of hereditary priests. In Bengal the view differs somewhat, and there is a general approval of the Bill on a very sound ground of principle, namely that non-Brahmins should not be forced by the law courts to pay *Joshis* for services which have been neither required nor asked for. In Bombay opinions are more divided. The High Court Judges generally, as also most of the other authorities, consulted, support the Bill. But it would be a mistake to suppose that approval is universal. Indeed, in

[Sir William Vincent.]

some places the opinion is very much divided on the question. For instance, I find one set of opinions where three judicial officers who were consulted favour the proposal and three oppose it. While I am dealing with this question of Bombay opinion, I should like particularly to draw the attention of the Assembly to the criticism of the word 'Hindu' as defined in the Bill. It has been pointed out with great cogency that that definition as it stands now, is open to considerable criticism. I do not dilate on this, because it is a matter which will be brought before the Select Committee. Other authorities, for instance, the Subordinate Judge and Public Prosecutor, of Ahmednagar, do not support the legislation, and the District Judge, Poona, and the Pleaders' Association of Western India—I do not know how far it is an influential body,—are opposed to it. I merely cite these because I do not think it is right that the Assembly should remain in ignorance of opinions against the Bill. But I want to be fair in this matter, and as I have said before, the majority of the persons consulted in Bombay, I think, support the measure which the Honourable Mr. Latthe has brought before the Assembly. In the Central Provinces, as was adumbrated by the last speaker, there is a great diversity of opinion. I want to quote a few words from the opinion of the Governor in Council of those Provinces. He considers that the Mover's introductory remarks are somewhat misleading. The rights of Watandar priests are vested rights; they have been held by the courts to be of the nature of rights in immoveable property. The measure will affect a large body of people as every village in the Maratha country has its Watandar Joshi, and he advises that it is necessary to approach the Bill cautiously and with full recognition of its extent and application. Finally he says, that there has not been a sufficient advance in public opinion in the Central Provinces and Berar to justify legislation and he therefore deprecates legislation affecting a custom which has been so long established.

There are many other opinions also or several opinions,—I will not say many,—in the Central Provinces which oppose this measure on various grounds, some of the objections, I think, being identical with those taken by the last speaker. For instance, the Bar Associations of Nagpur and Amraoti do not support this measure. I assume the Bar Association of Nagpur is a large and influential body. One Subordinate Judge, I notice, says that this measure will deprive thousands of Hindu priests of their livelihood which they derive from customary rights. These are matters which, as I said before, I thought I ought to put before the Hindu Members of this Assembly in case through oversight they have not had time to study the papers relating to the Bill. Government have no interest in the matter at all. If the Hindu Members of this Assembly think that this is a just measure, that this is a measure demanded by fairness and equity to non-Brahmins, and that it is not inequitable or unfair to Brahmins, then they will accept this motion, and the question as to the area in which the Act shall *suo motu* operate, and the question of definitions and so forth, will be very carefully considered in Select Committee, I have only put before the House the various views concerning this Bill.

Mr. J. N. Mukherjee: Sir, coming as I do from Bengal, I may at once tell this House that I do not possess that direct interest in the result of the Bill as those Honourable Members who belong to the Bombay Presidency may possess. But still as

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a Hindu, I think I am bound to say a few words as regards the principle of the Bill and to express my gratitude to the Honourable the Home Member for the impartial manner in which he has placed before the Council the opinions which he has received from various public bodies, and for the attitude which the Government of India has assumed as I know it would, in this matter.

The Bill like some others now before the House, introduces a very important principle, a principle which goes to touch the various representatives of the different religious communities who form this Assembly. So far as I am concerned, it may be a very small matter, but we have just heard that there are thousands of Wataudars in the Bombay Presidency who may be affected by this Bill. I hold in my hand an objection to the Bill which I have received—I do not know if other Members of this Honourable House have also received it. It refers to certain Resolutions which were passed at a meeting in some places in the Berars, and it runs to this effect :

' We the Watandar Joshis of Berar, assembled in a meeting on the 28th August 1921, express our strong protest against the Bill to be introduced in the coming Session of the Imperial Legislative Assembly by Mr. A. B. Latthe, M.L.A., as the same purports to encroach on the ancient rights of this class, and unnecessarily creates a gulf between the Brahmins and the non-Brahmins when there is none at present in this Province, and when the majority of the orthodox community of the Hindus quietly and fondly cherish this old institution as the same is not burdensome at all.

(b) The Bill aims at a trespass of the Legislature on the sacred domain of religion and thus violates the promise of the religious neutrality held out in the Royal Proclamation of 1858.

2. Resolved further that the copy of this Resolution be sent to all the Members of the Assembly.

Radhakrishna Raghao Ghonge.

President.

Now this raises the very important question of interference by this House in the religious practices, customs and rules of particular religious communities. That is to say, this House, composed as it is of Hindus, Muhammadans, Christians, and men belonging to other denominations, is called upon to assume jurisdiction in matters which concern religious bodies, and in the present instance, the class of Hindu priests known as Wataudars; and the House must, to my mind, be very careful as to how it proceeds in a matter of this kind. We are on our trial now. Private parties have, no doubt, been allowed by Government to put forward Bills, and a private party who is a Member of this House, may bring forward any Bill in respect of any matter which, according to the dictates of his judgment, may be antiquated or may be obnoxious to him. But it must be remembered, at the same time, that we do not represent a large mass of people who do not pay a certain amount of taxes. They are silent. We do not know what they think about Bills of this kind, but still we think that we represent India as a whole. Therefore, Sir, in view of the fact that there are Members of this Assembly, and other people outside this House, who wish to revolutionise Hindu society and Hindu rules of succession and so forth, it is particularly necessary that this House should pause, and consider the position, should ponder on the very grave situation, which has been introduced by Bills of this character. Now, Sir, from what has fallen from the Honourable the Home Member, I find that only large public bodies have been consulted in the present matter. Here is only

[Mr. J. N. Mukherjee.]

one opinion which I hold in my hand and to which I have referred, which has come from the Berars, and from only one body of men. This is not a matter in which opinion outside the class affected by the Bill, should be allowed to prevail, not the opinion of official bodies alone, but the opinion of men who are directly concerned in the result of the Bill itself, should govern the situation. Even taking official bodies as they are constituted, we find that the Honourable Judges of the Bombay High Court are divided in their opinion, that the Poona Bar Association is opposed to the Bill (and they are supposed to know something about the manners and customs prevailing in their part of the country) and the Central Provinces and the Bar Association of Nagpur are divided in opinion. But these bodies of men are what you call educated bodies of men, that is to say, English educated and more or less cut off from the main current of opinion of the orthodox community of the Hindus. My learned friend, the Honourable Mover of the Bill, has characterised the opinion of the Bombay High Court judges as a misguided opinion. Whether misguided or not, there is that opinion, and in view of the opinion that has been expressed, even by official bodies, the position that I would like to take is that the Bill be further circulated for opinion amongst those who are directly concerned with the effect of this legislation. I am entitled to ask for this, I think, under Standing Order 39 printed at page 25 of the Manual. It reads thus :

'If the Member in charge moves that his Bill be referred to a Select Committee, any Member may move as an amendment that the Bill be circulated for the purpose of eliciting opinion thereon by a date to be specified in the motion.'

No doubt the Bill has been privately circulated, if I may use the expression. We do not know to what places the Bill went, but as a matter of fact, it practically went to officially constituted bodies only; and considering the importance of the Bill and knowing to a certainty the effect it will have upon the orthodox classes of Hindus my motion before the House is that it may be further circulated, especially among those classes of men who are likely to be affected by the passing of this Bill, and that their opinions be submitted to this House during the next Session of the Assembly. My submission is that this Bill involves a grave question of principle, that is to say, we, by putting forward this Bill, in a way, assume that non-Hindus, Christians and Muhammadans and Parsis, whatever else they may be—should have a right to dictate to the Hindu community by a majority of votes, if they can get a majority of votes what ought to be their law according to their own tastes and views; and similarly that the Hindus must have a right to dictate to the Muhammadans and other non-Hindus, according to their tastes and views, what ought to be their law.

Sir, in matters of this kind, especially in matters of succession, where there is a gradual growth of law, and custom, we cannot reduce the question into one of taste and conveniences and so forth, and therefore my motion is that the matter be further circulated among those classes of men and their opinion collected and the result placed before this Assembly next Session.

Mr. President: I have received notice of the same amendment from another Member and I must give him the right to move it.

Mr. B. H. R. Jatkar : I have given notice of an amendment on the same lines as suggested by my Honourable friend, Mr. Mukherjee. I move it.

It is to the effect that the said Bill be circulated for the purpose of eliciting opinion thereon. This Bill, as already stated by my learned friend, Mr. Pyari Lal Misra, is a serious encroachment upon the religious susceptibilities of the Hindus and on the region of Hindu Law. The status of the Hindu priest or Joshi is known and has been recognised by custom and there is not a single village in the whole of the Bombay Presidency or the Central Provinces and Berar where there is no village priest.

This custom has been recognised by the Civil Courts, both by the Bombay High Court and the Judicial Commissioner's Court of the Central Provinces and Berar, and the law has been settled by a course of decisions. This Bill seriously interferes with the settled law of both these Provinces, and I say no ground has been shown why a Bill should be introduced to do away with that. In the aims and objects of the Bill, as stated by the Honourable Mover, it is said that it affects only the Bombay Presidency. While making his speech at the time of the introduction of the Bill he said that some parts of the Central Provinces and Berar were also concerned and that they were also affected by this Bill. I cannot say what is the condition of things in the various other Provinces, but even in the above two Provinces the Bill affects a large section of Hindu priests or Joshis as they are called. The village Joshi renders services to the villagers and receives a small pittance at some of the ceremonies performed at their houses. The Bill affects a large mass of village people also who have been receiving the services of the Joshis from time immemorial, and it creates a revolution in their religious ideas. My Honourable friend, the Mover, comes from that part of the Presidency where there is a strong feeling between Brahmins and non-Brahmins and it appears that that idea has actuated him to move this Bill. But it would be a very narrow view if he judges the other Provinces also or other parts of his own Province in the same light. The Bill really creates a strong feeling where there is none, and especially in my part of the Province, that is Berar, where the people have not raised a voice against the settled law of the Province. Like my friend, Mr. Mukherjee, I have also received a copy of the resolution from the Berar Joshis Conference. This will show the attitude of that class which is most affected by the Bill. It is no use hurrying the Bill through, against the wishes of the people, who are affected. The Joshis may be called a class of vested interests, and as the opinion of the Governor of my Province has been just read out by the Honourable the Home Member, the House will see that it says that the watan of Joshis is in itself property and it is immoveable property. The House will see that I am opposed to the Bill at least with regard to its applicability to my Province, but I won't mind if it is circulated for opinion to the various bodies and to the Joshi class and the public generally. It has been said that opinions have been called for and received

The Honourable Sir William Vincent : May I explain, Sir? The Bill has been circulated to all Provinces and full opinions have been received.

Mr. B. H. R. Jatkar : But the public who receive the services of the Joshis and the Joshis themselves have not been consulted, and it is very necessary that they should be consulted before we proceed in this case, and hence I put this amendment that it should be circulated in order to elicit opinion, and I hope the House will support it.

Mr. President : I do not know whether the Honourable Member has understood the technical meaning of the word 'circulation'. I understand, unless this Assembly gives explicit instructions, circulation only refers to Local Governments and such other bodies as may be mentioned in the motion.

The Honourable Sir William Vincent : In that sense it has been circulated.

Mr. President : The Honourable Member must realise that the word 'circulation' in this motion has a perfectly technical sense and that the Bill will not go to those bodies to which he refers unless this Assembly explicitly orders it to go.

Rai D. C. Barua Bahadur : I beg to submit that as exception has been made in the case of Bengal it should also be made in the case of Assam. We do not know what watandar priests are, or anything about them. The word 'Hindu' has been defined in a very peculiar way. I am a Hindu, but I do not come under that definition at all. We have no such priests as watandar, and they are quite unknown in our part of India. So, if it should be introduced, at the outset the provinces of Bengal and Assam should be excluded from its operation.

Dr. H. S. Gour : Sir, I am afraid the fact that the Honourable Mover of this motion has overlaid his speech with controversial matter is responsible for the acrimonious discussion which has followed it. I beg to submit that this is not a pure question of Hindu Law, but a mixed question, of Hindu and Civil Law. We have been told and told with a certain degree of emphasis that the right of a Joshi or of a watandar priest to make exactions from his constituents is a matter of Hindu Law. My friend, Mr. Mukherjee, and my friend, Mr. Pyari Lal Misra, have reiterated this statement. Now, I wish to challenge with due humility both of them to point out a single sentence from any of the recognised texts of Shastric Law where it is laid down that the priest is to demand and receive any perquisite for the performance of religious rites.

Sir, the history of this watan exaction may be divided into three chapters, one more gloomy than the other. You will find that in the orthodox books on Hindu Law it is inculcated beyond any shadow of doubt that the priest is to lead the life of an ascetic and to give his priestly services gratuitously and without any recompense. This you will find repeated in Manu and then you will find it repeated in the later books on Hindu Law. Now, we pass on to the second stage. The second stage was the offering of services for payment, and last of all, it happens to be payment without service, and this is the stage at which we find watandar priests' position both in the Central Provinces and in Bombay. Honourable Members will remember the watandar priests claim this as their hereditary watan and the right as their property and Honourable Members will remember that throughout the country such rights have grown up during the last 100 or 200 years. I remember a case which will be recalled by many in this House that a patwari claims one rupee for Dusserah for worshipping his ink pot and he refuses to give any copy of the jamabandi or katta to a tenant who does not worship his ink pot. The ink pot refuses to surrender the necessary fluid necessary for inditing the katta or the jamabandi. I find that these immemorial rights and customs existed even in Europe. We have a living example, I am glad to say the sole and single living example, of the toll-keeper, the man who used to put a rod

across the road and said, 'Pay me my six pence, otherwise you cannot pass.' If you ask him, 'Why should I pay you six pence', he said, 'This is the right sanctified by custom and the immemorial user of the land and the passers-by feel that it must be right'.

The priestly classes in Europe made similar exactions. I do not wish to detain the House by giving examples because they occur to all of us. Now I submit that so far as these Watandar Hindu priests in Berar and the Bombay Presidency are concerned, for a very long time they have been making these demands from the public at large, not because they render any public service, but merely because they say they claim this as of right and as sanctified by immemorial custom. Now, Sir, this is their way. If the people are willing to pay, there is no question about legislative or judicial interference. But when they put this matter before the Court, the matter takes a different turn. It assumes a peculiarly secular aspect. A court of law has got to be satisfied that the plaintiff who puts this matter in court has got what is known in the Civil Procedure Code as a civil right. Now, Sir, when the question comes up before the civil court, the first thing that the court inquires is 'have you got the civil right to put in a suit?' I beg to ask the Honourable Members of this House what is a civil right. A civil right is a right to property which a court of law can enforce by its own coercive process. Therefore it is not purely a religious question, but it is a religious question, which is dominated by the secular question as to whether you have got a right of suit. Now if I go to a court of law and say that I have a right, an old, sacred, immemorial right to put my hand into my neighbour, Mr. Mukherjee's pocket once a year on the Dasserah day and to empty its contents, and say to the court that on that particular day my friend received his travelling allowance and was walking home with it but he did not allow me to take possession of the bag which he was carrying, will the court give me a decree? If, then, I say it is sanctioned by ancient immemorial custom, the court will say 'whatever may have been your ancient right, I will put it now to the test of the established law that no custom is valid if it is opposed to public policy. And what is public policy? Public policy, I submit, demands and requires that nothing is good which is against justice, equity and good conscience. The question is, therefore, reduced to this. The question is not whether I have got an immemorial right, but the question is, when I go to a court and say I have got an actionable claim, whether I have got such a claim as the court will regard as a claim founded upon justice, equity and good conscience. That is the crux of the whole matter, and I think that my friends in this House will clearly disentangle this question from the Brahmin and non-Brahmin question, or from those other questions that have been raised, namely that these Watandar priests have been enjoying this right under the sacred Hindu Law,—that it is legalized and sanctioned by immemorial custom. Honourable Members will remember that the short question, therefore, with which we are concerned here is this. Is this a right which appeals to your conscience,—is this a right which can be justified upon the stern and solid ground of justice and reason? I submit, Sir, there can be no two answers to this question. Even my friend who is 'a stern and unbending Tory' in these matters will not deny the fact that if this question is once placed before a court of law, and an appeal is made to that final arbitrator of all disputes, namely, reason and commonsense, my friend will not have a leg to stand upon. I therefore submit that this is not essentially a Hindu-Law question: and I regret that the Honourable Home Member should

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have beaten a hasty retreat from the position which I submit he should have taken up in this connection. I say so, Sir, because this is not only a single and solitary instance in which we shall ask the Government to take up a firm attitude. To say that this is a question which affects Hindu Law and, therefore, it will be dropped by the Government, and to say 'we will have nothing to do with this question—you decide this question in the best way you can' is, I submit, not exactly the correct position for Government to take. If they once find that the question is a mixed question of Hindu Law and Civil Law,—if they once find that the courts of justice are daily petitioned to enforce this claim, I think it is the bounden duty of Government to see whether the courts of law, which administer Civil Law, should continue to give decrees in cases of this character. It is then a question of Civil Law, and not a question of Hindu Law, because, as I have pointed out, it is the duty of the court to see whether there is a civil right upon which the plaintiff is entitled to sue and obtain a decree against the defendant. Surely, Sir, if this question is of the character, I submit it is, then I submit, the Government should take courage in both hands and support this Resolution. They should say, 'we do not deal with this question as a question of Hindu Law,' but when you ask our courts of justice to use their coercive processes for the purpose of enforcing your right, you bring yourself within the domain of Civil Law, and it is our duty then to examine and see whether your claim can be supported and justified on the ground of justice, equity and good conscience, which supplements our statutory law. Now, Sir, this is perhaps a vain and idle appeal, because the Honourable the Home Member has already told us that the Government is committed to neutrality in a matter of this character. I wish therefore to appeal to my friends that this is a motion which they should heartily support, not only in the interests of justice but in the very sacred name of Hindu Law, which, I submit, does not tolerate the exactions of sums in the shape of priestly fees and offerings.

I have said, Sir, that in its original conception the office of a priest was an honorary office and he regarded it as a sacred duty to offer his religious ministrations to all and sundry without any charge, without any fee, and without any recompense. It was only in course of time that the clergy came forward and began to assert that they had an ancient right to make exactions from the laity, whether the laity required their services or not. My friend, Mr. Jatkar, who hails from Berar, told us that the feeling in Berar is strongly against this Bill. I think my friend will be the first to remember that in the Berars a very strong movement was on foot, and it is getting stronger every day, where the non-Brahmins have appointed their own non-Brahmin priests to the exclusion and supersession of the Brahmin priests, and who perform all the services which were before performed by the Brahmins.

Mr. B. H. R. Jatkar : Not in Berar.

Dr. H. S. Gour : My friend says it is not so in Berar. Let me repeat that it is so. I am as closely connected with Berar as my friend is. I practise in the Central Court in Nagpur, and I am in daily touch with the feeling in Berar. There is certainly a growing opinion in the Amraoti and Ellichpur districts in favour of excluding all Brahmins from their religious ministrations. Now, Sir, the question is a plain question.

Let us examine the question not as Hindus or Muhammadans, Christians or Parsis, but as men possessed of common sense. These priests come up and if I want their services I pay for them. If I don't want their services, can any Honourable Member in this House appeal to any rule of common sense and reason and say whether you want his services or not you shall pay an annual due to the priest who claims it of you, independent of any service which he may render to you. I have known cases and these cases are not many, but they typify the class of cases which exist in Borar. A gentleman, a Watandar priest, had a land fight, a land feud, with his neighbour, who happened to be his constituent. They were not even on talking terms. His relations died and this Watandar priest refused to perform the funeral ceremony, and at the end of 3 years, out of sheer revenge he filed a suit for Rs. 52 in the court and obtained a decree. I was engaged on appeal by the man, to whom injury in addition to insult had been offered by this gentleman of the priestly class, and I argued and pointed out that it is against the most elementary sense of natural justice that a man should not only inflict an injury of a most egregious character upon his constituent but afterwards demand a sum of money as his ancient perquisite. Case after case, Sir, could be cited in which the priestly classes have abused their power, and I therefore strongly support this motion, and I ask this Honourable House to ignore these adventitious and unnecessary questions about Hindu ~~versus~~ non-Hindu and the so-called sacred law of the Hindus, and to deal with the question as one of common sense that no man shall have money for which he has rendered no service.

One word more, Sir, and I have done. My friend, Mr. Latthe, has no doubt defined 'Hindu' in a way which is open to criticism. If my friend will look at the sub-section, even a Khoja or a Momin, who are Muhammadans but follow the Hindu Law, are classed as Hindus. But that is a matter which I think could be corrected by the Select Committee. There are other defects in the Bill, but these are all matters for the consideration of the Select Committee. So far as the cardinal principle of this Bill is concerned, I submit, Sir, it is unobjectionable and should not be objected to by the Honourable Members of this House.

Mr. President: The original question was :

'That the Bill be referred to Select Committee.'

Since which an amendment has been moved :

'That the said Bill be circulated for the purpose of eliciting opinion thereon.'

The Honourable Dr. T. B. Saprú: Sir, at one stage of the debate I thought that it was perfectly unnecessary for another Member of the Government to stand up in connection with this Bill. But Dr. Gour's speech I think makes it necessary for some other representative of the Government to make a few observations in regard to some of the remarks which have been made by him. I do not think the Bill is one which lends itself peculiarly to any elaborate eloquence. It is really a matter of law, and there are just one or two considerations of policy involved in it. I will invite your attention first of all to the questions of policy and then to the questions of law.

My Honourable friend, Dr. Gour, has said that the attitude of Government in regard to a Bill of this character ought to have been different to what it was stated to be by my Honourable Colleague, Sir William Vincent, this morning. I need scarcely assure Dr. Gour or many of my friends who are ardent

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supporters of social reform that in my individual and personal capacity there is probably no one here in this House prepared to go further than I am. But at the same time in a matter of this kind which affects certain vested interests, it is quite obvious that the right attitude for the Government to take is one of neutrality—more particularly when the House consists of a non-official majority and when the House can come to its own conclusions independently of any assistance from the Government. I sincerely hope and trust that my friend, Dr. Gour, and those who think with him in a matter like this will not assume that the Government is deliberately offering any resistance. The position that the Government has taken, and which has been explained at some length by my Honourable Colleague, Sir William Vincent, is that having regard to the conflict of interests the safest course for the Government is to leave this matter to the judgment of the non-official majority. I may further add that this attitude relates only to Members of the Government. So far as the official Members of this House are concerned, they are at perfect liberty to take their own course. So much about the question of policy.

With regard to the question of law, I think it is absolutely fruitless now to discuss what really was the origin of this rule or practice or custom, whatever you like to call it.

I do not wish to enter into any controversy with my Honourable friend, Dr. Gour, as to his exposition of the Hindu Law in regard to the rights of priests, though if I did enter into that controversy, I would very strongly challenge at least one of his observations, as my reading of Manu is not exactly the same as that of Dr. Gour. I can recollect numbers of verses in Manu where very minute statements are made with regard to the offerings which are to be made to priests. There is no harm in recognising the fact boldly that the priests have in Hindu history wielded an extraordinarily large power, and because we in modern times are not disposed to recognise their authority, we need not revise our notions of Hindu Law for that reason. The fact of the matter seems to be, if I may venture to make the suggestion, that the office of the Watandar—and I make that suggestion, entirely on my own responsibility—probably had its origin in the performance of certain duties which were cast upon the village priests by the State at a time when the Hindu State was the ruling power. I do not know what exactly is the meaning of the word 'Watandar' in the Marathi language, but speaking as a Northern India man, I can say that the expression is a compound of two Persian words, and very often I have found that when Persian words have travelled down to the South or the Bombay Presidency, they have in course of time come to assume a certain technical meaning which has been given in those particular parts of India. But whether that is a correct explanation or not, what is claimed there is by no means uncommon. Even in Northern India you find claims of this character put forward, though it must be added that the High Courts have persistently declined to recognise these claims. Only two years ago I had a case in which the Pandas of Kedar Nath, one of the sacred shrines, claimed a similar right, and the case was bitterly fought, and the High Court held that they could not claim such rights. Well, so far, therefore, as Northern India is concerned, and I would also say the same thing with regard to Bengal, no difficulty has at all been experienced, and it has been definitely ruled both by the Allahabad High

Court and I believe, by the Bengal High Court also, that there can be no such monopoly in the office of a priest. It is true that difficulty has been felt in Bombay and I understand also in Madras. (*A voice*: No difficulty in Madras). I may be wrong there, but certainly difficulty has been felt in Bombay, and if by reason of a persistent course of rulings it is impossible for the Bombay High Court to take a different view, there may be justification for the Bill which has been introduced by my Honourable friend, Mr. Latthe.

As to whether the provisions of this Bill will be acceptable to all sections of the community in the Bombay Presidency, it is a different matter, and it is precisely for that reason that the Government have decided not to take sides in a matter like this, but to leave it to the unfettered judgment of the House. Whatever may be my personal opinion in regard to matters of this character, whatever may be my personal sentiments, I must identify myself with the Government so far as their policy in this particular matter is concerned.

Mr. N. M. Samarth : Sir, I wish to tell this House briefly what really the substance, the gist of the Bill is. It will be noticed that the Bill is only a permissive measure. It says in clause (3) that no person shall be entitled to claim, as a matter of right, any ceremonial emoluments from any Hindu who does not call in the services of the person claiming those emoluments. If any Hindu in any village is willing to make payment to the village priest, this Bill does not interfere with him at all. It only says that any one who does not want to engage the services of the village priest but who engages some other priest, should not be compelled by a decree of the court to pay emoluments to the person whose services were not requisitioned. In other words, the Bill asks for freedom of conscience and freedom of action. The opposers of the Bill ask for coercion and compulsion, and the House will have to decide between these two issues. The situation is this, that in Madras, Calcutta and Allahabad, the High Courts have held that there cannot be any monopoly in priesthood of this character. The decisions of the Bombay High Court, however, have gone the other way, and only recently, in a decision, 42, Indian Law Report, Bombay, it was held that if a Hindu villager chooses to have Brahmanical ceremonies conducted, he must employ his village Joshi or fee him as if he had employed him.

Now the object of the Bill is to bring the law in the Bombay Presidency as well as in those parts of the Central Provinces, where there is a large Maharashtra community, into conformity with the decisions of the three other High Courts. The Honourable the Law Member was not sure as to what the Madras High Court decided. But I may point out to the Council, that the Madras High Court decided in 26, Madras Law Journal, page 483,—it is a judgment by Mr. Justice Sadashiva Aiyer as follows. This is what Mr. Justice Sadashiva Aiyer said: 'I am strongly against the recognition of office which could give rise to an exclusive right to officiate as *purohit* for a particular person or in a particular village or villages, especially a right which can be enforced in the courts of law. He further goes on to say: I hold that monopoly to officiate as *purohit* should not be recognised by courts and that it is against public policy to allow any such claim.' Therefore, Sir, the uniformity of opinion of Allahabad, Calcutta and Madras High Courts, is in favour of the principle embodied in this Bill. The Bombay High Court having by a series of decisions laid down the law which I have already mentioned

[Mr. N. M. Samarth.]

finds itself difficult on account of the well known principle of law known as *stare decisis*, to recede from them, and nothing can be done to get over those decisions unless those decisions go up to the Privy Council and the Privy Council overrule them. The Bill, therefore, is a simple measure, the principle of which is to bring the law in Bombay into conformity with the law which prevails elsewhere. Let the whole House be clear as to the principle of this Bill, and I need not repeat that while it does not enforce any restriction upon any Hindu who wishes to pay a Hindu village Joshi the emoluments that he thinks are his due, it does not compel any one to engage him, but all that it says is that if a Hindu does want to engage the services of the village priest, let him not be compelled by a decree of the court to pay him as if he had engaged him. I hope the House will pass this measure.

Dr. Nand Lal: Sir, it is regrettable to see that the controversy between Brahmins and non-Brahmins is manifesting itself in various phases, and this Bill, I am sorry to say, is a specimen of it. However, I am in support of this Bill for various reasons.

I differ from my learned friend, Dr. Gour, so far as his exposition of the law is concerned. He seems to tell us that the Legislature will step in only in the case when some sort of civil right is denied or crushed. Differing from him I may make my submission that my view of the province of a Legislature is this, that the Legislature will think itself called upon when there is fear of the breach of peace or when there is fear that there will be multiplicity of litigation and coercion. Since there is great room for this, the Legislature is right in stepping in and operating itself as a preventive. For these reasons I am in favour of this Bill and I support it very cordially.

Mr. W. M. Hussanally: Sir, it is impossible for a non-Hindu to recognise the importance of this Bill or the merits of its provisions. But I only want to speak with regard to one or two points that have been touched upon by my friend, Mr. Pyari Lal Misra. He said that the Joshis had not been consulted in Berar. It is impossible to suppose that the Bill which affects that class of people, could acquire their support. I am not concerned, Sir, personally with this Bill in itself, but from the opposition which has been led by my friends, Mr. Mukherjee and Mr. Pyari Lal Misra, I am rather anxious of the fate of another Bill which my friend, Maulvi Abul Kasem, has introduced with regard to the improvement of *waqfs* in Muhammadan societies in India and I am afraid that if this Bill falls, the fate of that Bill is also sealed. As I understand the law, that has been introduced, it ought to be one that is for the greatest good of the greatest number of the people, and if the Joshis alone oppose it and the rest of the Hindus of the Bombay Presidency and Berar and the Central Provinces support it, I think this Assembly is bound to also support it, otherwise no reform in our social life, whether of the Hindus or the Muhammadans, is possible.

Mr. Mukherjee wished that this Bill should once more be circulated for the opinion of the people of the Provinces it will affect. But I do not consider that the rule which he quoted at all applies because it has been once circulated and I believe it has been widely published in the Government Gazettes and every person who wished to express an opinion about it has done so or ought to have done so. And it is no use now to relegate it again to circulation once more

simply to avoid it. But at the same time since a discordant note has been struck by my friends, Mr. Pyari Lal Misra and Mr. Jatkari, I would suggest to the Honourable Mover to add the names of one of them to the Select Committee so that they may express any views they like in the Select Committee.

Mr. J. Chaudhuri : Sir, I move that the question be now put.

Mr. President : The original question was :

'That the Bill to amend the law relating to the emoluments claimable by Watandar Hindn priests be referred to a Select Committee consisting of the Honourable the Law Member, the Honourable Sir William Vincent, Mr. N. M. Samarth, Mr. N. M. Joshi, Mr. K. G. Bagde, Dr. H. S. Gour and the Mover.'

Since which an amendment has been moved :

'That the Bill be circulated for the purpose of eliciting opinion thereon.'

The question I have to put is :

'That the Bill be circulated for the purpose of eliciting opinion thereon.'

The motion was negatived.

Mr. President : The question is :

'That the Bill be referred to the Select Committee.'

The motion was adopted.

Mr. A. B. Latthe : (Cries of 'No, no!') One word of personal explanation, Sir. The Honourable the Home Member observed that when he refused to give me time on an official day to introduce the Bill, I accused him of being partial. I must explain what really happened. The Honourable the Home Member said...

Mr. President : Order, order. If I allow reports of private conversations to be used, I immediately open the door to acrimonious controversy. If the Honourable Member really wishes to make a personal explanation, I am prepared to allow him to do so but he cannot go into a private conversation on the purport of which no doubt two memories may differ.

Mr. A. B. Latthe : I have only to say this, Sir. The reason for the Honourable the Home Member's refusal to give me time for the introduction of the Bill on an official day was that Government would be thought to be on my side and this was fearing a certain community too much.

RESOLUTION *RE*: THE ANTI-DRINK MOVEMENT IN INDIA.

Beohar Raghubir Sinha : Sir, I rise to move the Resolution standing against my name. It runs thus :

'This Assembly recommends to the Governor General in Council that the following expression of opinion, namely that this Assembly declares its sympathy with the anti-drink movement in India, be conveyed to Local Governments with the request that they may consider the advisability of adopting measures to put a stop to the drink evil as soon as possible.'

In moving this Resolution for the acceptance of this Honourable House, I have no political ends to serve. I shall seek to gain such ends on the 29th instant when the Resolution on Self-government will be discussed.

[Beohar Raghubir Sinha.]

To-day I am solely actuated by purely social, civic, and humanitarian motives. I do not pose as the mouthpiece of any particular party, but as the jealous upholder of the traditions of my country which saw the evils of alcoholism thousands of years ago, and pronounced every sort of fermented liquor as the drink of the *Danavus*, the degraded and the ignoble. I do not mean to assert that drink was unknown in this ancient land before the advent of the Europeans, but there is not the slightest doubt that while before it was confined to the lowest strata of the population, English education and western culture have made it fashionable even among higher and educated classes, and its rapid spread among the working classes is simply alarming. People say, that the advent of the Bible in different lands has invariably been accompanied by the advent of the bottle, in spite of the teachings of the Bible, and it was impossible that India, once so sober, should have escaped this universally admitted curse of western civilisation.

Sir, the apologists of the drink traffic bring forward many arguments and quote arrays of figures to show that the excise policy of the Government is necessary in the best interests of the country and that by making drink expensive, it is keeping down drunkenness and so on and so forth.

But statistics and every day experience clearly demonstrate the alarming spread of the drink evil among the higher classes, that once regarded even the touch of liquor as pollution, and indulgence therein as the surest sign of social and religious degradation.

It is said, Sir, that the sale and consumption of liquor is decreasing. But I rely on the figures which are taken from the official reports. They will show that from the year 1904-1905 to 1918-1919 there has been an increase of twenty lakhs twenty-nine thousand nine hundred and ninety-six proof gallons of liquor, in the whole of India. In Bengal, the total increase of liquor has been ninety-six thousand three hundred eighty-six gallons in a single year from 1917-18 to 1918-1919. In the Punjab, too, there has been an increase of one lakh gallons in two years. Can anybody expect us, Sir, to remain indifferent under such deplorable circumstances when our countrymen are being thus victimised? Government may not be prompted in its excise policy by pure financial motives, but should it permit the people committed to its charge, to offer themselves as a sacrifice to the Moloch of drink by making it available everywhere and thus placing temptation in the very paths of the weak-minded.

I may quote a passage from the speech of Lord Chesterfield in the House of Lords in 1748 against the British Excise and License Revenue derived from intoxicating drink.

It reads thus :

'Luxury, my Lords, is to be taxed, but vice must be prohibited. Let the difficulties in executing the law be what they will. Will you lay a tax on the breach of the Commandments? Would not such a tax be wicked and scandalous, because it would imply an indulgence to all those who would pay the tax? This Bill (to license liquor shops for the sake of revenue) contains the conditions, on which the people are to be allowed henceforth to riot in debauchery, licensed by law and countenanced by magistrates, for, there is no doubt, but those in authority will be directed by their masters to assist in their design to encourage the consumption of that liquor, from which such large revenues are expected.'

(A voice.—Londer please.)

Should the Government which once yielded so tamely to the demands of the British public and sacrificed its opium revenue, now think of flouting Indian public opinion in these days, when the country is being enfranchised and hopes of Self-government are being held out? Some of us cannot believe, Sir, that Government is really indifferent to the fate of the teeming millions of this country and would deliberately sacrifice them for financial considerations.

Sir, no sacrifice of revenue should deter the Government from doing its duty. Some people argue that if we lose the excise revenue, education and other useful improvements will suffer. So it comes to this, that if we wish to provide increased and better facilities for education, etc., we must make the people drink more.

If in America this loss of revenue has easily been made good and when in this country itself a loss of opium revenue has not left the Government insolvent, I see no reason why it proves so formidable. As total prohibition has not proved itself a financial disaster in America, there is no reason why it should do so in India in spite of dissimilarity of conditions. We have the most illustrious apostle of total prohibition of America in our midst in these days, I mean Mr. W. E. Johnson. He has opened his campaign against drink in this country, which, I am sure, will inspire Indian public with greater zeal in favour of total prohibition.

The moral and material well-being of the Indian Nation as the result of prohibition must be a source of gratification to the Government.

My Resolution, however, does not suggest any particular means to meet the end. All it asks is that this Assembly should express its sympathy with anti-drink movement and that the Government should convey its opinion to the Local Governments to consider the advisability of adopting measures to put down the drink evil.

The acceptance of this mild Resolution by the Government will at least show that it does not wish to maintain an uncompromising attitude against this healthy movement and does not wish to flout public opinion.

One point, more, Sir, and I have done. This Assembly must be aware that the Central Provinces Government has accepted a Resolution moved in the Local Council which runs thus :

'This Council recommends to the Government to stop within, as short a period as may be practicable, the sale of country liquor throughout the whole Province.'

The words 'country liquor' had to be substituted for 'liquor' as the Honourable Mr. S. M. Chitnavis, Minister, observed that in the case of foreign liquor a reference to sanction of the Government of India will be required. To this I wish to draw the attention of the Government of India and request them to adopt the same policy as regards foreign liquor and thus further strengthen the hands of Local Governments.

In fine, with your permission, Sir, I wish to read out to this Assembly a message from Mr. W. E. Johnson contained in the letter which only the other day he has addressed to me. It is this :

'America tried out the policy of prohibition over a period of more than forty years. She was so satisfied with the result that the policy was adopted by the whole nation and no law ever was so strongly approved by the people. It becomes stronger in popular approval every year. Indian teachers have been proclaiming the evils of alcohol for two thousand years. Most of the drink has been eliminated by this teaching until less than one hundred years ago when the traffic in alcoholic drinks began to be commercialized and developed for revenue purposes. Since then, the drink evil has been so rapidly developing that it has now become alarming as a public menace. But India now has the responsibility

[Beohar Raghubir Sinha.]

of dealing with this problem, it being a transferred subject, and the whole world is watching to see what will come of it. I do not believe for a moment that India will eat her teachings of 2000 years and continue to exploit the sufferings of her poor for private profit or for revenue purposes as has been the policy for nearly a century. Temperance teachings will avail little as long as there is a drink shop on every corner established and authorised by law. It is only the removal of the cause of the evil that will serve to remove the evils themselves. As America has taken the lead in the Western world in eradicating this scourge, so will not India take the lead in the Orient in eliminating this supreme cause of suffering and vice.

Cordially yours,
(Sd.) W. E. Johnson.

With these words, I commend the Resolution for the acceptance of this Assembly.

Mr. President: The question is :

'This Assembly recommends to the Governor General in Council that the following expression of opinion, namely, that this Assembly declares its sympathy with the anti-drink movement in India, be conveyed to Local Governments with the request that they may consider the advisability of adopting measures to put a stop to the drink evil as soon as possible.'

Before I call anybody, I had better draw the attention of the Assembly to the character of the first amendment*. Amendments do not have to pass any process of admission before appearing on the paper. It would be physically possible, of course, for this Assembly to pass this amendment, but I will draw the attention of the Assembly to the fact that the Honourable Member moving the amendment instructs the Assembly to recommend to the Governor General to introduce legislation in this Assembly, which it is not within the power of this Assembly or the Indian Legislature to pass. With that I must leave him, because it is not in my power to rule the amendment as out of order.

The Honourable Mr. C. A. Innes: Sir, when the Government of India received notice of Mr. Sinha's Resolution, they were placed in a position of some difficulty. It was their business to advise the Governor General whether this Resolution should be allowed and there were strong grounds for holding that the subject-matter of the Resolution was primarily the concern of the Local Governments, and therefore not open to discussion in this House. Excise, as the House knows, is a Provincial, and in all Provinces except Assam, a Transferred subject, and as the House also knows, the Governor General's power of interference with the administration of Transferred subjects is very strictly limited by rule. On the other hand, apart from the fact that the Government of India naturally take a very deep interest in so important a question as that of temperance reform, they have a direct interest to some extent in the question raised by this Resolution. They derive revenue, a very considerable revenue, from imports of foreign liquor. Eventually therefore it was decided to allow Mr. Sinha to take his chance in the ballot and to put no obstacles in the way of the House, if it so desired, discussing this question of temperance reform, especially in the very general terms in which it has been put in this Resolution. At the same time, I have risen to speak at a very early stage in this debate for a particular reason. Only a few days ago, you had occasion to comment on the fact that the Assembly had embarrassed itself by devoting to subjects of comparatively minor importance time which

* That for all the words after the word 'Council' the following words be substituted: 'That except for medicinal purposes the sale, manufacture, use and import of liquor in British India be prohibited by an Act of the Legislature.'

could have been more profitably devoted to subjects of greater interest to the House. Now, Sir, I do not wish for a moment to deery the importance of the question raised by Mr. Sinha ; but I do say that as far as this House and the Government of India are concerned, at present the subject is not one of immediate practical importance. On the contrary, the interest of the subject is mainly academic. I may point out that we are not a debating society, but we are an Assembly of practical legislators. (Hear, hear.) I say that as our constitution is now arranged, any temperance movement in India must have its origin in the Provinces. I have already pointed out that excise is not only a Provincial but a Transferred subject, and I think that no one in this House will deny that each Local Government must be allowed to decide for itself to what extent the drink evil, to use Mr. Sinha's own expression, exists in each Province. Local knowledge, Sir, is essential for the consideration of the problem in all its bearings, and it is only Local Governments which can decide, having regard to all the considerations involved, whether those considerations be financial considerations or considerations based upon the material and moral condition of their peoples, to what extent they can usefully go in combating the evil. It must be remembered, Sir, that the Local Governments will have to pay the piper. Therefore it is for them to call the tune. I am aware, Sir, that the Resolution merely asks us to declare our sympathy with the anti-drink movement in India, and that it merely suggests that this expression of opinion should be conveyed to Local Governments. I take it, Sir, that the end which Mr. Sinha has in view is the suppression of the evils of drink,—and I am quite sure that there is no one in this House who does not sympathise with that object. (Hear, hear.) Certainly, the Government of India do, most whole-heartedly. But, Sir, I must confess that I am not in favour of accepting the Resolution in the form in which it stands. I am opposed, on principle, to offering, unasked, advice to Local Governments on subjects which are essentially, at present at any rate, their own concern, and which, Sir, they are perfectly competent to deal with themselves. The Ministers in charge of excise in the different Provinces in India are responsible to their own local Legislative Councils, and every one in this House must know that these local Legislative Councils have the cause of temperance very much at heart. I think I am right in saying that practically every Minister in every Province in India is now busily engaged in overhauling and re-examining the excise policy of his Government, in order that he may satisfy his local Legislative Council that all practicable measures are being taken to put down the evils of drink, and that the moral interests of the people are in no way being subordinated to considerations of revenue. The Governments of the United Provinces and of Bombay have appointed Committees to go into the whole subject, and probably most Members of this House will have seen that the report of the United Provinces Committee was recently published in the public Press. The Punjab Council, Sir, has accepted the principle of local option, and I understand that a Committee is now sitting to decide whether a workable scheme can be devised to give effect to that principle. In Bengal, the Minister has recently explained his policy in a long Press Communiqué. In the Central Provinces, as Mr. Sinha has pointed out, the local Legislative Council has adopted prohibition as the goal to be aimed at. And, finally, the whole question was discussed in March last in a full-dress debate in the Legislative Council of Bihar and Orissa. It is worth noting that this Resolution, which recommended that steps should be taken totally to prohibit the sale,

[Mr. C. A. Innes.]

manufacture and consumption of liquor in the Province within a period of 5 years, was rejected by a large majority of the Council, on the ground that it was premature, and that at present it was not politics to talk of prohibition. I have given these details, Sir, in order that the House may realise that local Legislative Councils throughout the country have the cause of temperance very much at heart; that they have taken it up in real earnest, and that they are bringing pressure to bear upon their Ministers, in order that adequate measures may be taken to further the cause of temperance in India. This being so, Sir, I suggest, for the consideration of the House, that it would be out of place for the Legislative Assembly to offer to these Councils advice which is not only unsought but which is also unnecessary. If we adopt a Resolution of this kind, I fear that we shall be setting up a bad precedent. This Assembly is jealous, and rightly jealous, of any encroachment upon the functions marked out for it by the constitution. We may take it for certain that the local Legislative Councils are equally jealous of any encroachment upon their functions, and that they might resent advice which they have not asked for, and which is quite unnecessary. I suggest, Sir, that if we are to be careful of the dignity of this Assembly, if we are unwilling to place this Assembly in a false position, and if we are anxious to set up salutary precedents, we should refrain from trespassing beyond the sphere marked out for us by the constitution. I submit, Sir, that the Mover would be well advised to withdraw his Resolution. (Hear, hear.) If not, Sir, I am afraid that if the Resolution is put in the form in which it now stands, I am compelled to oppose it on behalf of Government.

I have carefully refrained from discussing the merits of the case; I base my opposition solely on the point of constitutional principle. It has occurred to me, Sir—and I should like to throw out the suggestion—that possibly we may come to an agreement in a very simple way. We are all in this House entirely in favour of temperance reform ('Yes, yes') I am not proposing a formal amendment, but I just throw out a suggestion as a possible solution. I suggest, Sir, that a Resolution of the following kind, would meet us all:

'That this Assembly recommends to the Governor General in Council that note may be taken of the fact that the Assembly is in sympathy with the temperance movement in India.'

I think, Sir, that that is all that it is necessary to say, and, Sir, it avoids what I have pointed out is a dangerous precedent and principle, namely, the danger of our trespassing beyond our functions and offering to Local Governments and local Legislatures advice which is quite unnecessary, and which is quite unsought.

Mr. R. Faridoonji: Sir, in speaking on this subject I labour under some disadvantage, being one of those who have in recent years come in for a great deal of popular criticism, and latterly, have been somewhat severely handled by a portion of this House. Needless to say, I am referring to district officers.

Sir, the drink habit in India is well known to be as old as history. The ancients used to fight their great battles primed with the soma juice. All the world over, the craving for stimulants is as old as mankind, and is not likely to disappear until all humanity ascends to Mr. H. G. Wells' New Utopia described in one of his books. Coming down to more recent times, say, the rule of the Maratha period, which is often held up as a model rule, the drink habit

was just as bad, if not worse, than it is now, and it prevailed among the upper classes. In the city of Nagpur, over a hundred years ago, the Political Officer reported that there were over 300 stills, and women of the middle classes were seen going freely to grog shops. There are at present only 10 to 15 liquor shops in that city.

The policy of Government in regard to drink has been laid down in their Resolution of 1905. I shall quote an extract from the Resolution :

'The Government of India have no desire to interfere with the habits of those who use alcohol in moderation. This is regarded by them as outside the duty of the Government and it is necessary in their opinion to make due provision for the needs of such persons. Their settled policy is, however, to minimise temptation to those who do not drink and to discourage excess in those who do, and to the furtherance of this policy all considerations of revenue must be absolutely subordinated.'

In other words, Government aim at restriction and not prohibition. That policy has been strictly carried out throughout India, by reducing the number of shops, by restricting the number hours and by raising the duty on liquor, the only limitation being guarding against the risk of an outbreak of illicit distillation. That risk is not a small one, as the material for distillation is within easy reach—rice, mowra, the date palm, etc.—and the process of manufacture is just as simple, namely, two earthen pots and two bits of bamboo. This policy of Government is a wise policy. In Persia, which is purely a Muhammadan country, prohibition, with heavy penalties, has been the rule for centuries, and yet the habit of drinking has been widespread. Even in the United States which have run dry lately ('No, no'), illicit distillation is pretty widespread. And, after all, Sir, is the vice of drinking any worse than the vice of over-eating which is far more widespread and which at least does as much harm, intellectually, morally and economically? Increased drinking is an index to prosperity, and is therefore much in evidence in the larger industrial towns, but in the interior the policy of restriction has been eminently successful. In my Province, for instance, which has a large proportion of aborigines, the average yearly consumption per head of the adult population is something like 6 to 8 bottles of the weakest kind of liquor, which is three times as weak as whisky or brandy.

The question of revenue has all along been entirely subordinated to the policy of restriction, and a Government which has forfeited crores of revenue from the opium traffic with China cannot find it difficult to forego revenue from drink, and reach the pockets of the people who have been saved so many crores. Lastly, the evil of driving people by prohibition from drink to drugs is a matter for consideration. The Ganja habit, and the habit of opium smoking, which latter exists even among the upper classes to some extent, is far more injurious than the drink habit. Prohibition is a counsel of perfection, and the object aimed at can only be effected by the propaganda of persuasion and by getting people out of the drink habit.

Mr. E. L. Price: Sir, I support entirely Mr. INNES's suggestion put before the House, and I think on behalf of Government he has expressed a very proper feeling for the cause of temperance. What is temperance? Temperance is moderation in all things and, Sir, imposed not by the iron bars of making ordinary acts criminal offences but by moral impulses. Now, Sir, the Mover of this motion has nothing at all to do with temperance. The House cannot make its mind too clear on that point. He is not concerned in the slightest with Government's idea of temperance and moderation brought about by moral impulses, helped of course by good social customs and usages,

[Mr. E. L. Price.]

Not a bit. All he is concerned with is prohibition. He speaks with his own tongue in his own throat, but the voice is the voice of Mr. Pusseyfoot Johnson. Sir, last Saturday when we had a day off, I took a busman's holiday and induced myself to go and hear some more speeches. I heard Mr. W. E. Pusseyfoot Johnson. What is more, I induced Mr. Pusseyfoot to hear me. Now, Sir, Mr. Pusseyfoot of course is not a great speaker, and he is anything but a great debater, but he is a very clever fencer of awkward questions. He has had illimitable practice no doubt.

Mr. President : Order, order. The Honourable Member has had his say about Mr. Johnson.

Mr. E. L. Price : Sir, I am sorry if I am out of order. I will try and put myself in order. But I must explain that we had exposed to us what is, I think, the basis of Mr. Raghbir Sinha's Resolution, which really has prohibition behind it. Before the era of prohibition in America we had given us a very lurid picture of the country, a picture I should be very sorry to draw of my country; and after prohibition we had a rosy picture which I cannot accept, both from the evidence of the press and the evidence of my own friends who have travelled in America, for I happen to know that in spite of prohibition, America is not dry! And as a matter of fact neither America nor any other country can be dry till you induce all the people to live in glass houses. While people enjoy houses with solid walls and anything like privacy, to prevent private distillation is a physical impossibility. The American law forbade private distillation. It went on. The police, overwhelmed with the importance of their own functions in securing the enforcement of an impossible law, took on themselves to make searches without warrants. There was one Professor—the name of the University I forget now, but his house was searched suddenly and they found his private still. They arrested him, but he said 'What are you doing? Don't be foolish—everybody is doing it.' Everybody *was* doing it. I turn to the '*Civil and Military Gazette*' of the 24th and the cable from New York shows that as everybody was doing it and people were not inclined to put up with the violation of the sanctity of the theory that every man's house is his castle, they have changed the law. They have changed it now: in the United States private distillation is now allowed. No man's house can be searched for it, for no man can be punished for it. He is allowed to make his liquor and to drink it himself and entertain his friends with it. All that he is prevented from doing is to carry a bottle about with him in the street. He can give his friend a drink in his own house, but if he gave his friend a bottle to carry home with him and the friend carried it home that would be 'transport' and a crime! Somebody throws a doubt on it. I have the New York Cable under my hand to show him. Now, if you see this point,—and mind you that whereas Indians are keen on privacy in their own houses, probably more keen than Americans,—you realise that private distillation cannot be stopped, and you will also see that absolute prohibition is an impossible policy for India. Moreover, in the United States to get grape sugar they have to put sulphuric acid on ordinary sugar and so on; but all these things are unnecessary in India where most people have a toddy palm handy and the mowra flower is ubiquitous. So it is quite impossible in my opinion to stop private distillation under absolute prohibition in India, and I do not think the Members of this House are prepared to have anybody prowling about in their kitchens or clearing their sideboard

any more than they show any sign in this Assembly of having their ward robes messed about. I do not see any *khadi* here to-day. Well, Sir, why I feel so peculiarly keen on putting the position before the House that prohibition is impossible is, that an attempt to impose it will mean the infringement of liberty of the subject and the privacy of our houses—and I am very keen indeed on personal liberty. It is not because I am a European, or an Englishman, but just because I am a man, and I am glad to say that the desire for personal liberty and the right of a man to please himself in personal matters goes very far down in society. In the bullying by pickets in Karachi, of two of the men who put up a plucky fight, one of them followed the humble occupation of a *dhobi* and another a *harigariwala*. I do not know how they fought, but my own feeling is that those poor fellows showed a very valuable spirit in building up the common wealth. I would sooner as a fellow-citizen have a *dhobi* who would resist bullying rather than a graduate of any university would put up with it. It reminds me of those lines :

‘Some village Hampden, who with dauntless breast,

‘The petty tyrant of his fields withstood.’

Now we have this position, that a very great country, the United States, during the last two years has been offering its body civic as a *corpus vile* for vivisection. And mark you, that vivisection is not over. The law has been changed as recently as the last week of August. They have not yet solved their problem. Why on earth should we not stand aside, watch them and take all the benefits of that experiment without undergoing any trouble ourselves? It is a valuable thing to find anybody at all offer themselves for such an experiment and to be able to stand aside now and watch the end, and the end is a good way off. Yet we may have all the benefits of their experiments and none of their toils and pains.

Therefore, Sir, to conclude. I do support the Honourable Mr. Innes' suggestion entirely. It is a temperance proposal. It commends itself to all of us. Temperance is moderation in all things and it is urged on a man by moral impulses and not by the iron bar of law. But the proposal of Mr. Sinha, however it may be disguised, has not got anything at all to do with temperance. It is simply a matter of absolute prohibition to be ruthlessly imposed on India *willy nilly*.

Mr. J. F. Bryant : I move, Sir, that the question be now put.

Maulvi Miyan Asjad-ul-lah* : Sir, I rise to support the Resolution moved by my Honourable friend, Mr. Beohar Raghubir Sinha. In this connection I should like to say that the use of liquor is strictly prohibited under our Quranic laws and the object of this prohibition is abstinence from the use of alcohol which is considered to be a polluted thing. The leaders of Islam have called it the mother of evils, that is, it creates evils. So far as my poor knowledge goes, all the religions of the world are opposed to its use, and kings have also from time to time prohibited its use by law on certain occasions. If my memory does not fail me, during the recent Great War our King-Emperor and many of his Ministers gave up the use of alcohol. Although the use of alcohol in small quantities under medical advice is beneficial to patients yet it is an admitted fact that it is quite useless and even harmful to healthy people.

* The speech was delivered in Urdu and the original will be found printed as an Appendix.

[Maulvi Miyan Asjad-ul-lab.]

In India, where the majority of the population is uneducated, the domestic customs of the people in general are against the use of alcohol, and both the health and habits of the people are impaired when they take to it. The use of alcohol first affects a man's brain and Sheikh-ul-Bais accordingly calls it the destroyer of wisdom. From this it may well be understood that if a man's brain is affected he commits numerous crimes against law. It has often been observed that the dacoits usually take alcohol before they commit those deeds of tyranny and inhumanity, which even an uneducated and illiterate man would abhor.

Further the use of alcohol has proved to be the cause of deterioration of the Indians. As is well known to the Honourable Members of this House, when the habit has once taken a hold on the Muhammadan and Hindu gentry, it has caused the ruin and fall of very big estates in a few days and deprived the members of the families of their daily food. In these circumstances, I venture respectfully to request that the Honourable Members of this House will support this Resolution in the interests of the country and of humanity and by so doing they will earn the good will of Indians in general.

Although Government will lose a small amount of revenue by prohibiting the use of alcohol, yet as this Government has a reputation among the countries of the world for the spread of civilization and morality among the people, which aim it has always at heart, it is expected that it would not mind the loss of revenue but would rather issue orders for the prohibition. I now Recommend to the Honourable Members of the Assembly to support this resolution for the welfare of the world.

Rao Bahadur C. S. Subrahmanayam : I rise to a point of order, Sir. The Honourable gentleman who spoke last has been heard by some of my friends with great approval and manifest delight. I am sorry I could not share in that delight. I presume, Sir, that knowledge of the language in which the last speech was delivered is not among the many attainments with which you are credited, and I should like to know, Sir, if there is any rule under which the last speech could be translated for us into the language of this Assembly, *i.e.*, English.

Dr. Nand Lal : I shall translate if I am permitted.

Mr. President : The appointment of an official interpreter has not yet been considered. The speech will be printed both in the original and in a translation in the official report and that for the moment, I think, must satisfy the Honourable Member from Madras.

Dr. Nand Lal : Sir, I am in full accord with the noble movement of the Provincial Councils, namely, I am in full sympathy with the anti-drink movement. I am one of those who are anxious that this evil should be stamped out, and driven out of this country. I endorse the view of the Honourable Mover in regard to the various reasons which he has assigned but I am afraid I cannot identify myself with some of his remarks, as for instance when he said that this evil followed the advent of the British Government. I differ from him.

Beohar Raghubir Sinha : I did not say that.

Dr. Nand Lal : By this expression, I am sorry to say, he has shown his ignorance of history. I wish he could have spared the time and studied ancient history, then he would not have adopted the attitude which he has done,

So far as the terms of this Resolution are concerned, I must say that I plead my inability to appreciate it because I feel I am not competent to handle it. It is beyond the province of this Assembly. It is directly concerned with the Provincial Councils and on the top of that it is one of the Transferred subjects. (Cries of 'Hear, hear!') As I raised my voice yesterday, I reiterate the same. We cannot issue warrants against the Provincial Councils and we cannot poke our noses into their affairs. That is direct interference with their Province. But when I say that I hope I may not be misunderstood as expressing any lack of sympathy with the noble cause, which is very rightly advocated by this Resolution. On the whole, not being indifferent to the policy couched in the Resolution, I agree with the amendment which has been so rightly moved by the Honourable Mr. Innes. I personally feel very much indebted to the Government for this very kind attitude and I heartily support the amendment which has been moved by the Honourable Mr. Innes.

Mr. W. M. Hassanally : But he has not moved an amendment.

Mr. President : It would be of considerable assistance to the Chair in guiding this debate if the amendment were placed before the House.

The Honourable Mr. C. A. Innes : Have I your permission to move it, Sir? I beg to move, Sir, as an amendment to the Resolution on the agenda paper that the following Resolution be adopted by the House :

'That this Assembly recommends to the Governor General in Council that note may be taken of the fact that the Assembly is in sympathy with the temperance movement in India.'

Rai Sahib Lakshmi Narayan Lal : Sir, there can be no two opinions about the fact that the Government should sympathise and earnestly sympathise with the anti-drink movement. Most of the best men of every country are positively of opinion that drink is an evil ; it is an evil according to every religion, drink is not only an evil by itself but it is an evil which gives rise to other evils. And it is therefore the bounden duty of the Government to leave no stone unturned to take every possible step for completely eradicating this evil by prohibiting the manufacture and sale as well as the import of wine except for medicinal and industrial purposes. It is not befitting the position of any Government as the benefactor of the people to encourage directly or indirectly any trade in an evil. No doubt the Government of India has been trying to eradicate this evil by its excise policy, but this policy has been tried for a sufficiently long time without any appreciable success. America has found out the mistake of its old policy and has now adopted a new policy of prohibition which has already shown ample signs of success. No doubt a long standing evil cannot be eradicated in a day and instances of illicit manufacture are now and then still heard of here and there, but that is the case with every evil—instances of the breach of even wholesome laws like those to prevent the commission of perjury, forgery, theft and other similar crimes are not unfrequently heard of everywhere ; that is no reason why the Government should not have the laws for preventing these crimes ; the Government should not be lagging behind in following the noble example of America.

This is apparently a provincial subject but there are more reasons than one for the declaration of policy regarding this matter by the Indian Government ; this question affects the whole of India ; besides the anti-drink policy has now become a political problem ; this is one of those subjects which has given to the non-co-operators the popularity which they claim and the position of the co-operators is very much compromised in the eyes of the public—if they lag behind the non-co-operator in eradicating this evident evil.

[Rai Sahib Lakshmi Narayan Lal.]

Again, this is a subject which is sure to affect the revenue of the country in one way or another; although, at the outset, its effect upon the revenue seems to be unfavourable, in the long run the effect is sure to be very very favourable. If this evil is appreciably eradicated, there shall not only be a great decrease in the number of crimes, reducing very much the cost of criminal administration but there shall also be a considerable saving and economic development making the nation strong enough to bear further taxation and yield more income-tax revenue which is the chief concern of the Central Government. It is therefore in the interest of the people as well as the Government that the declaration of this policy of sympathy with the anti-drink movement should be made soon. The Local Governments are merely asked to consider the advisability of eradicating this evil which cannot anyhow mean dictating any policy to them. I therefore oppose this amendment.

Rai Bahadur Bakshi Sohan Lal: Sir, I don't think that anyone in this House is prepared to deny that the evil of drinking ruins not only the wealth and health of the person who drinks it but also his moral character, and that notwithstanding the utmost and whole-hearted efforts of Government and certain Temperance Societies in India to reduce the consumption of liquor the evil is increasing in this country and, if not checked at once, it may reach to such a climax as to infect all the male and female population of this country and make the check of this evil even by legislation very difficult if not quite impossible. If the history of jail population, civil and criminal, in India be traced, more than half the inmates will be found to be victims of this vice. If the history of the inmates of the lunatic asylums be investigated, the proportion of cases due to this evil habit will not be less than that in the jails.

If the history of indoor and outdoor patients in hospitals and dispensaries, especially of venereal diseases and tuberculosis, diabetes, gout, etc., be gone into, the prominent part will be found due to the effect of alcoholism or to immoral character to which most of the drunkards are addicted. If the history of deaths caused by suicide, murder, culpable homicide not amounting to murder, and by rash or negligent act, specially murders by husband or wife be gone into, a larger part will be credited to the direct or indirect effect of drink. If the causes of absence from duty amongst soldiers, military officers and other private and public servants and daily labourers be investigated, almost all such defaults will be found due to the influence of drink. Prohibition law will be welcomed in India. India has always been under prohibition law except since the advent of the British Raj. Hindu, Muhammadan and Buddhist have prohibited drinking liquors as a very heinous offence. (*See 'Ancient India by R. C. Dutt, at pages 287, 288 where it is stated 'murder, drinking spirituous liquors, violation of guru's bed, incest, theft, etc., were heinous offences and sins according to Hindu law and Buddhist law.'*) When Bharat returned to Ayodhya from his maternal uncle's home in Kashmir on the death of his father, Dashratha, and exile of his eldest brother Rama and went to see his step-mother Kausalya (the real mother of Rama), who was in distress and grief on account of her husband's death and son's exile, and Kausalya pointed out to him by way of a grievance that his mother Kaikeyi had secured the kingdom for him by getting his eldest brother Rama, the rightful successor to the throne, to be sent to the jungle as an exile, Bharat took very hard oaths, attributed to himself most heinous offences, if he were aware of what had taken place or if he were directly or indirectly concerned in any conspiracy against Rama.

Amongst these hard swearings, Bharat said that the punishment of a murderer, or of one who drank spirituous liquor be awarded to him if he were in any way concerned in getting Rama to be sent to exile. This shows that drinking spirituous liquor was during the old Ramayana days treated as a very heinous offence and severely punished next to murder. Quran Sharif prohibits the use, sale and manufacture of liquor and declares it as *Haram* and offence, rendering the manufacturer, seller and drinker of a spirituous liquor an apostate. Even during the present times in India itself the Begum of Bhopal has issued a proclamation that any Muhammadan in her territory found intoxicated, carrying liquor, or sitting in a liquor shop shall be sentenced to rigorous imprisonment. So far as my information goes, Christian religion is also against drinking liquor. If I am wrong so far as the Christian religion is concerned, I shall be obliged to any of my Christian colleagues in this Assembly for correcting me. 'Zenda Vesta,' the religious book of the Parsis, prohibits drinking liquor. Thus, all Indian communities are quite prepared to co-operate with Government in enforcing prohibition laws, and if the Government is also prepared to co-operate with the people in this matter, I think this is the time for eradicating the evil of drinking liquor from this country by legislating prohibition. This will earn for the country the same benefits which America has earned by the prohibition laws. The question put by some of the financiers of the State is that duties on import of liquor, wholesale and retail licensing of liquor shops and duties on liquor stills, etc., bring not less than 10 crores of rupees as a yearly revenue, and how to make up the State expenditure if this revenue is curtailed? Have they ever considered the fact that for every one rupee of liquor revenue, 20 rupees at the least have to be wasted by the people on drink and its accessories in addition to the waste of time and health, and the saving of this 200 crores to the people will add to the prosperity of the people to such an extent that it will immediately bring to the State automatically more than 10 crores without any difficulty, and when this saving of 200 crores is invested in banks, in improvement of trades and industries of the country by the people, the income to the people will go on increasing every day, and bring to the Government treasury every year ever increasing additional revenue far in excess of what the Government can possibly expect from the dirty traffic in liquor. But supposing for argument's sake that no immediate revenue is forthcoming to make up the deficiency the financiers of the State will be justified in imposing without any reasonable grudge on the part of the people, additional taxes, to make up their loss of revenue on prohibiting liquor traffic to meet the peoples' wish; or in finding other sources of revenue and decreasing the expenditure, and Government will cast off the blame of encouraging the people to the cruel habit of drinking liquor by starting drink shops which are most injurious not only to the individual persons dealing with those shops, but also to the society at large. Another reason advanced by the administrators of the country in favour of the liquor traffic is that prohibition by law will lead to illicit distillation and increase the habit of drinking filthy or bad stuff. But how many persons in town or in a village are expected to venture to take the trouble and risk of managing to work illicit stills for the purpose of producing liquor for personal use or for sale, unless the whole Indian population as well as the whole Government machinery be condoning their acts and screening the manufacturers and sellers and drinkers of illicit spirits? Perhaps many cases of theft or murder may not be detected, but a strong smell coming from the distillation

[Rai Bahadur Bakshi Sohan Lal.]

and spreading for miles from the distillery informs everybody of the place where the still is working and this cannot possibly be concealed from the neighbours. The offences of illicit distillation, sale, possession and use of spirits may be made very severely punishable and informants be handsomely rewarded. If still any case of illicit distillation, sale or possession of liquors occurs, that will be very rare, and from this it does not follow that because there is illicit distillation there should be no law against distillation. There are laws against stealing, murder, dacoity, adultery and bribery, but we see that the offences of theft, adultery, murder, dacoity, and bribery do occur every day in every part of the world. The third reason advanced against prohibition law is that it will interfere with personal liberty of individuals. All penal laws interfere with personal liberty of individuals. Why then all penal laws are not repealed? This is analogous to the story of a man who did not know swimming and was being drowned in a river and another who could swim was standing by on the bank and watching the drowning man struggling for life till the drowning man was drowned and lost his life. The man standing by on the bank of the river on being asked, why he did not try to save the drowning man replied that he did not wish to interfere with his personal liberty. That would be the case of those who say that prohibiting the use of intoxicating liquors interferes with the personal liberty of the people. So far as my information goes, prohibition in one form or other is in force in the British West African Possessions, such as Sierra Leone, the vast regions of Northern Nigeria, the protectorates of Somaliland, British East Africa, Uganda, Nyasaland, the northern Rhodesia, British Bechuanaland, and to some extent, in Basutoland, and other European nations in Africa have also prohibited in their territories the introduction of alcoholic liquor. If personal liberty in these parts of British and European Africa has not been interfered with by a prohibition law, how will it be interfered with in India?

The other Indian States, such as Hyderabad, Kashmir, Mysore, Baroda, etc., are all in sympathy with prohibition law, but they cannot take a lead in the matter and wish to follow the laws of the Imperial Government in British India in this respect. The prohibition law having succeeded in America, there is every hope of its becoming successful in India, and we must not shirk the responsibility by anticipating difficulties. Wherever there is any new measure to be introduced there is always a danger of difficulties, but in India there are expected to be least such difficulties in the way of enforcing prohibition law at this stage when the evil has not yet spread among females, and is restricted only to few males. If it is not checked now, it is bound to infect the females and the remaining males, and then it is bound to make the Indian household life so very miserable and unhappy that prohibition laws will be met with immense difficulties for their enforcement. We must lose no time in passing the Resolution as amended.

I may be allowed here to quote Shaikh Sadi's Persian saying :

Darakhte ki aknun grift ast pee
Be nairue shakhs barayad za jae
Sare chashma bayad gariftan bamil
Cho pur shud na shayad guzashtan ba fil.

The tree which has taken root just now and is not yet deep-rooted can be easily uprooted by the strength of one man. The head of a spring can be crossed by one step, but when it flows on to its full extent it cannot be crossed even by

an elephant. So in my humble opinion this is such a problem that we must take the earliest and strongest steps to eradicate this drink evil from the country, by a prohibition law, if we seriously wish to get rid of the evil.

Mr. B. P. Singh : Sir, I have very great pleasure in supporting the motion before the House. The question has been looked at from all points of view, and there is nothing new to contribute to the discussion. I venture to submit, Sir, that there can be no two opinions regarding the subject now under consideration. I need hardly say that the ultimate goal of the Government policy ought to be total prohibition of the drink traffic in this country, except for medicinal purposes. The example of America affords an object lesson to us. India is always noted for temperance and sobriety. The evil effect of drink is well known. I may be permitted to quote here the opinion of Lord Alverstone, the late Lord Chief Justice of England. He stated that after 40 years' experience at the Bar and 10 years as a Judge, he knew it as a fact that 90 per cent. of crime in England depended on intemperance. The discouragement of drink with a view to its ultimate prohibition is bound to lead to a decrease in crime, and to the amelioration of the condition of the people, especially of the poorer classes, who fall an easy victim to the bane of drink. The policy of 'maximum of revenue with a minimum of consumption' hitherto professed by Government has not brought about any effectual check; and it is a sad fact that the drink traffic in the country is rather on the increase. Government should therefore steadily keep in view the ultimate goal of making this country a 'dry' one. Although I know it is a provincial subject, I would think an expression of opinion from the Assembly would give the Local Governments a lead in the matter. With these few words, Sir, I beg to support the motion before the House.

Mr. R. A. Spence : Sir, I think, from what we have heard from Mr. Innes, and from the amendment that he has put before the House and from the speeches of my Honourable friends, Mr. Price and Dr. Nand Lal, that Beohar Raghubir Sinha's original Resolution put before us was, if I may say so, rather badly worded. If the idea of the Honourable Mover was to draw the attention of this House to the evils which arise from the abuse of alcohol, and to suggest practical steps by which that abuse can be done away with, he would have had—as I think the Assembly has already shown—he would have had the full support of this Assembly. The Honourable Mover's Resolution, and I think the speeches of those in favour of the amendments which were not put, in regard to absolute prohibition were based on two wrong premises. The first is that the use of beverages containing alcohol is an evil, and, secondly, that prohibition would put a stop to that evil if it existed. Let me now deal with the first of these wrong premises, that is, with regard to the so-called drink evil. I may say that I think that except in the extreme teetotaler circles who class the wine merchant in the same category as the non-co-operator classes the Government, that is Satanic—and we have heard something about that in these and other parts of this Hall lately—except, I say, in these extreme circles, the wine merchant and those who deal in alcoholic beverages are recognized as the keenest in the cause of preventing the abuse of alcohol. Some may put this keenness on a low basis and say that it is due to the harm that has been done to their trade by the abuse of alcohol. But I put it on a higher basis and say that it is due to the fact that we recognize the good that comes from the moderate use of alcohol; and we are therefore only too keen to join in all steps that could prevent the abuse of it. We all recognise

[Mr. R. A. Spence.]

the evils which come from over-eating, the evils which come from too great an attention to athletics, or to work, to the neglect of all other things. But we do not bring forward Resolutions in this House about the evils of eating or playing or working. Whether a man should take in moderation, or avoid the use of, fermented liquors is, I consider, a matter for himself and for his religion. If from his birth onwards he has been taught by his religion that all fermented liquors when drunk on this earth are sinful, I, who consider that religion is good for man, consider he should avoid it and obey the tenets of that religion. But, having definite views of his own, there is no reason why he should dictate to others and force the acceptance of those views on others, whether they approve of these or not. That is interfering, as Mr. Price has already pointed out, with man's natural right of free will.

I do not want to detain the House with a generalisation on the benefits of the moderate use of alcohol. I have my own opinions on the subject,—so have others. I do not want to waste your time, but these benefits are believed in by many of the workers and cultivators of the soil, and I think therefore I might turn to what is necessary to prevent those evils which arise from the use of alcohol and which we are all in favour of preventing.

What is not necessary is prohibition. Prohibition is not necessary because it is impracticable and impossible to enforce in this country, and because if it were possible it would interfere, as other speakers have already said, with men's individual likes and freedom. Prohibition is impossible in a country where the means for procuring every kind of liquor lies at the door of every man's house. Think of our palm-trees of all varieties and the ease with which spirit can be distilled in a private house. Think of it. How can prohibition be possible? These liquors can be illicitly procured. Let me remind you too of the ease with which drugs, such as *Bhang* and *Ganja* can be obtained. Experience has taught us that the suppression of one evil, against the wishes of the people, leads in many cases to even greater evils. Have we not had instances of this in this country, and has not the virtual suppression of opium led to the worse evils of cocaine? Prohibition is impracticable in this country. I have heard an argument that this is not so and that Government has successfully prohibited the illicit manufacture of salt. But this is no true analogy, seeing that the people can get salt from Government. The prohibitionists say, we cannot get liquor from Government or anyone else. Prohibition, I repeat, is impracticable in this country, apart from the loss of revenue which it will entail and which it will be necessary to replace, and if any Members feel so inclined they should ask the Honourable the Finance Member, who I am sorry to see is not here to answer me, what sources of revenue so far untouched he is keeping up his sleeve. We have already heard—we heard it yesterday during the debate on the Civil Pensions—that taxation in India has reached its limits. Think of the burden that you are going to transfer if you bring in prohibition and do away with the revenue from liquor—think of the burden you are going to transfer from the shoulders of what after all is a small section of the community who drink alcoholic beverages, on to the shoulders of the many who do not drink alcohol. Is the hard-working tax-payer to be saddled with heavier burdens in order that some of his fellow-countrymen should be deprived of what they consider a blessing? They will not be deprived. They will still drink liquor but it will be liquor which has not paid revenue to Government. Prohibition is again impracticable because of the vastly increased expenditure it

would entail. The Honourable Member for Commerce and Industry can tell us what is the size and what is the expense to the Government of the present Excise Department. Can he tell us what the expense of the Excise Department would be if we decide to enforce prohibition even nominally? It would be an enormous expense. Prohibition again I say is impracticable because the people of this country, as previous speakers have said, will not put up with the intolerable invasion of their *pardah* which any attempt to enforce prohibition must entail. America, about which we have heard so much lately, as my friend, Mr. Price, has already said, although not a land of *pardah* has just brought in legislation to prohibit the searching of houses by Excise Officers and to permit the distillation—I must not use the word distillation, but to legalise the manufacture of beer and wines in private houses. Does not this look as though America, after trying the experiment of Prohibition, has found it impracticable. I think Dr. Nand Lal was very wise when he said, 'Let us wait and see what the results in America will be.'

I have now shown, I hope, that prohibition is impracticable and will not serve the purpose we have in view, namely, the prevention of the abuse of alcoholic beverages. Let me now put before you the steps which I consider we should take for the purpose. First, surely we must raise the education of the working classes who are, I suppose, the class most addicted to the abuse of drink, and teach them that liquor may be used but not abused. Then we must improve the amenities of life available to them. If they have bad houses, long exhausting hours of labour, no proper means of recreation—is it a wonder they seek the solace of drink and in their uneducated state, abuse it? Further, we must see that liquor is pure and unadulterated. Nothing I have said or could say in regard to the drinking of pure beverages applies to the drinking of bad alcohol. This is what we should avoid; this is what we should prohibit; let Government see to it that the toddy and country spirit supplied is pure and unadulterated, and let them take a firm stand against the importation or sale of spurious foreign liquors. In conclusion, let me, as my friend, Mr. Price, said, ask the Members here to be temperate and moderate on this question, and let there be no intemperance in dealing with it. Let our aim in regard to alcoholic beverages be to use them as not abusing them, and go on our way rejoicing.

Rai Bahadur S. P. Bajpai: Sir, I must at the very outset congratulate the Honourable Mover of this Resolution on the way he has put it before the House this afternoon. I had also given notice of an amendment, but since the Honourable Mr. Innes has come forward to make a compromise and the Government is prepared to meet us half way, I think it much better to withdraw my amendment.

There can be no two opinions that the drink evil has done incalculable harm to India. I think even my Honourable friends, Messrs. Spence and Price, will not deny the virtues of teetotalism. But this is not the point before us. The Government has expressed their fullest sympathy with us in this matter, and I think we should accept their amendment and let the Resolution go chiefly with a view to avoid misunderstanding between ourselves and the Provincial Councils and their Ministers.

Mr. Sarfaraz Hussain Khan: Sir, I move that the question be now put.

Mr. President: The question is that the question be now put.

Mr. S. C. Shahani: Sir, closure at this stage will be a wrong perpetrated on the House. A question such as this is of great interest to the House and some of us have still something to say.

Mr. President: Order, order. I may point out to the Honourable Member that the speeches have nearly all been on one side. There have been in all eleven speeches already.

Mr. S. C. Shahani: Messrs. Price and Spence's arguments ought to be replied to.

Mr. President: May I point out to the Honourable Member again that I am only exercising my discretion in accepting a motion for closure. It is for the Assembly to decide whether the debate shall end or not. I have taken into account the fact that the great bulk of the speeches have all been on one side, and if the arguments advanced by two Honourable Members have not been answered, that is the fault of other Honourable Members who have not availed themselves of their opportunities.

The question is that the question be put.

The motion was adopted.

Mr. President: The original Resolution was :

'This Assembly recommends to the Governor General in Council that the following expression of opinion, namely, that this Assembly declares its sympathy with the anti-drink movement in India, be conveyed to Local Governments with the request that they may consider the advisability of adopting measures to put a stop to the drink evil as soon as possible.'

Since which an amendment has been moved that the following words be substituted for the original Resolution, namely :

'This Assembly recommends to the Governor General in Council that note may be taken of the fact that the Assembly is in sympathy with the temperance movement in India.'

The amendment was adopted.

The Assembly then adjourned till Three of the Clock.

The Assembly re-assembled after Lunch at Three of the Clock. The Honourable the President was in the Chair.

MESSAGES FROM THE COUNCIL OF STATE.

Mr. President: There are two Messages from the Council of State to be read by the Secretary.

Secretary of the Assembly: Sir, the first Message received from the Secretary of the Council of State runs as follows :

'I am directed to inform you that in accordance with Rule 36 (3) of the Indian Legislative Rules, the amendments made by the Legislative Assembly in the Maintenance Orders Enforcement Bill were taken into consideration by the Council of State at its meeting to-day, the 27th September 1921, and that the Council have agreed to those amendments subject to the following further amendment, namely :

'In the definition of 'reciprocating British Possession' in clause 2 of the Bill, the words 'outside British India' be restored after the word 'Dominions.'

I am to inform you that the Council has reinserted these words at the motion of the Government Member in charge of the Bill on his explaining that they were inadvertently omitted.'

The second Message received from the Secretary of the Council of State is as follows :

'I am directed to inform you that the Council of State have, at their meeting of the 27th September, agreed without amendments, to the following Bills which were passed by the Legislative Assembly :

- (i) *A Bill further to amend the Negotiable Instruments Act, 1881.*
- (ii) *A Bill further to amend the Carriers Act, 1865, in order to empower the Governor General in Council to make by notifications additions to the Schedule to that Act, and to free a common carrier from liability under that Act for loss or damage, arising from the negligence of himself or of any of his agents or servants in respect of any property which, being of the value of over one hundred rupees, and of the description contained in the Schedule to that Act, has not been declared in accordance with the provisions of Section 3.*
- (iii) *A Bill to provide for the levy of customs duty on lac exported from British India.*
- (iv) *A Bill further to amend the Indian Post Office Act, 1898.*
- (v) *A Bill further to amend the Indian Penal Code.'*

RESOLUTION *RE*: EQUALIZING THE NUMBER OF INDIANS AND EUROPEANS IN CERTAIN POSTS.

Lala Girdharilal Agarwala : Sir, the Resolution which I have the privilege to move before this Honourable Assembly this morning runs as follows :

'That this Assembly recommends to the Governor General in Council :

- (a) *the desirability of equalizing the number of Indians and Europeans in the following posts by filling future temporary or permanent vacancies by Indians till the deficiency has been made up :*
 - (i) *Governors of provinces,*
 - (ii) *Chief Justices,*
 - (iii) *Chief Judges or other Heads of the highest Judicial courts in India,*
 - (iv) *High Court Judges or Judges of other highest courts in India ;*
- (b) *that a copy of the above Resolution be submitted to the Home Government with favourable recommendations.'*

Mr. Price : Sir, on a point of order. Are these appointments within the power of the Governor General in Council ?

Mr. President : Order, order. I must let the Honourable gentleman finish his Resolution.

Lala Girdharilal Agarwala : The subject is a very delicate one and demands most calm and dispassionate consideration. Far be it from me to raise any racial question, or make any invidious comparison. But I am bound to say that the satisfactory solution of the difficult problem which is now engaging the attention of this Honourable House is calculated to be advantageous to Indians and Europeans alike. Much of the discontent and unrest that rules India at the present day would disappear when India's just claims are recognised and the Indians are given an equal share in the Government of their own country.

As far back as 1833 the monopoly of office by which Indians had been excluded from the principal offices of the Government was abolished by the enactment of Section 17 of the Statute of 1833. Lord Macaulay described it as ' that wise, that benevolent, that noble clause ' and said, ' I must say, that

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to the last day of my life, I shall be proud to have been one of those who assisted in the framing of the Bill which contains that clause.'

The Marquis of Lansdowne in introducing the Bill before the House of Lords, said :

'It was a part of the new system which he had to propose to their Lordships, that to every office in India every Native of whatsoever caste, sect or religion should by law be equally admissible and be hoped that the Government would seriously endeavour to give the fullest effect to this arrangement, which would be as beneficial to the people themselves as it would be advantageous to the economical reforms which were now in progress in different parts of India.'

The Court of Directors, in forwarding a copy of the Statute to the Government of India, observed :

'The meaning of the enactment we take to be, that there shall be *no governing caste* in British India ; that whatever other tests of qualification may be adopted, distinctions of race or religion shall not be of the number.'

They emphasised that *not race but fitness* is henceforth to be the criterion of eligibility for public offices.

In the Great Charter of 1858, Her Gracious Majesty Queen Victoria proclaimed as follows on this subject :

'And it is our further will, that so far as may be, our subjects of whatever race or creed, be freely and impartially admitted to offices in our service, the duties of which they may be qualified, by their education, ability and integrity duty to discharge.'

On the 11th March 1869, His Grace the Duke of Argyll is reported to have said as follows :

'With regard however to the employment of natives in the Government of *their* country, in the covenanted service, I may say, that we have not fulfilled our duty or the promises and engagements which we have made.'

A Public Services Commission was appointed in 1886 under the presidency of His Honour Sir Charles Aitchison, formerly Lieutenant-Governor of the Punjab, with the result that the Statutory Civil Service was abolished and the Indian Civil Service and the Provincial Civil Service or *Pariah* service to use the words of Mr. Dadabhai Naoroji—were inaugurated.

The Commissioners reported in paragraph 60 of their Report that it was inexpedient to hold an examination in India for Covenanted Civil Service and Indians who wanted to join that service were obliged to go to England. With the exception of a few listed posts, the superior posts of District Judges and Collectors were ordinarily given to members of the Indian Civil Service.

Mr. Monomohan Ghosh, as President of the Indian National Congress of 1908, observed as follows :

'We exercise no real influence over the direction of this vast empire which is really ours. We are lured from time to time by many small and badly paid posts, but we are excluded from those in which important action alone is possible.'

In his pamphlet styled '*Indian Problems*' Mr. Malabari wrote in 1904, that there was a mass of young men in India, capable of competing for Indian Civil Service and demanded that the examination for Indian Civil Service should be held in India as well as in London.

Since Lord Minto became Viceroy and Lord Morley, Secretary of State, further steps were taken towards satisfying the just claims of Indians. In 1907, Mr. K. G. Gupta (afterwards Sir K. G. Gupta) and Mr. Bilgrami were appointed to the India Council in London and two years later, i.e., in 1909, Mr. S. P. Sinha (now Lord Sinha of Raipur), then Advocate General of Bengal, was appointed as the first Indian to be the Law Member of the Viceroy's Council.

On 17th March 1911, the Honourable Mr. Sobha Rao Pantulu in moving a Resolution in the Imperial Council for the appointment of a Commission to consider the claims of Indians to higher and more extensive employment in the Public Services, made a most able and memorable speech and concluded as follows :

'The whole question, I need hardly state, hinges on the attitude of England towards India and the relations that should exist between the British and the Indian subjects of His Majesty. This question has been prominently attracting the attention of all those who are interested in the welfare of Great Britain and India—whether the relationship between Europeans and Indians in this country should be one of manly comradeship and co-operation born of equal status and equal privileges or whether it should be one of timid dependence and sycophancy born of the relationship of superior and inferior. It is a truism that real respect and comradeship can only grow out of common service, common emulation and common rights impartially held.

The Government calls upon us to co-operate with them in evolving a high sense of citizenship in the difficult task of carrying on the complex administration of this vast country. Is it too much to ask that to secure our co-operation and develop a common citizenship, we should be placed on a footing of equality and manly comradeship with the British subjects of His Majesty the King-Emperor.'

The Honourable Nawab Saiyid Muhammad Sahib Bahadur in supporting the Resolution of the Honourable Mr. Sobha Rao observed as follows :

'The language of the solemn pledges and declarations made by the Parliament and responsible statesmen during the last 75 years and the terms and spirit of the Queen's Proclamation leave no doubt in the mind of the inquirer that the theory on which we are governed is simply excellent and beyond the pale of all dispute.'

The Honourable Mr. Gokhale concluded his speech in support of the Resolution moved by the Honourable Mr. Sobha Rao Pantulu in the following words :

'No body urges that the English element should be withdrawn suddenly or even largely but unless Indians are introduced into higher ranks in larger and larger numbers the discontent which the Government are anxious to remove is not likely to disappear.'

The Honourable Pandit Madan Mohan Malaviya in support of the said Resolution prepared his speech with the following remarks :

'The result of the discussion shows that in many departments Indians are not getting their fair share of the public appointments. The principle that they should freely and impartially be appointed to every office in the different departments for which they may be qualified has long been admitted. I do not think there is anything left to be desired in that direction either in the words of the Statute of 1833 or the Proclamation of 1858 or the subsequent declarations of the Government on this question.'

I am thankful to the Government for appointing an Indian to the post of Governorship and I am glad to say that the Government of India are quite satisfied with the first Indian Governor. I will only quote before this Honourable House a passage from the speech of my Honourable friend, the Honourable Sir William Vincent, made before this very House on 5th March 1921, which is printed at page 624 of the first Volume of the Legislative Assembly debates. He says :

'The Governor of Bihar and Orissa has rendered conspicuous services in public life and I desire now to repudiate any suggestion that the Government of India or any Member of the Government of India has not the fullest confidence in him. Indeed, we all regard him as one of the most eminent men in this country and the suggestion which has been made that the policy of the Government was undertaken in order in any way to deprecate His Excellency Lord Sinha, I am glad to have an opportunity of publicly repudiating in the most emphatic manner possible.'

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I can boldly say without fear of contradiction that there are several eminent Indians trusted both by the Government and the people, who can adorn the posts of Governorships in every part of India with as much ability as any European if not better. It is not necessary for me to mention their names as they are well-known.

Turning to the posts of Chief Justices, I submit that several Indians have acted as Chief Justices in various High Courts in India with marked success and one gentleman has been given a permanent post and the Honourable the Law Member will contradict me if I am wrong when I say that the Indian Chief Justice has done credit to his post.

There being six High Courts in India I claim that three of the said posts should be permanently filled by Indians. There being only one Indian Chief Justice at present, there is therefore a deficiency of two. Under the circumstances I submit that so long as two more Indians are not permanently employed as Chief Justices, future temporary or permanent posts should be given to Indians only. There are a considerable number of Indians whose appointment as Chief Justices would be an acquisition to the judiciary, but I refrain from mentioning their names out of respect for them. I may say in passing that the invidious distinction between a Vakil and Barrister for appointment as Chief Justice is absolutely meaningless at the present day and should be removed, when even our Honourable Law Member happens to be a Vakil whose abilities are unquestioned and unquestionable.

As for the posts of High Court Judges, Chief Court Judges and Judicial Commissioners, the case is quite simple and clear. Indians have already established their reputation on the High Court Benches.

According to the statement printed at page 5 (a) of the Legislative Assembly Debates, Volume II, there are 48 permanent and three Additional High Court Judges attached to various High Courts in India, of whom only one-third are Indians. The eight posts of temporary Judges are filled by non-Indians. The Chief Judge of Burma Chief Court is a European. There is only one Indian Judge of that Court while there are three permanent, one additional and three temporary Judges who are all Europeans.

As for Judicial Commissioners, there are 11 permanent, 24 temporary European officers as against two permanent and three temporary Indians.

In the Calcutta High Court, for example, on the 1st January 1921, there were 4,580 original suits, 1,046 insolvency and 220 miscellaneous cases pending on the original side and 523 first appeals, 4,050 second appeals, 4,204 miscellaneous besides a number of criminal cases. During the last five years Rs. 10,80,000 were spent in translation, interpretation and printing in the Calcutta High Court alone.

In that High Court there are only four Indian Judges as against one Chief Justice, seven permanent, one additional and two temporary European Judges besides two permanent European Judges being on leave or other duty, making a total of 12 Europeans. In that High Court the average duration of first appeals from decrees in 1920 was 656 days or nearly two years. Out of the total number of Judges enumerated above only three are able to understand some of the languages of the people, among whom I presume four Indian Judges are included.

This shows that a majority of European Judges and Chief Justice of the Calcutta High Court are unable to understand any local vernacular.

In the Calcutta High Court alone, seven posts of Chief Justice and Judges were filled by direct recruitment in England since 1901 and I am sorry to say that my Honourable friend, Sir William Vincent, has to admit that the Government has no information as to the extent of the acquaintance of these officers when appointed, with the languages, laws and customs of Indians. He has further admitted that these officers did not receive any training in Indian languages, laws and customs before taking charge of their duties. Are such appointments justified by precedent in England?

It may be said that the language of the High Courts is English, and it is not necessary for any Chief Justice or High Court Judge to know the languages of the people.

In reply, I submit, first of all, that time has now come when the language of the High Courts should be the same as the language of the people just as it is the court language in all subordinate courts in India.

Secondly, I say, that in spite of the language of the High Courts being English, a Judge who understands the language of the people is better equipped to discharge his duties as such than any other man. Besides language, it is necessary to know the habits and customs of the people before a man can *honestly and truly be called a Judge*.

A true Judge should be able to place himself in the position of the parties or witnesses before he can form a correct opinion as to their conduct and statements bearing upon the question before the Courts.

We will have all these advantages when we have at least one Indian Chief Justice or High Court Judge presiding in every Court.

A considerable amount of delay and expense to the parties can also be avoided by placing First Appeal of small values before Indian Bench of the High Courts without the necessity of translation and printing. Much delay is caused in the hearing of second appeals on account of preparation of paper books which can also be avoided when there are a sufficient number of Indian Judges in every High Court.

Even if the above suggestions are not adopted at present, I say, there is a distinct advantage in having one Indian Judge at least, in every Bench. Sometimes questions of interpretation and construction of documents executed in local vernaculars come up for decision and the opinions of Indian Judges in such cases is of great value. Similarly when questions of Hindu or Muhammadan Laws are concerned or a question of custom is involved, the opinion of an Indian Judge commands public confidence.

On August 20th, 1917, the Secretary of State for India made the following announcement* in the House of Commons :

'The policy of His Majesty's Government with which the Government of India are in full accord is that of the increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realization of responsible Government in India as an integral part of the British Empire.'

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In paragraph 313 of the report on Indian Constitutional Reforms, it is stated as follows :

'In the forefront of the announcement of August 20th, the policy of the increasing association of Indians in every branch of the administration was definitely placed..... we have already seen that Lord Hardinge's Government were anxious to increase the number of Indians in the public services and that a Royal Commission was appointed in 1912 to examine and report on the existing limitations in the employment of Indians... ...The report (of the Commission) was signed only a few months after the outbreak of the war and its publication was deferred in the hope that the war would not be prolonged. When written it might have satisfied moderate Indian opinion, but when published, two years later, it was criticized as wholly disappointing. Our inquiry has since given us ample opportunity of judging the importance which Indian opinion attaches to this question. While we take account of this attitude, a factor which carries more weight with us is that since the report was signed, an entirely new policy towards Indian Government has been adopted, which must be very largely dependent for success on the extent to which it is found possible to introduce Indians into every branch of the administration.'

In his minute recorded by Mr. M. B. Chaubal which is attached to the report of the Public Services Commission, he says in paragraph 20 which is printed at page 379-380 of the report.

'According to the last census, out of a population of over 30 crores .0 lakhs in the country there are only one lakh and 99,787 Europeans and allied races (of whom 91,00 form the army with their wives and dependants) and a little over one lakh Anglo-Indians. So, roughly, for the purposes of recruitment for the public services in India, the total population between these two communities is about 2 lakhs and 9 or 10 thousands.

The tendency in the latter to return themselves as pure Europeans and in some of the Indian Christians to return themselves as Anglo-Indians, has been noticed at the last census and in the earlier ones.

Thus, strictly, the number of real Anglo-Indians would appear to be even a smaller figure than that given above. To the whole population they stand in the proportion of 1 to 1,400. Assuming all of them to be literate in English, these two communities stand to the Indian literate population as 1 to 6. It should be noted that European population given in the census includes all those that are in India purely temporarily for purposes of Government service or trade. The permanent European population must be very small indeed, and this, together with the Anglo-Indian population, would probably stand as 1 to 10 in literacy. The Anglo-Indian community by itself stands to the general Indian population as 1 to 3,000 and in literacy in English, they stand as 1 in 13.

With these figures one will be able to appreciate the surprisingly large number of posts held by Europeans and Anglo-Indians in the public services as against the natives of the country.

Out of 11,064—the total number of posts—6,491 or 58 per cent. are held by the members of this small community. As regards posts of Rs. 500 and above, out of a total 4,984, they hold 4,042, i.e., 81 per cent., and as regards posts of 800 and above, out of a total of 2,501 they hold 2,259 or 90 per cent.

In his Note of Dissent recorded by Mr. Abdur Rahim (now Honourable Sir Abdur Rahim) he says, at page 400, paragraph 20.

'Looking back to the past history, India until the disruption of the Moghul Empire, always produced men of high administrative talents, and at the present day, in the more advanced Native States, whenever opportunity exists, Indians are successfully bearing the burden of the entire administration; some of them achieved notable distinction, such as Sir

Salar Jung and Sir T. Madhoroa. It should also be noted that a fair proportion of these men were originally in the British Indian service but only found an adequate opportunity for a full play of administrative capacity when they were appointed either as ministers or heads of departments in these States.

Then, when there are large Indian commercial communities, such as in the Bombay Presidency, Indians successfully conduct the affairs of Industrial concerns of considerable magnitude. In professions, where success is dominated by free competition and the value of work is judged under conditions different from what prevails in an Indian official department, the merits of the Indians work cannot be gainsaid. In the profession of law which it must be observed was wholly unknown to the Hindu and Muhammadan systems and is, of all institutions peculiarly occidental, Indians have acquired such remarkable proficiency that it is now conceded to them as being particularly suited to their aptitudes. In western medicine, in the practice of which they suffer many dis-advantages, as I shall have to point out, their success has been equally remarkable. Not only is the general level of efficiency of Indian qualified *practitioners* highly satisfactory but some of them in the more advanced presidencies have achieved eminent distinction as surgeons, doctors and *gynaecologists*, and a few men have also done research work of value with such facilities as were within their reach. Of those who devoted themselves to politics, it would not be difficult to mention the names of a number of men commanding gifts of political judgment and foresight and of platform oratory, debate and organization.

In the region of scientific research of the higher order, at least 2 names may be mentioned, those of J. C. Bose (now Sir Jagadish Chandra Bose) and P. C. Roy, who have won more than an Indian reputation while the Nobel prize of literature was awarded the year before last to Rabindra Nath Tagore whose poems have become familiar to most cultured men and women of Europe and America. Then to anyone who knows India will occur the names of those men who organized momentous movements of social, religious, educational and political reforms, that have so largely changed the outlook of India. Under Lord Morley's scheme of reforms, Indians have been found fit for appointment in the executive councils of the Viceroy, of the Council of the Secretary of State for India. While on the Benches of the High Courts Indians have long established their reputation. In the face of these facts it is hard to believe that India is deficient in wealth of intellect or character.

Section 96 of the Government of India Act clearly provides that no native of India nor any subject of his Majesty resident therein shall, by reason only of his religion, place of birth, descent, colour or any of them, be disabled from holding any office under the Crown in India.

His Excellency Lord Reading in the course of his memorable speech made on 31st May 1921, at the dinner given by our club at Simla stated as follows :

'I am minded to speak to you very briefly on certain propositions which I think are established beyond the possibility of doubt. The first is the fundamental principle of British rule in India. I suppose there is no one—there is no section of the British community, I am sure—who would dispute the proposition that here in India, there can be no trace, and must be no trace of racial inequality.'

No one can study the problems of India without realizing at the outset that there is some suspicion, and perhaps at the present moment, some misunderstanding between us.

Well, I am convinced that whatever may be thought by our Indian friends not present in this room—I do not refer to those present, because they are conscious of the contrary—I say, we do not for a moment indulge in any notions of racial superiority or predominance. I think this is axiomatic of British rule, although I am quite prepared to admit that there may be undoubtedly certain questions with which I am striving to make myself familiar, in which there will be an opportunity for putting this equality on a firmer basis than at present exists and as a corollary, scientifically considered,

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It is not a separate proposition and I am sure that it will demand from you as whole-hearted support as the proposition which I have just enunciated—I say that there cannot be and must never be humiliation under British rule of any Indian because he is an Indian.

These weighty enactments, declarations and announcements have encouraged me in moving this Resolution before this Honourable House.

India has produced great men in the past and is the seat of ancient civilization and learning. Indian rulers and statesmen of the Hindu and Muhammadan periods have left a landmark in the histories of the world.

With these few words I commend this Resolution for your acceptance.

Rao Bahadur C. S. Subrahmanayam : Sir, the Resolution which my learned friend, Mr. Agarwala, has moved in such eloquent terms, and bristling with so many extracts from the speeches of eminent men, European and Indian, is a Resolution which, if I may say so, covers a wide field. As an Indian, it is no doubt my duty to hope that all that is contained in this Resolution, and much more, will come to pass. But it is a difficult task imposed upon the Indian Members of this Assembly. If we do not agree with Mr. Agarwala, we shall be charged with being unpatriotic, and probably it may be said we belong to the Government party. And, if we agree, we, as practical men, are faced with innumerable difficulties, because, as I understand, the business of this Assembly is more connected with what may be termed practical politics, and not with idealistic aims and aspirations and the elucidation of those matters and not with asking the Assembly and challenging the Government to make a definite pronouncement on those aims and aspirations. That tendency to ask the Government to make pronouncements on such aims and aspirations, I think, well, if I may say so, ought to be deprecated, because if we continue this habit of asking the Government to make a pronouncement, Government will probably be driven to and will hesitate to give those answers and those assurances which are ordinarily termed sympathetic, because the Government is a practical body, and if we are to go on asking them to give assurances of a sympathetic character, probably those assurances would carry no weight. We should be very chary in inviting Government to give us assurances, because we have had enough assurances for I think three quarters of a century.

And I suppose these assurances, whether they are carried out in full or whether carried out partially, are there, and our business in this Assembly is to pick out each one of them as occasion arises and press it upon the attention of Government to carry it out in a practical manner. Therefore, as practical Members of this Assembly, I thought it was time that Honourable Members of this Assembly recognised this aspect of their duties. With regard to the Resolution which is now before us, the Honourable the Mover, in the course of his speech, referred to the names of two great Indian administrators. Sir Salar Jung was one of them. I am slightly acquainted with the history of Hyderabad, but if Sir Salar Jung were alive to-day, I fancy it would be impossible for him to carry on the administration of Hyderabad. Well, that factor we should recognise. If Sir Madhav Rao, the other name mentioned, were alive now, probably he would not find a seat in this or any other Assembly in this country. He was great no doubt in his time, and in those times he was all right; but to-day a man like Sir Madhav Rao would not get a hearing anywhere in this country. I shall be treading on a little more dangerous

ground if I refer to Lord Sinha ; but probably the Assembly is aware that Lord Sinha's position from time to time has been questioned by a large number of people.

They say he does not represent Indians. So it comes to this, that we shall be quarrelling about these matters from time to time, and the less occasion we have for disputes and quarrels I think the better for our own sakes.

Now the quotations which my learned friend read out were taken out of their proper setting, and while they were quite right, quite proper on the occasions when those speeches were made and those pronouncements were uttered. I do not think, however, that those extracts support the proposition that is now before us. We are very early in our life under the Reforms Scheme. Is it not our duty to confine our attention to working this scheme for all it is worth. Ought we not to test the constitution we have. Pick out holes by all means. Let us try and find out defects and then stand up and say here are the black spots in the scheme. Can any one in this Assembly say that during the last few months that we have been working this constitution, we have been able to pick out a single black spot. In theory and in doctrine, I have heard a great number of people say. There are a great many defects and a great many spots. Probably I should agree to some extent with all they say. But when you have got the thing in hand and you are working it—working it with every facility that can be offered to us to work it—are you able to give one instance where this scheme has failed? Probably time will reveal its defects. Should we not wait for that time which will show where the defect is? I am not at this moment prepared to agree that the scheme is excellent, because even that is in the lap of the Gods: the future will reveal whether it is excellent or bad. Are we in this Assembly such a homogeneous lot that we are prepared to say really that on the many questions that arise in this House we are agreed? We are as a matter of fact strangers to each other. That is one difficulty in this Assembly. We come from different parts of the Empire, and speaking generally for myself I may say that with one-tenth of the Members I am not well acquainted. How do I know then the feelings of the Members who come from different parts of this country. Interests are oftentimes divided. If we go into the question of finance, we find each Province has got certain things to press forward. Now that is one of the things where the greatest difficulty would arise in the homogeneous working of this Assembly. I don't want to multiply instances, but what I feel to be a matter of great consequence and what has emboldened me to venture to stand up here is, should we not allow some time for these things to settle down and for us to understand not only our own position, but also the position of the various Provinces? Now the increase of Indians in the list of appointments given in the Resolution is all very good. But have we come to the point that we have exhausted all the other spheres of Government activities where we might easily, without trouble and without much opposition from Government, increase our representation? Is it not better to see that in all these other Departments of Government we are more largely represented. I say that this discussion is very like those academic discussions we have every reason to deprecate, and with great deference to my Honourable friend I don't think this is a question we should raise just at present.

The Honourable Sir William Vincent : Sir, when I heard parts of the speech of the Honourable Mover, I thought for the moment that we must be discussing the report of the Public Services Commission and the appointment of Indians to various minor posts under Government. That is a matter which I hope to have an opportunity of dealing with on a subsequent Resolution by Mr. Jamnadas Dwarkadas. It is not relevant to this discussion.

I will ask this Assembly therefore to clear their minds of one fallacy in the last speech, namely, the idea that this Resolution has anything to do with appointments in the All-India services, as we generally understand that term. It is very important that this point should be made clear, because I fear that otherwise some prejudice may be created in the minds of the Assembly. The Resolution itself deals with particular high appointments, namely, the appointment of Governors of Provinces, the appointment of Chief Justices and certain other high judicial appointments. In my opinion, there was a great deal of force in the objection taken by Mr. Price that this is a matter that is not primarily the concern of the Governor General in Council, which, so far as I know, is the test of the admissibility of a Resolution. At the same time, the Resolution has not been disallowed as there are certain of these appointments which are made by the Governor General in Council I believe and with regard to which the Resolution of the Mover was therefore beyond doubt in order.

But the discussion is not a question of Indianising the services or anything of that kind. As a matter of fact, there has been a greater advance in the direction of appointing Indians to higher appointments in the last few years than any one in this Assembly imagines or realises. Take the case of Members of Council. There are now in every Government, I believe, one or two Indian Members of Council as against one or two European Members, and in addition to that there are two or three Ministers in every Province.

If you take the Government of India, when I took over my present appointment, there was only one Indian Member of Council. Well, there are now three. There were also very few Indians in the India Council, I mean the Council of the Secretary of State for India. What is the position now? There are three Indian Members in that body. I mention these facts to show that the suggestion made in this Resolution that the Government of India or the Secretary of State or His Majesty's Government are in any way negligent of the claims of Indians to higher appointments is in the present circumstances entirely unjustified. I put the facts plainly to Members of this Assembly as I want then to consider the facts. Further, the particular appointments to which reference has been made, are, most of them, not made by the Government of India at all. Let me take the case of one appointment, the appointment of a Governor of Province. Here it is said that 'the Governors in the said Presidencies are appointed by His Majesty by warrant under the Royal Sign Manual.' Now it is quite reasonable, that from time to time, this Assembly should seek to amplify its own jurisdiction and power and to influence the Government of India. It is very proper, they should, but is it right that this Assembly should seek to encroach upon the prerogative of the Crown and dictate the qualifications of those who are appointed by His Majesty? That is the question really before the Assembly.

Let me now take the appointment of High Court Judges. They are appointed by Letters Patent from the Crown, and except in so far as the Calcutta High Court is concerned, those appointments are made without

reference to the Government of India. I have no doubt that the Viceroy is personally consulted and at times, we hear of particular proposals but they are made directly by His Majesty, the Secretary of State or His Majesty's Government in communication with the Local Government. That is not again therefore a matter which concerns us. Officiating appointments in the various High Courts, except in the Calcutta High Court, are again made by the Local Governments, and not by us at all. Here again you have a matter which does not concern the Government of India primarily in any way. As a matter of fact, the direct appointments with which we are concerned and which are mentioned in this Resolution are only acting Additional Judges in the Calcutta High Court and Additional Judges of some other High Courts and Judges of the Chief Court of Burma, but nearly all the appointments to which the Resolution refers are not matters with which we are directly concerned at all.

Here I want to turn to another matter, and that is to the words used in the Resolution 'the desirability of equalising the number of Indians and Europeans in the following appointments'. Is it right that the number of High Court appointments should be filled up on racial qualifications only? Are the numbers of Europeans and Indians to be equalised irrespective of merit? For that is what is suggested, and directly suggested, in the Resolution. As a matter of fact, when we come to judicial appointments, Honourable Members will find that there has been a greater advance in the appointment of Indians in the department than in any other branch of the service that I know of except perhaps in the Provincial Executive Council. We have at present one permanent Chief Justice and one Acting Chief Justice of a High Court, and that was never the case till this year; there are also now 16 Indian Judges of High Courts. I do not say that this is all that this Assembly may desire, but I do say that it is a very great advance on anything that we have hitherto known in this country, and I believe that every one will really recognise that in the matter of all these appointments the merits of Indians are being carefully considered. If there is any one who is in doubt on this point in the case of appointments made by the Government of India or in cases in which the question of recommendation lies with the Government of India, I can assure him that he has no ground for his doubts.

There is only one other matter, Sir, to which I wish to advert, and that is the question of appointing Indians as Governors of Provinces. Here, again, I think the Assembly will agree with me that the best men must be chosen irrespective of race. You have in Lord Sinha an admirable Governor. The Honourable Member has put it to me that I made this admission about him. I am glad publicly to reaffirm that the Government of India and all of us have the utmost confidence in him, and he has by the admirable work deserved all credit. Is this appointment any reason why this Assembly should attempt to interfere with the prerogative of the Crown in the matter of appointing Governors? Is it not better to leave unto Cæsar the powers which are Cæsar's.

Mr. Muhammad Yamin Khan : Sir, I have heard the speech of the Honourable the Home Member very carefully, and I am in full sympathy and accord with him when he says that the posts of Governors and High Court Judges should not be given on a racial basis but they should be given to the best men in the country. I also agree with him that the prerogative of the

[Mr. Muhammad Yamin Khan.]

Crown should not be touched by this Assembly. But, Sir, there is another side of the question. While I am in full sympathy with the remarks of the Honourable the Home Member that the best men should be chosen for high posts, I will put a question to him, and it is this. Are there not other men as fit as Lord Sinha is in this country in whom the Government of India have got the same confidence and who can enjoy the same confidence as that reposed in Lord Sinha? Or are there no better men qualified in India among Indians who can be called as good men as the English Judges? I think, Sir, India is not wanting in legal talent; India is not wanting in persons who can do justice to the litigants. There are very capable lawyers who can be chosen to hold the highest offices under the Crown. If the Honourable the Home Member means that it is the prerogative of the Crown to choose only from among Englishmen I think it is a fallacy. That is not what the Honourable Mover of the Resolution means. What he means is this, that Indians, if they are found fit, should be given an opportunity of getting an equal number of appointments under the Crown.

Of course the Honourable the Home Member will admit that India has produced for some time people in whom even the British Government can put the fullest confidence, then why are those persons said not to be fitted to hold office under the Crown? They should be given an opportunity just the same way. If there are persons available in India, then and then alone should those posts be given to Indians. It would be ridiculous on the part of the Honourable Mover if he says that a person simply because he is an Indian, even though he is not fit to hold an office, should be given an office. If you can find a better person amongst Englishmen, certainly the post should go to the Englishman and not to an Indian simply because he is an Indian. But, when we can find in India that there are persons who are as fit and as capable as an Englishman, then why should there be a distinction? Why should that post go only to Englishmen and not to Indians? I fully appreciate what the Honourable Home Member says that when he came here into this House, there was only one Indian gentleman in the Executive Council and there are now three. This shows certainly that there are in India some people who are capable of holding office as Executive Councillors. And that is not limited to 3. There might be other persons as fit as these 3 are. With due respect to these gentlemen I have no doubt that these are the 3 best persons who are there, I have nothing to say against them. What I mean is that there might be other persons available for these posts too. And, when there are 16 Judges who are sitting on the Benches of the High Courts, there are certainly other lawyers who are very capable persons. They are available for any vacancy which might fall vacant. It is no argument to say that those posts which are reserved for Indians only will go to the Indians and those which are reserved for Englishmen will go to Englishmen. I am not aware of the other High Courts but I know about my own High Court, the Allahabad High Court, and I know that for some time this has been the custom. There is a Muhammadan Judge and there is a Hindu Judge. All the other posts are filled by Englishmen. If there is a temporary vacancy it goes to the same class. If a Muhammadan Judge goes on leave, a Muhammadan Wakil or Barrister who is supposed to be the best man on the Bar is chosen and he is placed there. If a Hindu Judge goes on leave then of course the vacancy is filled by a Hindu. But it has been very seldom that when a

Civilian has retired or other Judge has retired, that the post has been given to an Indian Vakil or Barrister who has been supposed to be as fit as to officiate for an Indian Judge. If a man is quite capable for an Indian Judge's vacancy, why is he not fit to officiate for an English Judge who is going on leave? Well, that is the contention and this is the real grievance, and especially for the Bar, when the people are not properly recruited from the Bar. And what the Honourable Mover has said has been put into a very very narrow shape. This Resolution ought to have been worded very broadly. Of course I cannot speak on that point which is not before the House. But what will satisfy is that the attitude of the Government should be to remove all distinction—whether a man is an Englishman or an Indian, whoever is the best fitted man should come up. Of course, if this principle is adopted, then the Indians will have no grievance and there will be no necessity for the Honourable Mover to move this Resolution. But his contention is that he finds that the best men who are supposed to be coming up are from a certain lot. The other lot is ignored altogether. From the other lot there comes up only one man now and then. Now that should not be so. Out of the whole community, whether Englishmen or Indians, choose the best man and place him there, irrespective of his nationality, simply because he is the King-Emperor's subject, the best man should get the best place and I think that will be a very reasonable thing if the Government goes and adopts this principle.

Certainly it is not primarily the business of the Governor General in Council to appoint persons to these high posts, but, as the Honourable Mover says, the Governor General in his capacity as Viceroy and Governor General is consulted by the Local Governments. His Excellency the Governor General has got some voice and this is only a mere recommendation simply coming up in this shape that in future the tendency of the Government should be in this direction, and, of course, if this Resolution is passed, then the Local Governments will also consider that this is the considered opinion of the representatives of India and they are speaking on behalf of India. But if this Resolution had been passed in the local councils, then it would only have meant that it applied to that particular Province, and it would need to be passed in all the provincial councils. But here this will draw the attention of all the Local Governments to make suggestions and to recommend persons in future in order to fill vacancies from amongst Indians.

At least, what I would submit is, that the Assembly should adopt this attitude. You cannot touch a magic wand and make the whole country become a beautiful garden of Aladdin. We have no magic wand, and we cannot give all the posts to Indians at once but there should be a gradual development in that direction, and if any vacancy occurs it should go to an Indian. We don't want a revolution but gradual evolution. And if this is the attitude of the Government, I think it will satisfy the Indians and all public bodies.

Rai G. C. Nag Bahadur : Sir, I move that the question be now put.

Rai Bahadur S. P. Bajpai : Sir, with your permission, I would like to make a verbal change in my amendment substituting 'possibility' for 'advisability'. My amendment reads thus:

'That for the Resolution the following be substituted:

'This Assembly recommends to the Governor General in Council to consider the possibility of:

(1) increasing the number of Indian Governors to be appointed from among the ranks of public men, and

(2) increasing the number of Indian Chief Justices, Chief Judges, High Court Judges and Judicial Commissioners, to be appointed from among the ranks of practising lawyers.'

[Raj Bahadur S. P. Bajpai.]

Sir, I am in full sympathy with the Honourable Mover of this Resolution. He has really made out a very good case but I fail to see why the percentage should be fixed. As my Honourable friend, Mr. Yamin Khan, has just pointed out, we should always select the best men for these high offices. I think, Sir, it is not necessary for me to make a very lengthy speech. What I want to say with regard to this amendment is that Government should accept the principle that there is a desirability of increasing the number of Indians for the high offices of Governors and Chief Justices, etc. The only Indian Governor so far appointed—I mean Lord Sinha—has proved a great success and has given thorough satisfaction to the Government as has been admitted just now by the Honourable Sir William Vincent.

The Indian Chief Justices, Chief Judges and Judges of the High Courts have done very satisfactory work, at least, they have not been found inferior to their European colleagues. If the Proclamation of 1858 and the Announcement of 20th August 1917 have any meaning in them, I think it is high time that the Government should consider the necessity of increasing the number of Indians for the high offices of Governors, Chief Justices, etc. Surely there is no paucity of competent men in India.

I have only one word more to add. I recommend in my amendment that the Governors should be appointed from amongst the ranks of public men. Sir, with the increased powers given to the Legislative Councils it is necessary that the Governors of the Provinces should be men who inspire confidence in the elected representatives of the people. If Governors are appointed from amongst the ranks of public men, they are bound to inspire confidence, and the reforms will be worked out much more satisfactorily. With regard to the appointment of Judges from among the ranks of practising lawyers, I need not say anything to support it. The necessity is obvious. Practising lawyers are decidedly the best men to sit on the High Court benches.

With these few words I move this amendment for the acceptance of the House.

Mr. President: Amendment moved :

‘ That for the Resolution the following be substituted :

This Assembly recommends to the Governor General in Council to consider the possibility of :

- (1) increasing the number of Indian Governors to be appointed from among the ranks of public men, and
- (2) increasing the number of Indian Chief Justices, Chief Judges, High Court Judges and Judicial Commissioners, to be appointed from among the ranks of practising lawyers.’

Dr. H. S. Gour: Sir, when I heard the speeches of the Honourable Raj Bahadur Subrahmanayam and the Honourable Sir William Vincent I began to rub my eyes because I was lost in doubt as to whether the Raj Bahadur had not by a mistake been elevated to the position of a Home Member and the Honourable the Home Member had not descended to the common level of a private Member of this House, because, Sir, I see more liberalism in the statement of the Honourable the Home Member than in the castigation of the Raj Bahadur who says that the country is not prepared at present, and the few cheap platitudes in which he has indulged and which I submit have been indulged in by all who wish to detract the people of this country and to be little the

good that these people have been doing. My friend comes here and in his own cynical style says that these reforms must be given time, and that before they have had sufficient time and mature experience, the people of this country should not be given any further measure of self-government. Sir, if these had come from the lips of the sundried bureaucrat, from the Treasury Benches, I should have still considered that statement as highly reactionary. But coming as it does from one of the accredited representatives of the people of this country, I feel, that it will not be received with a ready response in the country. So far as the Honourable Sir William Vincent is concerned, I must say that I take exception to one statement. The Honourable the Home Member is literally right when he says that these appointments of Governors, of Chief Justices and Puisne Judges of the High Court are made by the King; but surely the Honourable the Home Member knows as well as I do that that is only a figure of speech and that the real appointments are made by the Government of India and by the Local Governments.

The Honourable Sir William Vincent: May I rise to offer an explanation, Sir.

That is entirely an incorrect statement. These appointments are not made by the Government of India in any sense.

Dr. H. S. Gour: If the Honourable the Home Member had only indulged me for two minutes and allowed me to complete my statement, he would have felt that my statement was absolutely correct. Before the reforms were conceded and when the High Courts were under the direct jurisdiction of the Government of India, all these appointments were made in the name of His Majesty as a matter of course, but all the recommendations had to go from the Chief Justices of the various High Courts and the Government of India.

The Honourable Sir William Vincent: May I rise again to offer an explanation, Sir. That also is incorrect.

Dr. H. S. Gour: With the exception of the Calcutta High Court where the Chief Justice used to send recommendations, as a matter of fact, the Viceroy used to transmit them to the Secretary of State. As regards the Provincial Governors, I beg further to submit that the Government of India sends the names to the Secretary of State and the Secretary of State then receives the Sign Manual of His Majesty and announces the name of the Governor who is appointed.

The Honourable Sir William Vincent: May I rise for a third time and offer an explanation, Sir. This statement is also incorrect.

Dr. H. S. Gour: The Honourable the Home Member has not told us what is the correct procedure. I have said that the correct procedure is that His Majesty the King signs as a matter of course, but the recommendations are issued by the Government of India and the Secretary of State, and not a single instance is known in the records of the Government of India when the King vetoed an appointment made by the Secretary of State or the Government of India. I invite the Honourable the Home Member to read a valuable book published by Lord Morley. In his 'Recollections' he points out that when the question arose about the filling up of a high vacancy, that of the Viceroyalty of India, great pressure was used upon him by the then King-Emperor and the Cabinet, but in accordance with the well-established

[Dr. H. S. Gour.]

convention, as that appointment was one which was entirely to be made on his own responsibility he stood out and selected a man of his own choice. That I take it is the real convention. His Majesty does sign, it is his prerogative in the real sense of the term, but in reality the recommendations are made by the responsible Governors and Governors General (*A voice*: And the Ministers), and by the Ministers. The point upon which I am at issue with the Honourable the Home Member is this, that when the Honourable the Home Member says that any person who refers to these high offices trenches upon the established prerogative of the Crown, I beg to differ. For all practical purposes the Government of India does make these appointments, the Secretary of State does make the appointments, and I submit it is perfectly within the competence of this Assembly to request His Excellency the Governor General to view with favour the recommendations made by this Assembly. I therefore submit that the question is entirely within the jurisdiction of this House.

The next question, therefore, that arises is, should this Assembly make the recommendation? Here again I have the misfortune to differ from the Honourable the Home Member. He says, the best men are always appointed. Now, Sir, if this question was within the competence of this House fifty years before and we had raised that question, that would have been the reply. Whenever the Government wishes to justify an appointment it says, 'I always appoint the best man. Don't you know that we are infallible? We never appoint a bad man, but we appoint the best man.' But I beg respectfully to submit that the feeling in this country is growing in favour of the fact that they must not be the best men but they must be the best men out of the people of this land. The Chief Justices are imported from England. The Governors are appointed—more or less the Governors of Bombay, Madras and other Presidencies, are imported from England. Now, I ask the Honourable the Home Member with his long and varied experience of the administration of this country whether these imported articles from a foreign land are as good as he could obtain locally? Do they know the language? Do they know the manners and customs of the people? Do they understand the various problems which the various nations and races in this country present? I submit they do not, and I submit, therefore, that if these reforms are to be given a trial, if these reforms are to succeed, the Government of India must exhibit a measure of generosity in trusting the people of this country in placing at the head of the Governments, in placing at the heads of the various tribunals, the responsible leaders of public thought and men of eminence in the legal profession. Can the Honourable the Home Member say that it has been done in the past? I submit he cannot. And if it has not been done in the past, this Assembly will be justified in raising its voice of protest against what has been the policy of the Government of India, in asking the Government of India to reconsider the policy and bringing it in line with the new spirit of reforms which has been inaugurated in this country. Now, Sir, one more word. It has been said by the Honourable Mr. Subrahmanayam that the homogeneous system, the working of the system is somehow or other inconsistent with the acceptance of this Resolution. Now, if he had quoted some Chinese proverb, it would surely have been more intelligible to me than this phrase which he has made the pivot of his whole case. What is the meaning? I should be so glad if anybody could explain what it means, because I have failed to understand it. These are the political

shibboleths in which people mask their thoughts, their real thought being to oppose this Resolution for the simple reason that this Resolution, if carried, is likely to lead to the appointment of certain people whom we do not like. My friend went on further to say that in this Assembly we have a menagerie of races, which do not always agree. Is that a sign of weakness? I submit, Sir, that it is a sign of strength. We have come here to represent various classes and interests, and at times if we do not agree, there is nothing unnatural about it. Why should we all agree? If we did, our agreement would be miraculous. I submit that if we have to look at these questions from different points of view, and if at times we do not see eye to eye with one another, it is because we come from various Provinces, represent different interests and place before this House the various points of view. The Honourable Member regards that as a sign of singular weakness. I, Sir, regard that as a sign of strength, seeing that this House has the courage of its convictions, and does not fall into one stereotyped groove of following one method and one principle and one measure. On all these questions of various characters that come before this House, every person is entitled to ventilate the views which he considers to be the right views of his constituency. The Honourable Member, I submit, then, cannot treat that as a peg upon which he has hung his whole diatribe against the Honourable Mover's Resolution. I submit that so far as this House is concerned, I submit so far as the representatives of the people outside the House are concerned, I do not think that there is one man who cannot sympathise with the underlying principle of this Resolution. But, at the same time, I am not at one with the Mover of this Resolution, who wants a cut and dried scheme of appointments of Governors and other high dignitaries in the proportion of half and half. I think this House should sympathise with the general principle—that it is necessary in the present interests of the country and of the Government of India and I further make bold to say in the interests of the progress of this country and its position as a portion of the British Empire,—that the Government of India should take the earliest steps for the purpose of showing a greater confidence in the people of this country by placing as many people as they possibly can at the heads of Provinces and Courts. In this light, I submit, this Resolution should receive the support of this House.

The Honourable Sir William Vincent : Sir, if I had the misfortune to interrupt the last speaker on two or three occasions during the course of his speech, I did so in no spirit of discourtesy but merely because I wanted the Assembly to understand that he was under an obvious misapprehension in regard to certain allegations which he made. One of the statements made if, I understood him correctly, was that the Government of India were directly concerned with the appointment of Governors. The Government of India is the Governor General in Council; that is, the Governor General and all the Members of his Executive Council: and I state it as a positive fact, an incontrovertible fact, that the Governor General in Council has nothing to do with these appointments at all, and that individual Members of the Governor General's Council are not consulted in these appointments. Does the Honourable Dr. Gour suppose that when His Majesty's Government are considering the question of appointing a successor to Lord Willingdon, they ask the views of the Government of India? Not at all. It is idle to suggest that we have anything whatever to do with these appointments. It is probably true on doubt—though I have no personal knowledge of the fact—that the Secretary

[Sir William Vincent.]

of State and the Viceroy correspond privately on such appointments. But to suggest that the Government of India have anything whatever to do with these appointments is incorrect. That is the point I have tried to make, and I do not think the position taken up by Dr. Gour can be maintained, or that he would himself attempt to maintain it if he were to investigate the matter or question any one of my Honourable Colleagues here. The same is the case with Chief Justices, I believe the procedure in regard to the appointment of Chief Justices is this. I speak on hearsay information. The Governor of Madras or of Bombay make proposals to the Secretary of State, and the Secretary of State arranges with the Lord Chancellor and other legal authorities, if an English Barrister is to be sent out, as to who would be a suitable nominee. Similarly he probably consults local authorities if an Indian Barrister is to be appointed. But the communications do not go through the Government of India at all, nor do they have any part in such appointments. The Government of India have nothing to do with them. With regard to the Calcutta High Court, what is the practice there? The practice is not to write to the Government save in the case of officiating appointments or additional Judges. The practice is to communicate with the Viceroy, and he communicates with the Secretary of State, although on occasions His Excellency the Viceroy does, when he so chooses, consult individual Members of his Council.

Sir, I think I have established these propositions. The first is that the Governor General in Council is not primarily concerned, or in any way concerned, with many of these appointments. I do not know whether I have made this clear but I do hope that I have removed the misapprehensions created by Dr. Gour. Further when he suggested that I tried to deceive the Assembly, I assure the Assembly that there is no foundation for such a suggestion. Dr. Gour went on to say we have not appointed Indians in sufficient numbers. That is a possible accusation that may appeal to many. What I put to him is this, that the Government have in recent years taken every care to increase the number of Indians in all high executive and judicial appointments, and I defy any Honourable Member of this Assembly honestly to controvert this statement. Having regard to the known sympathies of His Excellency the Viceroy and the Right Honourable the Secretary of State for India, can any one say this question has not been viewed in recent years in a different spirit from what it had been in the past? Is not that a fact? In these circumstances is it right, is it fair, that we should be asked now to make a recommendation of the kind proposed by the Mover of this Resolution, namely, that half the appointments—exactly half and no more or less—should be given to Indians. Dr. Gour however wants to go much further. He does not want to import any English Barristers at all from England, for any High Court; the Assembly have been told, these Judges are ignorant of your language, they are ignorant of your customs, know very little of Indian law and so forth. These Members, however, who deal with the law courts—there are many of them here, my Honourable Colleague, the Law Member, is one, the Honourable Mr. Shafi is another—those who have had business in the law courts, I should like them to say whether they wish to see the High Courts of this country deprived of the benefit, and the very great benefit, that has been secured by the importation of English Barrister-Judges into this country. Have they not been of the

greatest service? Have they not laid the foundation of a sound system of criminal and civil law in this country? Have their services not been of the greatest benefit to the whole of the people of this land? Dr. Gour's proposal would however lead you to this that no English barristers at all would be employed in High Courts in this country. Now I hold no brief for the English barrister except that I believe the appointment of practising English barristers as Judges of the High Court is of the utmost value. I have now dealt with the Resolution. The amendment asks us to consider the possibility of increasing the number of Indian Governors. If that was a matter which lay in our power, or which was primarily our concern, I should be glad to place it before His Excellency the Viceroy and the Secretary of State. But I put it to the Assembly that we are asked to intrude on a matter which is not our business at all, and I hope the Assembly will be reasonable and not ask us to undertake a duty which is not ours in any sense according to the law or practice.

Munshi Iswar Sarau: Sir, there is a peculiar disease which attacks some of the public men of this country. It is a most insidious disease and its effects sometimes prove quite fatal. This is the disease of 'sobriety.' When this particular malady attacks a public man his vision is blurred and he imagines that he serves his country by obstructing progress and by standing against all reform. I am afraid that the Honourable Member from Madras, though he may not as yet have actually got the disease, is on the fair way of getting it if he will not take necessary precautions in time. Now what does he say? 'Work the reforms for all they are worth.' Exactly, that is what we are all trying to do. The pronouncement of August 20, 1917, is certainly the corner-stone of the Reform Scheme, and in it we find the declaration made:

'That the policy of His Majesty's Government, with which the Government of India are in complete accord, is that of the increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realisation of responsible government in India as an integral part of the British Empire.'

Whatever opinion the Honourable Member from Madras might have about the merits of this proposition, surely he cannot dismiss it as a proposition the object of which is not to work the reforms, to use his own words, for all they are worth. I may be wrong, Sir--and if I am wrong I shall be sorry,—but I take it that the Honourable Member wishes all these reforms to be postponed till that happy day when there will be absolute unanimity in this Assembly and perhaps outside in the country. If that is his view, let me say in all humility that the country will have to wait long, very long indeed, before any reform is introduced in the Government of India.

Sir, there was waged a battle royal between the Honourable the Home Member and the valiant Knight of this Chamber, Dr. Gour. I am afraid, this battle was fought over side-issues. We do not wish to encroach on the prerogative of the Crown, nor are we at this moment interested in ascertaining whether these appointments are made by the Government of India or by the Home Government. You will find that the Honourable the Mover has distinctly said in his Resolution that a copy of the above Resolution be submitted to the Home Government with favourable recommendations. The Honourable Member's idea was that his proposition should be submitted to the authorities

[Munshi Iswar Saran.]

in England for their favourable consideration with such remarks as the Government of India might be pleased to make. Does he really try to encroach on the prerogative of the Crown? I regret to say that the Honourable the Home Member was rather unjust to my Honourable friend. It does not matter to us in the least who makes the appointments. We take the fact of these appointments and we wish to express our dissatisfaction with them, and at the same time we wish to express a hope that a new departure will be made in the policy that has been pursued so long. We recognise—and there the Honourable the Home Member is right—that the policy of the Government of India of late has shown signs of a welcome change. But, asks the Home Member, haven't we got three Members in the Executive Council? Might I in all humility ask the Honourable the Home Member a counter question: in the High Courts how many Indian Chief Justices have we got? Out of the High Court Judges, how many are Indians? Out of the Judicial Commissioners and Judges of other higher Courts, how many Indians have we got? He says these appointments are not made on racial grounds. Exactly. This is what we are pleading for. Are we then to understand by implication the Honourable the Home Member to mean that there are not men in this country who can be appointed to these high posts? I do sincerely hope the Honourable the Home Member does not mean it.

Take these posts one by one. Take the question of the appointment of Indian Governors. The Honourable the Home Member and my friend the Honourable Mover have both paid their tribute of respect and admiration to that distinguished countryman of ours, Lord Sinha. I have no doubt that Lord Sinha is regarded as one of the most illustrious Indians living to-day. But, Sir, I ask this House in all seriousness, is there not a second Sinha in India? I recognise Lord Sinha's capacity, Lord Sinha's distinction, Lord Sinha's achievements and Lord Sinha's other qualifications, but he does not stand all by himself. There are, I say with confidence, other men in the country who, if called upon, can discharge his duties with equal satisfaction to Government as well as to the people. Sir, I am afraid, some of the Honourable Members here will regard this demand as chimerical and impractical. But I ask this House to consider if five years ago a man had got up and said that he wanted an Indian Governor for a Province, would he not have been laughed at as a lunatic, if not worse? I submit that the time has come when the recommendation should go up to the authorities in England that Indian aspiration demands, and demands in very clear terms, that there should be more Indian Governors in India, and that, having regard to the capacity of Indians, having regard to their education, having regard to their tradition if they are called upon to undertake these difficult tasks, they will certainly be able to discharge their duties satisfactorily. Might I ask the Treasury Benches to tell us when they have called upon us to undertake any task have they found us wanting? Whether as Governors or as Chief Justices or Judges, whether as Members of the Executive Councils or as Ministers, wherever we have been entrusted with the highest positions, we have given every satisfaction to the Government as well as to the people.

Sir, take again the question of the Legal Department. I submit with great respect that it is the one Department in which Indians have established their claim beyond any shadow of doubt. I shall only mention one or two

names. Take in my own Province, Sir Sunder Lal and in Madras Sir Muthuswami Aiyer, and who can say these two gentlemen would not have adorned the positions of Chief Justices with distinction if they were given the opportunity? I submit, Sir, there are many men in India at the present moment who can with profit to the country as well as to the Government, be called upon to hold these responsible posts.

Sir, let us now come to close grips with the real question at issue, and what is that question? Putting aside for the moment all these technical difficulties, the question is, are Indians to be given the opportunity of rising to the highest places in their own country, or is it by way of an exception that a man is to be called upon to occupy a high office? I submit, Sir, that if you want to make the reforms successful, and, as my Honourable friend from Madras has said, to work them for what they are worth, it is absolutely essential that, while you introduce changes in the political machinery, you should at the same time call upon Indians to all the highest offices which by their education, by their reputation, by their integrity and by their intelligence, they are entitled to occupy. Sir, I wish to say that I do not agree with the Honourable Member when he says that these posts should be given half and half. It is not at all necessary to lay down any hard and fast rule. I am rather inclined to agree with my Honourable friend, Mr. Bajpai, that our recommendation should only be that the number of the Indian Chief Justices and Justices and of Governors should be increased without binding ourselves or trying to bind Government or the authorities in England to any fixed ratio. Sir, I wish to ask the Honourable the Home Member and his Colleagues in the Government to look at this question not from a technical point of view, and will the Honourable the Home Member permit me to say that while he presented before us all these technical difficulties, while he repudiated the suggestion that the Government of India was responsible for these appointments, he did not say a word which would give us hope, which would give us courage. Not a word was said by him to give us hope, he only asked us to look at the policy which was pursued so long. He did not tell us why is it that there is only one Indian Chief Justice in all the High Courts of India. If the Honourable the Home Member will consider this aspect of the matter, I am certain he will see that the proposition which has been moved by my friend on my left is not so impracticable, and is really not a proposition which attempts to encroach upon the prerogative of the Crown. Every one, I submit, has got a right to go up to the Crown and to lay his representations for the consideration of the Crown and of the responsible Ministers of the Crown. This Resolution only attempts to place our views in clear language before the Government of India and the authorities in England, hoping that the Government of India will express their own views about the recommendations which this Assembly wishes to make.

The Honourable Dr. T. B. Sapru : Sir, I am afraid both my Honourable friends Dr. Gour and Munshi Iswar Saran have proceeded on the assumption throughout their interesting speeches, that the Honourable Sir William Vincent was the sworn enemy of the idea embodied in this Resolution. So far from that being the case, I imagine that it must have been apparent to any one who followed his speech with close attention that his objection was based mainly upon a constitutional ground, particularly because of the manner in which the Resolution has been presented to the House. He pointed out to

[Dr. T. B. Sapru.]

the House that during the last few years there has been a steady tendency to increase the number of Indians in the higher offices of the State, and if I understood him correctly—I am here again speaking subject to correction by him or by any other Member,—that tendency is likely, in fact, is certain to grow in the future. Therefore, so far as the future is concerned, I confess that I take myself a very hopeful view, and I do believe that, as time goes on, we shall find that more and more Indians come to occupy higher official positions. The real dispute is with regard to the form of the Resolution, and that turns upon the constitutional issue which has been raised by my Honourable friend, Sir William Vincent.

There is only one other matter to which I will refer and that is because of certain observations which were made by my Honourable friend, Dr. Gour. I am sure when Dr. Gour has heard all that I have got to say he will not regret that I am just reminding him of a matter of which he as a member of the English Bar should be proud. I need scarcely remind the House what my own personal feelings are with regard to the question of the Bar, but even a man like myself who does not belong to the English Bar may in fairness pay a tribute to the service rendered to the cause of liberty and freedom, justice and law in this country by members of the English Bar. If you go back to the beginnings of British rule and remember the battle royal that was waged at that time between the Governor General of those days—Warren Hastings—and the representatives of the judiciary, what do you find? It was the English barrister-Judge who stood out for the liberty of the subject. Coming down from the time of Warren Hastings to more modern times, what names are more honoured in the history of judicial administration or in the entire history of legal systems in recent times than the names of Sir Barnes Peacock, Sir Richard Garth, and, in recent times, that of Sir Lawrence Jenkins? The fact that I am not a member of the English Bar would not stand in my way, and I must candidly recognise that the English barrister-Judge has left a shining example for his successors to follow. This does not mean that I am not equally proud of some of the distinguished countrymen of mine who have adorned the Bench or who have been the best lights of the legal profession in this country—men like Mitter, Bhattacharya, Aiyanger are honoured names among the lawyers in India.

Now, Sir, what I do submit is this. While Dr. Gour and I are both of us agreed that the Indianisation of the High Court must continue, I hope he will not differ from me that, having regard to the manner in which our judicial system and our entire legal system has developed during the last fifty or sixty years, the English barrister-Judge has even to-day his own value. My friend Dr. Gour has contributed a valuable book to legal literature—I refer to his commentaries on the law of the transfer of property—and no one can appreciate better than Dr. Gour that, so far as the essential features of our law of property are concerned, they are closely allied to the English system and an English barrister who comes out from England does no doubt contribute substantially to the elucidation of those intricate principles with which we have got to deal every day of our lives,—and he also brings out with him those high traditions of independence and freedom which we all value and which we all expect from members of the Bench in any part of India. Pray do not understand that there are not men in this country who would rise equally to the standard, but what I do contend is, that at the present stage of our evolution.

and for some time to come I do not think that it would be right for us, having regard to the larger interests of justice and law, to entirely dispense with the services of the English barrister judge. I say so with the full consciousness that there are eminent lawyers in this country, and I say so in the full belief that our lawyers must sooner than later come into their own.

Dr. Nand Lal: Sir, with the greatest possible humility and without meaning disrespect to the Honourable Mover of this Resolution, I feel constrained to say that this Resolution is not aptly worded. This is not due to the lack of ability, but I daresay this is due to lack of time. The Honourable Mover is a lawyer of some standing, and I am sorry to see why he could not spare time to go into the provisions which have got some bearing on the questions involved in his Resolution. I think there is not a single Honourable Member of this Assembly who will not agree with me, so far as this principle is concerned, that the fixity of number for a specific community has already fettered the hands of the Government of India and all of us are feeling the pinch of it. As for instance, so many Muhammadans may be appointed, and similarly so many Hindus may be appointed.

This policy, I may be allowed to submit, has really put ability and merits at great discount, and I am afraid I cannot identify myself with this petition of my friend that a similar policy may be adopted so far as the numerical strength of Europeans and the numerical strength of Indians is concerned. When I look into the provisions of the Government of India Act, then I feel encouraged and I see for myself and I wish to convey the same information to the Honourable Members of this Assembly. I hope they will kindly see that there is no line of demarcation; there is no question of racial distinction; there is no racial bar embodied and incorporated in these provisions. What do these provisions say? I shall let you know what they say. They say: 'A Judge of the High Court must be a barrister of England or Ireland.' An Indian may go to England. Is there any bar? It is a question of money, time, merits and ability to pass examinations. No question of colour or nationality.

I am an Indian and a barrister of England; there is no bar in any way. Referring to the same provision again:

'Or a member of the Faculty of Advocates in Scotland of not less than five years' standing.'

Look at the beauty of that provision. Merits are appreciated. Standing is respected. Standing, ability, experience are given prominence and not nationality. So far as these high posts are concerned, I say—and I can show from the top of my house—that so far as the statutory law is concerned there is no racial distinction at all. With regard to the other point which was at issue in regard to the appointment of Governors, may I invite my learned friend's attention to the very clear provision, which is embodied in section 46. What does this section say? It also is, as it seems to me, averse to racial distinction. The Governors of the Presidencies are appointed by His Majesty by warrant under the Royal Sign Manual.

There is no indication of racial distinction. Merits and abilities are sure to be appreciated. Therefore, this present debate to my mind, my learned friend will excuse me when I say, is idle. I agree with my learned friend Dr. Goar when he says that the Chief Justices were imported. If he means to say in the past years, I may meet him half way, but if he is speaking of the

[Dr. Nand Lal.]

present time, I must differ from him, because we must be very fair in controversy and debate. I come from the Punjab, and I feel proud to inform this Assembly that the Chief Justice of that High Court is an Indian, not only an officiating Chief Justice but a permanent Chief Justice. I am sure my learned friends, the author of this Resolution and the author of the Amendment, do not mean seriously to say that all European Judges should be dismissed at once and their places should be given to Indians. Indeed, in course of time, when vacancies do occur, we will lay our claim to them. We are entitled to be appointed as Judges of the High Courts in India, and we are capable of holding that position and doing full justice to it. The appointments which were given to Indians have been held by them, and in their official career they have shown to the world that they are capable of doing full justice to the appointments and deserved the confidence which was placed in them. My learned friends have gone out of their way in asking why the posts should not be given to Indians. There is no bar in our way. Is there any statutory law which stands and operates as a clog? Again this is an idle idea. We are capable; there is no doubt about our efficiency and capabilities, and why should we doubt our own merits?

On another score I have to differ from the learned author of this Resolution, and that is this. It is not fair on our part to blow hot and cold at the same time. Only the other day we were discussing a Resolution in regard to the achievement of self-government and dominion government, and to-day we are discussing a Resolution of quite a different character. To my mind they are not reconcilable. If we may happen to get dominion self-government, then there will be no question of nationality. It will depend on the choice of the electors. The electors may choose Europeans, Indians, or anybody else....

Mr. Muhammad Yamin Khan: On a point of order, Sir. Does the Honourable Member mean to say that the electors will choose the High Court Judges or the Chief Judges?

Dr. Nand Lal: I beg your pardon. You have not followed me at all. I meant to say that when we have got self-government, the so-called *Swaraj* then these appointments will be given according to merits always, because the power of appointing and dismissing, though indirectly, will lie in the hands of the electors, since they will be electing the Members of the Executive Council. In other words the Executive will be responsible to the people. So, on this score also I beg to differ from the author of the Resolution. So far as our aspirations are concerned, I am in accord with the reasons advanced by the learned Mover of the Resolution and I am in full sympathy with his arguments, so far as our capabilities are concerned. With these few remarks I submit that the debate which unfortunately has become unusually hot is misplaced.

Mr. S. C. Shahani: I move that the question be now put.

Mr. Jamnadas Dwarkadas: There is hardly a single Indian in the country who would not feel cheerful at the prospect of a large number of Indians being appointed to fill higher posts. But, Sir, with due deference to the Honourable Mover of the Resolution, to my Honourable friend Dr. Goar, and to my Honourable friend, Munshi Iqbal Saran, I submit that it seems to

me that this Resolution is unfortunate, and it would have been much better if it had not been brought before this Assembly. Munshi Iswar Saran in the course of his very eloquent speech pointed out that in the declaration made by the Secretary of State on August 20th, 1917, the Secretary of State himself admitted the need of assimilating a larger and larger number of Indians in the Government, and he utilised that statement made by the Secretary of State in favour of the argument that he advanced that so far as the higher posts were concerned a larger number of Indians should be appointed to fill those higher posts. I ask my Honourable friend Munshi Iswar Saran to compare the state as it existed before that declaration was made and the state as it exists now. I ask my Honourable friend Munshi Iswar Saran in all honesty to tell me whether at the time when he first read the declaration he ever dreamt that for the first time the post of the Under Secretary of State for India would be given in the year following to a prominent Indian? I ask my friend Munshi Iswar Saran whether he ever dreamt at that moment that in the year 1920 for the first time an Indian would be appointed the Governor of a Province? I ask my friend Munshi Iswar Saran and those who think with him, whether at that time there was any Indian who dreamt that an Indian would be appointed as the permanent Chief Justice of an Indian High Court? It is true that these posts have not yet fallen to the lot of a larger number of Indians, but I want this House not to forget the fact that by entrusting Indians with these highest posts that are available in the country, the Government have recognised, I say His Majesty's Government have recognised, the principle of admitting Indians to equal ranks so far as the higher posts are concerned. As for a larger number it is a question of time. I have no doubt that the moment it is realised by every one concerned that Indians who were appointed to fill these posts have acquitted themselves honourably, both from the point of view of His Majesty's Government and from the point of view of the people of this country, I say that the time is near at hand when more and more and a larger number of Indians will be appointed to fill these posts. But, Sir, we hear a cry in the country to-day even when these high posts, high offices are entrusted to eminent Indians,—we hear a cry, and to a certain extent, a legitimate cry, that it is not the highest posts that we want; the higher posts are the baits that the Government throw in order to throw dust in the eyes of the people of the country and for the purpose of winning over those who might oppose the Government. It is not these highest posts that we want; it is those posts which are filled by men who run the administration that we want should be filled up by Indians. I wish that matter had been discussed here. I wish we had here given expression to our opinion that in the All-India services a majority of the people should be recruited in India. So far as that is concerned, I recognise, Sir, that even that principle has been recognised by the Secretary of State and the Government of India. But what I want to point out, and most emphatically point out, to this House is this, that His Majesty's Government having recognised the principle of admitting Indians to the highest possible posts available in the country, it hardly lies in our mouth to bring any Resolution which might have the effect of showing as if the Government has altogether ignored our claims. I take it as a matter of course that once these distinguished men establish their reputation as equals to Englishmen, and I have no doubt that they have already done so, the process of appointing Indians to the highest posts will be naturally inevitably accelerated,

[Mr. Jamnadas Dwarkadas.]

It does not lie with, it is hardly necessary for, the Assembly to propose a motion of this character. No Government, I submit, Sir, with due deference, can tie itself down to a policy which it is not in its hands to carry out. It is the business, as the Honourable the Home Member has rightly pointed out, of His Majesty's Government. The Honourable the Home Member has also told us that while the Viceroy, as Viceroy, is consulted, the Government of India, as Government of India, is not consulted. If the Government of India is consulted, I think this Assembly will be the first to object to this principle of consulting the Governor General in Council for all the posts that are to be filled by His Majesty's Government. I submit, Sir, that it would not be proper for this House to pass this Resolution. I submit, Sir, that this House ought to have confidence, having regard to the policy that has been followed by His Majesty since that declaration was made, even beyond the dreams, and I submit the wildest dreams, of my countrymen. I submit that, in view of that fact, it would be much better if my Honourable friend, Mr. Agarwala, would consent to withdraw his Resolution, and trust and have confidence in His Majesty's Government that their policy, once recognized, will always be to assimilate Indians for all the higher posts that are available in this country.

Mr. K. Ahmed : I move, Sir, that the question be now put.

Mr. S. C. Shahani : I move that the question be now put, Sir,.....

The Honourable Sir William Vincent : I rise to a point of order. Is the Honourable Member in order in first moving that the question be now put and subsequently speaking on the Resolution?

Mr. President : That is entirely a question of taste.

Mr. S. C. Shahani : I must thank you, Sir, for your kindly permitting me after permitting Mr. Jamnadas Dwarkadas to make a few observations on the question under consideration.

Mr. President : Order, order. There can be no question of permission from the Chair.

Mr. S. C. Shahani : I stand corrected. It is probably my right. So I shall make a few remarks with regard to the question under consideration.

Mr. Jamnadas Dwarkadas got up to say that the character of the Resolution was unfortunate. I looked for his establishing this statement, but in vain. The Resolution is unfortunate if it is calculated to do harm either to Government or to the people. As a matter of fact, there is considerable difference of opinion and misunderstanding on the question, and it is well, I think, for both parties that the question has been discussed here. The fundamental presumption which is involved in the Resolution that has been brought forward is that the right of Indians to the highest appointments should be recognized. It has been said just now by Mr. Jamnadas Dwarkadas that these high appointments are given to Indians to throw dust into their eyes,.....

Mr. Jamnadas Dwarkadas : I said that was an argument made by some of my countrymen outside this House.

Mr. S. C. Shahani : Which argument, however, is wrong. As a matter of fact, the merits of the Indians being recognized, Mr. Agarwala has come forward to us to suggest that this Assembly recommends to the Governor General in Council that it be represented to the authorities responsible for these appointments that approximately an equal number of these important

posts be given to Indians, provided of course they be found to possess sufficient merit; and if this is the presumption involved in the Resolution, I do not see how anybody can rightly object to this Resolution. It has been said by the Honourable the Home Member that the Government of India is not responsible for these appointments; that in fact they are never consulted. The answer is, and the object of the Resolution is, whoever is consulted, and whoever makes the appointments, it should be brought to his notice that, in the opinion of this Assembly, these highest posts should be equally distributed to Europeans and Indians, provided of course there is sufficient merit available.

I have to refer to one statement that was made, namely, that such a Resolution would mean an encroachment on the prerogative of the King. The King never allowed any one to make the appointment of Ministers before the reign of William III. But after the reign of William III, any student of English history will realise that the appointments are made practically in consultation with the representatives of the people in the Parliament of England. Dr. Gour was perfectly right when he said that the opinion of the people should be respected, and if the opinion of the people is in practice respected, the prerogative might in form continue to be exercised by the King-Emperor. There is nothing in the Resolution to suggest that any invasion or encroachment is intended.

It has been suggested by my Honourable friend Mr. Subrahmanyam that we might well content ourselves with the lower appointments and not concern ourselves at all with the higher. I really do not understand why this distinction should be made. It is true that the lower appointments, as Mr. Jamnadas Dwarkadas has pointed out, probably mean more effective participation in the administration of the country, and from that point of view I have no doubt that everyone in the House will endorse what has been said in regard to our having a larger share of these appointments. But if it is seriously contended that at this time we should not come forward to suggest that approximately an equal distribution of the higher posts should be made, then I say, well, the suggestion is wrongly made, and we should not accept it. It has been pointed out, and very rightly, by some that, perhaps at this stage when Indians are being associated in increasing numbers in Government, it will not be in good taste to keep pressing for a larger share. I agree with this view so far as it goes. On this ground I would suggest to my Honourable friend Mr. Agarwala to withdraw the Resolution. The position that we occupy with regard to this Resolution is, I suppose, now clearly defined.

The Assembly divided as follows:

AYES—31.

Ahmed, Mr. K.
Akram Hussain, Prince A.M.V.
Asjad-ul-lah, Maulvi Miya.
Ayyangar, Mr. M. G. M.
Bagde, Mr. K. G.
Bajpai, Mr. S. P.
Bhargava, Pandit J. L.
Chaudhuri, Mr. J.
Faiyaz Khan, Mr. M.
Girdhardas, Mr. N.
Gour, Dr. H. S.
Hussanally, Mr. W. M.
Iswar Saran, Munshi.
Kamat, Mr. R. S.
Lakshmi Narayan Lal Mr.
Lathe, Mr. A. B.

Mahadeo Prasad, Munshi.
Mudaliar, Mr. S.
Mukherjee, Mr. J. N.
Mukherjee, Mr. T. P.
Nag, Mr. G. C.
Neogy, Mr. K. C.
Pyari Lal, Mr.
Reddi, Mr. M. K.
Shahani, Mr. S. C.
Singh, Babu Ambika Prasad.
Sircar, Mr. N. C.
Sohan Lal, Bakshi.
Subzosh, Mr. S. M. Z. A.
Yamin Khan, Mr. M.
Zahiruddin Ahmed, Mr.

[The President.]

NOES—47.

Abdul Quadir, Maulvi.
 Abdulla, Mr. Saiyed Muhammad.
 Abdul Rahim, Mr.
 Abul Kasem, Maulvi.
 Agnihotri, Mr. K. B. L.
 Aiyer, Sir P. S. Sivaswamy.
 Asad Ali, Mir.
 Barodawalla, Mr. S. K.
 Bryson, Mr. J. F.
 Carter, Sir Frank.
 Chaudhuri, Mr. N. N.
 Cotelingam, Mr. J. P.
 Crookshank, Sir Sydney.
 Dalal, Sardar B. A.
 Faridoonji, Mr. R.
 Fell, Sir Godfrey.
 Gidney, Lieutenant-Colonel H. A. J.
 Ginwala, Mr. P. P.
 Gulab Singh, Sardar.
 Habibullah, Mr. Muhammad.
 Hailey, the Honourable Mr. W. M.
 Hullah, Mr. J.
 Ikramullah Khan, M. M.
 Innes, Mr. C. A.

Jamnadas Dwarkadas, Mr.
 Jatkar, Mr. B. H. R.
 Jejeebhoy, Sir Jamsetjee.
 Kabraji, Mr. J. K. N.
 Man Singh, Bhai.
 Misa, Mr. P. L.
 Mitter, Mr. D. K.
 Muhammad Hussain, Mr. T.
 Muhammad Ismail, Mr. S.
 Nand Lal, Dr.
 Percival, Mr. P. E.
 Price, Mr. E. L.
 Rhodes, Mr. C. W.
 Samarth, Mr. N. M.
 Sapru, the Honourable Dr. T. R.
 Sharp, Mr. H.
 Sim, Mr. G. G.
 Singh, Babu B. P.
 Srinivasa Rao, Mr. P. V.
 Subrahmanyam, Mr. C. S.
 Vincent, the Honourable Sir William.
 Waghorn, Colonel W. D.
 Wajid Hussain, Chaudhuri.

The motion was negatived.

Mr. President: The question is that the original Resolution be adopted.
 The motion was put and a division called for.

The following Resolution was put to the vote: The Assembly divided as follows:

'This Assembly recommends to the Governor General in Council:

- (a) The desirability of equalizing the number of Indians and Europeans in the following posts by filling future temporary or permanent vacancies by Indians till the deficiency has been made up:
 - (i) Governors of Provinces,
 - (ii) Chief Justices,
 - (iii) Chief Judges or other Heads of the highest judicial Courts in India,
 - (iv) High Court Judges or Judges of other highest Courts in India;
- (b) that a copy of the above Resolution be submitted to the Home Government with favourable recommendations.'

The Assembly divided as follows:

AYES—35.

Abdul Quadir, Maulvi.
 Abdulla, Mr. Saiyed Muhammad.
 Agarwala, Lala G. L.
 Agnihotri, Mr. K. B. L.
 Ahmed, Mr. K.
 Akram Hussain, Prince A. M. M.
 Asjad-ul-lah, Maulvi Miyan.
 Ayyangar, Mr. M. G. M.
 Bagde, Mr. K. G.
 Bajpai, Mr. S. P.
 Bhargava, Pandit J. L.
 Chaudhuri, Mr. J.
 Chaudhuri, Mr. N. N.
 Faiyaz Khan, Mr. M.
 Ginwala, Mr. P. P.
 Girdhardas, Mr. N.
 Gour, Dr. H. S.
 Gulab Singh, Sardar.

Iswar Saran, Munshi.
 Jatkar, Mr. B. H. R.
 Lakshmi Narayan Lal, Mr.
 Latthe, Mr. A. B.
 Mahadeo Prasad, Munshi.
 Man Singh, Bhai.
 Mudaliar, Mr. S.
 Mukherjee, Mr. T. P.
 Nag, Mr. G. C.
 Neogy, Mr. K. C.
 Reddi, Mr. M. K.
 Singh, Babu Ambika Prasad.
 Singh, Babu B. P.
 Sohan Lal, Bakshi.
 Srinivasa Rao, Mr. P. V.
 Subzposh, Mr. S. M. Z. A.
 Yarnja Khan, Mr. M.

NOES—41.

Abdur Rahim, Mr.
 Abul Kasem, Maulvi.
 Aiyer, Sir P. S. Sivaswamy.
 Asad Ali, Mir.
 Barodawalla, Mr. S. K.
 Bryant, Mr. J. F.
 Carter, Sir Frank.
 Cotelingam, Mr. J. P.
 Crookshank, Sir Sydney.
 Dalal, Sardar B. A.
 Faridoonji, Mr. R.
 Fell, Sir Godfrey.
 Gidney, Lieutenant-Colonel H. A. J.
 Habibullah, Mr. Muhammad.
 Hailey, the Honourable Mr. W. M.
 Hullah, Mr. J.
 Innes, the Honourable Mr. C. A.
 Jamnadas Dwarkadas, Mr.
 Jejeebhoy, Sir Jamsetjee.
 Kabraji, Mr. J. K. N.
 Kamat, Mr. B. S.

Misra, Mr. P. L.
 Mitter, Mr. D. K.
 Muhammad Hussain, Mr. T.
 Muhammad Ismail, Mr. S.
 Mukherjee, Mr. J. N.
 Nand Lal, Dr.
 Percival, Mr. P. E.
 Price, Mr. E. L.
 Rhodes, Mr. C. W.
 Samarth, Mr. N. M.
 Sapru, the Honourable Dr. T. B.
 Shahani, Mr. S. C.
 Sharp, Mr. H.
 Sim, Mr. G. G.
 Sircar, Mr. N. C.
 Subrahmanyam, Mr. C. S.
 Vincent, the Honourable Sir William.
 Waghorn, Colonel W. D.
 Wajid Hussain, Chaudhuri.
 Zahiruddin Ahmed, Mr.

The motion was negatived.

RESOLUTION *RE*: AMENDMENT OF THE INDIAN EVIDENCE ACT.

Mr. K. Ahmed: Sir, I beg to move the following Resolution* which stands in my name, with these verbal changes:

'This Assembly recommends to the Governor General in Council that section 165 of the Indian Evidence Act, 1872, should be amended, and that the Judge may, in order to discover or to obtain proper proof of relevant facts on close of the examination, ask any question he pleases in any form at any time of any witness:

Provided that the parties may further examine or cross examine the witness upon any fresh matter elicited by the Court.'

Sir, in moving my Resolution I wish to make it clear that I desire to emphasise its *substance* and not its *actual wording* which I now see is susceptible of much improvement. In the first place, I recognise that the amendment prohibiting the Court to do a certain thing would improve if its language is converted into an affirmation of principle that the Court has the right to supplement the examination of parties and witnesses. But in the latter case not, so as to prejudice the examination or cross-examination by their counsel. The gravamen of my complaint is that Courts often interpose in the examination of the witnesses with a view, no doubt, to elicit further facts, but which has in effect the result of neutralising the examination or cross-examination of witnesses. The Honourable Members of this House may consider this as a trivial point, but I appeal to those who belong to the learned profession to say in how many cases their whole case has not been materially prejudiced by such judicial handling of witnesses.

It is a common complaint in the mufassil and not unusual even on the original side of the High Court that Judges often take upon themselves to examine witnesses in the whole case and then

* The Resolution as it appears in the List of Business as follows:

'This Assembly recommends to the Governor General in Council that Section 165 of the Indian Evidence Act, 1872, should be amended and the word "but he should not interpose after the Examination-in-chief has been finished and question the witness on the points to which the cross-examination will properly be directed" be inserted after the word 'irrelevant' in that Section.'

[Mr. K. Ahmed.]

leave the counsel to supplement their examination. And, as the Judges are not tramelled by any restriction regarding relevancy, propriety or leading questions, the parties cannot complain and it has the double effect of prejudicing the Court and of shaking the party's confidence in its partiality.

Fifty years have since passed and the Bar in India has become so strengthened, that its presence is felt even in the remotest corner in the smallest Court of the land. The reason then which existed for the enactment of section 165 has ceased to exist, and I do not see why the whole section should not be repealed and at the same time I wish to make a slight amendment which I submit is abundantly justified by the growth of legal intelligence in the country and the multiplying examples of abuse of power which the section leads to. In this connection I beg to cite the weighty remarks.....

Mr. W. M. Hussanally: Sir, I rise to a point of order. If this Resolution is carried to-day, will it have the effect of committing this House to any Bill that may be brought hereafter embodying the proposal which is now carried?

Mr. President: The Resolution is a recommendation to the Governor General in Council. It does not lay any obligation on them whatever either to introduce a Bill or, if a Bill is introduced, to amend it in the manner suggested.

Mr. K. Ahmed: In this connection I beg to cite the weighty remarks, made as far back as 1881 by Sir Richard Garth, the Chief Justice of Bengal. It is reported in the Indian Law Reports 6 Calcutta at page 279 (Emperor vs. Nur Buksh Kazi).

'At a trial before a Sessions Court Judge an examination in chief of the witness for the prosecution being finished, he questioned the witness at considerable length upon the points on which he must have known that the cross examination would certainly and properly be conducted. To take such a course was irregular and opposed to the provisions of section 138 of the Evidence Act of 1872. It is not the province of the Court to examine the witnesses unless the pleaders on either side have omitted to put some material question or questions; and the Court should, as a general rule, leave the witnesses to the pleaders to be dealt with as laid down in section 138 of the Act.'

Section 138 says:

'Witnesses shall be first examined in chief and then, if the adverse party so desires' cross-examined. The examination and cross-examination must relate to relevant facts, etc.'

Now, Sir, another improvement that the section necessitates is that which prevents parties to cross-examine any witness without the leave of the Court upon any answer given in reply to questions by the Court. The Courts in this country use this power to the prejudice of parties without giving them a chance of cross-examining witnesses from whom they have elicited facts prejudicial to their case. On this point also there are decided cases in which the Judges have animadverted upon the arbitrary refusal to grant leave to cross-examine a witness upon matter elicited by the Court. I would not have brought this matter before this Honourable House had it not been of sufficient public importance, and I hope it will not suffer by my inadequate advocacy.

I beg to move, Sir, that my Resolution be accepted.

Munshi Mahadeo Prasad: Sir, the Resolution of the Honourable Mover is only one-sided and contemplates only the prevention of interference by the Court after the examination in chief. Had it been so worded as to limit the power of the Court after the examination is over, I would have supported the motion. There might be Judges who take into their

heads to believe or disbelieve the story of a prosecution or of a witness at an examination in chief and sometimes put questions in cross-examination according to the association of ideas in their brains. But the Resolution as it is worded is such that it will not help Judges to come to a just and true conclusion. Further, when a case is tried by a Judge on the civil side, even then after the examination in chief is over, and the cross-examination has not commenced, it will be only one-sided to prevent intervention of the Court before a cross-examination. I submit, Sir, that the Courts of this country are to do justice in different parts of the country. There are places in different villages where one cannot get the assistance of a trained lawyer. Sometimes *mukhtars* are available in the sub-divisional Courts of a district. If the hands of the Court are tied by the policy in the Resolution, I submit that there will be injustice. Taking all these points into consideration, I would beg to oppose the Resolution.

Dr. Nand Lal : Sir, I beg to move the following Amendment to this Resolution which has been so ably moved by the Honourable Mr. Ahmed.

The Honourable Sir William Vincent : I rise to a point of order, Sir, Is the Honourable Member entitled to put the Amendment without notice? I have not even had a copy of it.

Dr. Nand Lal : If I may be permitted to give an answer to the Honourable Sir William Vincent, I may say that this Amendment has very kindly been admitted practically by the Chair, and when once permission has been given by the President, that is sufficient.

Mr. President : Will the Honourable Member say whence he learnt that that permission was given? Under Standing Order No. 65 the Honourable the Home Member is entitled to object on the ground of want of notice. I understood that the Amendment had been circulated and no objection had been taken. If the objection is taken I must uphold it.

The Honourable Sir William Vincent : I find the Amendment is here. I withdraw the objection.

Dr. Nand Lal : I thank the Chair for the permission and the Honourable Sir William Vincent for the consent. The Amendment which I beg to move runs as follows :

'This Assembly recommends to the Governor General in Council that Section 165 of the Indian Evidence Act, 1872, be amended to this extent that after the words 'at any time' the words 'before the commencement of examination in chief and after the end of cross-examination' be inserted.'

Before I may be able to do justice to this amendment I feel bound to invite your attention to the provisions of Section 165. Section 165 of the Indian Evidence Act runs as follows :—'The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases in any form.' Up to that I have no quarrel with the provision. My quarrel crops up now.

'At any time.

(here is the expression from which I differ.)

'Of any witness or the parties about any fact relevant or irrelevant'.

I do not quarrel with the word 'irrelevant' too. Look at the modesty of this amendment and the liberality of the Resolution.

'And may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court to cross-examine any witness upon any answer given in reply to any such question.'

[Dr. Nand Lal.]

The provision as read out by my humble self before you will, undoubtedly, convey the idea that a Judge, which here includes a Magistrate, has got unfettered power. He may put any question at any time. Perhaps some Members of this Honourable Assembly may ask, is there any section in this Act which gives us some clue to the right procedure? In answer to that, I would submit that there is, and I shall invite their attention to that provision very briefly. That provision is section 138 of the same Act, which lays down the specific procedure, the method which should be adopted in the course of recording the evidence, thereby I mean to say, in the course of examination in chief of the witness as well as the cross-examination of the same witness, and on the top of it, the re-examination, with which I am not concerned here, so far as the present debate goes. Now, the wording of section 138 is as follows:

'A witness shall be first examined in chief, (if the adverse party so desires) cross-examined, then if the party calling him so desires, re-examined. The examination in chief and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness has testified in his examination in chief.'

The reason why I have particularly invited this Assembly's attention to this is this, that here the method in which the parties to the suit or the Court ought to move is described, and now we find section 165 which gives unlimited power to a Magistrate or Judge.

The first ground on which I question the correctness or the soundness of section 165 is this, that it is in conflict with the provisions of section 138. In section 138 of the Evidence Act it is not stated 'subject to the provisions of section 165,' and therefore I think I have rightly endeavoured to make out this point that the provisions of section 165 are faulty, and that that section is not happily worded in any case. The other ground on which I object to the provisions of section 165 is this. Here a party to the suit or an accused or a complainant engages a lawyer, pays him thousands or hundreds according to the character of the offence, according to the value of the suit, or in some cases according to his (client's) pocket, and again in some cases according to the status of counsel. Counsel comes and begins to proceed with the examination in chief of the witness who has been called by the party whose counsel he is. He has begun examination in chief. He puts one question to witness A, for instance 'Did you see something?' Then the Court jumps up and intervenes and begins to put questions, I mean to say the Judge or the Magistrate. The Court goes on putting questions after questions. In some cases, perhaps *bona fide*; and in some cases, perhaps, being persuaded by bias or prejudice; we cannot say positively, and it cannot be said definitely that always he will be persuaded by bias. At the same time it cannot be said that he will be always prompted by good reasons; but I am quite prepared to assert with the greatest emphasis that in some cases the Courts do go out of their way, and in some cases they exercise their discretion rightly. However, it is established that there is room for fear that injustice may be done, and if I am able to establish that there is room for the deviation of a Magistrate or Judge from the path of justice, then, I think, this Assembly will accede to the contention that I have established my case. Similarly, if a Counsel who has been engaged by the accused or the defendant, as the case may be, begins to cross-examine and he has put one or two questions,

then similarly the Magistrate or the Judge intervenes. The questions which will be put by the Counsel, practically will be of no avail, because the reason and the object with which the Counsel was going to put questions seem to be thwarted altogether by the questions put by the Court or by the Judge, who, I must say, though I am sorry to give expression to it, is in some cases not competent, is not efficient, and does not understand the law. Though it may be conceded that some Magistrates, and some Judges, undoubtedly, understand it. Therefore there is not only a possibility, but a probability, that the questions put by the Court or by the Judge before the cross-examination, will mar the object of the defence, and I am quite entitled to submit that if this provision be allowed to remain, then the defence is crippled. No accused, then, can give proper defence which he is entitled to give. Therefore, my prayer is a simple and modest one which, I believe, will be acceded to even by the Treasury benches that this unfettered power, this unlimited privilege which is given to the Court, I mean to say, the Judge or Magistrate, should be guarded well by certain reasonable limitations as I have suggested.

The Magistrate or Judge is at liberty to put even irrelevant questions in order to find out the truth, as I have already submitted. I am not opposed to this. In some cases, witnesses may be tutored to bear testimony to certain facts which are favourable to the party which gets them, and the Judge in some cases may thus be right, in order to find out the truth, to put questions though irrelevant. I have no quarrel with that. But I submit, and I raise my voice with the greatest power which I can command, that this Assembly will kindly realise the mischief of the effect which is produced by this undesirable provision which remains on the Statute-book of this country. We have got the fountain source of the Indian legislation namely, English Law. Let us examine that perpetual fountain, in order to see whether there is any provision in support of the provision under debate. So far as my knowledge goes, I could not find any. Supposing there is a rule of law which gives this unfettered freedom and liberty to a Magistrate or Judge, even then the proposed amendment may be accepted because the circumstances of India are different from those in England. Perhaps by the opposition I may be called upon to say, what authority I have got to support my view? They may say 'your view is not acceptable; assertions are not sufficient data for alteration of law; what authority have you got.' Then, in reply, I shall submit that I have got very eminent authority, a leading case of the Calcutta High Court (6 Calcutta). (A cry 'that is more than a generation old'). If that question were conveyed to me from the Chair, I would have been justified in answering it. But perhaps my silence may be taken as a sign of weakness. I will therefore submit in reply that the older the law, the better it is, because it has not been repealed. It has got the same statutory force. It is a rule of law. It has not been rescinded. It has not been abrogated: and its very age proves the soundness which is conveyed in that proposition which is laid down in it. As I submitted, I may invite this Honourable Assembly's attention to a pronouncement, a judicial decision, which is in support of my contention which I am raising before this Assembly. The substance of that ruling, so far as I can recollect, is that it is not the business of the Court to examine the witnesses unless the pleaders on either side have ended their work—mark these words, they are of the greatest possible importance, mark what those words convey, it should be borne in mind that the Court should leave the witnesses to be dealt with by the pleaders as laid down in section 188 of the Act. In this

[Dr. Nand Lal.]

case the Judges, before the examination is finished, begin to put questions—which is undesirable. Am I not justified, Sir, in saying that the proposition which I have laid before this House is not a proposition which is a child of my own imagination, but it is a proposition which has got judicial support. No less than the Honourable and learned Judges of the Calcutta High Court, as already pointed out, are against the practice under debate. There is a general complaint—that the Judge or Magistrate interposes and begins to put question after question : and therefore, the work which ought to be done by a pleader or counsel is really disturbed very much, and they are not allowed to do their duty. So I think the House will agree with me that the Amendment, which I have proposed, speaks for itself. One of my friends, a Member of this Honourable Assembly, who spoke last practically was in support of my Amendment when he began to say that the Resolution only deals with one aspect of it

Mr. President : The Honourable Member must bring his speech to a close now.

Dr. Nand Lal : I will do my level best. Taking the very good hint from the Chair, I should like to shorten the debate. So on these grounds, without prolonging the debate unnecessarily, I may invite this Honourable Assembly's attention to the point, which is this : that the right of accused, and in a similar way the right of the complainant, are set at naught by this undesirable provision which has been allowed to remain in the section, and I appeal to the House to accept this Amendment. I feel encouraged that the Law Member, who is well conversant with all the fundamental principles of the law, and who has practised for about 30 years at the bar, will see his way readily to support the Amendment which I have placed before this House.

Mr. President : The original Resolution was :

'This Assembly recommends to the Governor General in Council that section 165 of the Indian Evidence Act, 1872, should be amended and the words 'but he should not interpose after the examination-in-chief has been finished and question the witness on the points to which the cross-examination will properly be directed' be inserted after the words 'irrelevant' in that section.'

The question is :

'That it be amended to this extent that, after the words 'at any time' the words 'before the commencement of the examination-in-chief and after the end of cross-examination' be inserted.'

The Honourable Sir William Vincent : Sir, I think the last speaker is really under some misapprehension as to what the effect of the Section is, and I should like to explain what the legal position is. He spoke of a Judge being allowed to admit irrelevant evidence in answer to questions put by the Court. Now a Judge is allowed great latitude in asking questions of a witness, but I must point out to the Honourable Member that no Judge is allowed to base his decision upon anything save relevant facts duly proved. That is one misconception, as I thought, in the mind of the speaker. The Honourable Member went on to say that Section 165 was inconsistent with Section 138. The latter is the ordinary Section which deals with the procedure for the examination of witnesses, and there is no foundation for the suggestion. Section 138 deals with the examination of witnesses by the parties or their pleaders. Section 165 deals with an entirely separate matter,—the examination of

witnesses by the Court. The object of Section 165 is really to provide, that the Judge may ask any question he pleases in any form at any time of a witness or the parties about any fact relevant or not. The intention is to prevent injustice: that is the simple idea at the bottom of the law,—not to allow any equitable decision to be defeated or avoided by a mere technicality, but to arm the Judge himself with power to get at the real truth of a case. That is what the effect of the Section is. May I read for one moment the remarks of the Select Committee on this provision of the law, they said :

'We have accordingly thought it right to arm Judges with a general power to ask any questions, upon any facts, of any witness, at any stage of the proceedings, and we have inserted in the Bill a distinct declaration that it is the duty of the Judge—especially in criminal cases—not merely to listen to the evidence put before him but to inquire to the utmost into the truth of the matter.'

I need not read more, because this citation sufficiently illustrates my point and what was said when that report was written is very largely true now. The point has been very well put by a gentleman at the back of the Assembly, who spoke earlier in the debate. In many cases Judges and Magistrates—Magistrates more particularly—have to make every endeavour themselves to sift the evidence and get at the truth. The prosecution is often represented in smaller courts—to whom this Act applies just as it does to any other—by unskilled advocates. Consequently, after the pleader for the prosecution, or the Mukhtiar for the prosecution, has finished his examination, there may be some fatal gap in the evidence which the witness is quite able to supply if only asked to. Now I can understand my friend, Dr. Nand Lal, appearing for the defence and finding the prosecution has left a big gap in the evidence being much annoyed when the Magistrate intervenes and asks a question by which he just gets out of the witness the facts which the pleader has omitted to elicit.

There are two views taken of the duties of a Judge in this matter. The first is what I may call the scholastic view, that the Court should sit as an automaton and merely listen to any evidence adduced by pleaders before it. The second seems to me a more rational position, namely, that it would be absurd that the Court should fail to use every effort within its power to get at the truth, that is the view that was taken by the framers of this Act which has been in force without objection since 1872. The Honourable Mover of the amendment, and the Honourable Mover of the Resolution, cited a case to the Assembly in which the Section was misused. It is a well-known case and I am not surprised at their citing it. But there are two points to which I should like to draw attention. The first is that this case is 40 years old. In order to find out any recorded instance of abuse of the law as it stands, the Mover has had to go back for that period. Now this is an important point. If this was a provision of the law which was frequently abused, the matter would have gone up to the High Courts time after time, and the Honourable Mover would have been able to produce numberless instances in recent years. The fact is that on one occasion a Judge did misuse the provisions of this Section, and he was hauled over the coals by the Chief Justice, Sir Richard Garth. But the Chief Justice did not go nearly as far as the Honourable Mover who has suggested that no question should be asked by the Judge at all before the cross-examination is complete. What did the Chief Justice say? I will read the head note of the report—I have read the full record of the case myself :

'It is not the province of the Court to examine the witnesses unless the pleaders of either side have omitted to put some material question or questions.'

[Sir William Vincent.]

Now that is exactly the occasion when Section 165 is most useful to any Court. It was suggested that this provision of the Act is not in accordance with the best legal principle. Now if we go to the law of Great Britain, we shall find that the Judge is allowed exactly the same privilege there. I will read from an authoritative textbook on the subject.

'The writers on the English Common Law repeatedly affirm the scholastic view, that the Judge must form judgment exclusively on the proof brought forward by the parties. So far as concerns the practice, Judges both in England and in the United States do not hesitate to interrogate a witness at their own discretion eliciting any facts they deem important to the case.'

Again it is said that a certain latitude is allowed to a Judge with respect to the rules of forensic proof.

'He may ask any questions in any form and at any stage of the cause, and to a certain extent even allow parties or their advocates to do so.'

Again it is said :

'The Court always may, and often does, examine a witness at the close of his examination.'

That is, before the cross-examination,—the very point at which the Honourable Mover says no examinations by the Court should be allowed.

'The Court is not bound by the same rules as to leading questions. The Court can put what question it pleases and in what form it pleases.'

I have tried to bring these points out because they illustrate to my mind the fact that the law of this country is framed on English principles by an English lawyer of great eminence. It is one of the few Acts that has stood the test of many many years without being amended. It was I believe drafted by that great authority, Sir James Fitz James Stephen. The only instance in which it has been shown that there was an abuse of this Section goes back 40 years, and it was then corrected by the Honourable Judges of the Court. The provision is essential for criminal cases particularly, and indeed for civil cases also, where skilled advocates are often not available—if the object of courts of law is to administer justice. I have heard it doubted, whether this is the purpose for which courts of law exist but I have never doubted it myself. I have always hoped that this is the primary function of a court of law. I have shown also that this provision of the law of evidence is entirely in accord with English principles and I submit to this Assembly that it would be lamentable if this Assembly were now lightheartedly to decide to abandon what has been an accepted principle of law for 50 years. Nor can it be said that this is an unimportant provision of the law. If Honourable Members will take the trouble to study any elementary textbook on the subject, they will see that the greatest importance has always been attached to this provision as a means of eliciting the truth. I hope therefore Honourable Members will reject this amendment.

Mr. Jamnadas Dwarkadas : Sir, I move that the question be now put.

Mr. President : The question I have to put is that the question be now put.

The motion was adopted.

Mr. President : The original question was that :

' This Assembly recommends to the Governor General in Council that Section 165 of the Indian Evidence Act, 1872, should be amended and the words ' but he should not interpose after the Examination-in-Chief has been finished and question the witness on the points to which the cross-examination will properly be directed ' be inserted after the word ' irrelevant ' in that Section ; '

since which an amendment has been moved, substituting the following for the original Resolution :

' This Assembly recommends to the Governor General in Council that Section 165 of the Indian Evidence Act, 1872, be amended to this extent, that after the words ' at any time, ' the words ' before the commencement of the Examination-in-Chief and after the end of the cross-Examination ' be inserted. '

The question I have to put is that that amendment be made.

The motion was negatived.

Mr. President : The question is that this Assembly do adopt the original Resolution :

' This Assembly recommends to the Governor General in Council that Section 165 of the Indian Evidence Act, 1872, should be amended and the words ' but he should not interpose after the Examination-in-Chief has been finished and question the witness on the points to which the cross-examination will properly be directed ' be inserted after the word ' irrelevant ' in that Section. '

The motion was negatived.

The Assembly adjourned till 10-30 A.M. on Wednesday, the 28th September, 1921.

Maulvi Miyan Asjad-ul-lah: آنر بیل بریز ہڈنٹ و آنر بیل ہاؤس میں اس وقت آپکی سامنے کھڑا ہوا ہوں تا ئید میں ریزولوشن میڈیے دوست آنر بیل بیوہ راگھو بیرو سنہا کی اور حسب ذیل عرض کرتا ہوں یہ شراب خانہ خراب جسکو ہمارے پاک قرآن نے سخت ممانعت استعمال کو واسطی فرما با ہے اوسکا مطالب صاف ہے کہ شراب سے برہیز کرو وہ نا پاک ہے اور رہنما یان اسلام نے اوسکا نام آم الخبا ئس رکھا ہے یعنی برا ٹیوں کا پیدا کرنیوالا مجھے نا چیز کو جہا ن تک علم ہے تمام مذاہب دنیا اسکے استعمال کے مخالف ہیں اور وقتاً فوقتاً بادشاہان زمانہ نے بھی اوسکی استعمال کی کبھی کبھی ممانعت چند ایام میں ضروری قرار دیا ہے مجھے جہا تک خیال آتا ہے اس جنگ عظیم کے زمانہ میں ہمارے شہنشاہ معظم برطانیہ اور اونکی بڑے بڑے وزرائے جنگی نے عین دوران جنگ جرمنی شراب کی استعمال چند دنوں کی واسطی بند فرمایا تھا گرچہ اوسکا استعمال کم مقدار میں ڈاکٹرو نے حکم سے کبھی کبھی مریضوں کو فائدہ پہنچاتا ہے لیکن اہک صحیح و تدریجاً آدمی کیلئے یہ بیفائدہ اور فضول تصور کیا گیا ہے

ہندوستان جہاں اکثر تعلیم سے بے بہرا ہیں اوس سے مراد عام لوگ ہیں جن لوگ کی ذاتی قواعد بھی شراب پینے کے برخلاف تھے ان لوگ کثرت سے شراب استعمال کر کے اپنی صحت و اپنی عادت تو خراب کر دیتے ہیں اور چونکہ اوسکا اثر پہلے آدمی کی عقل پر آتا ہے [چنانچہ شیخ الرائیس] نے اسکا نام فاتر العقل رکھا ہے یعنی عقل کا بیکار کرنیوالا پس جب آدمی کا عقل خراب ہوتا ہے تو وہ ہزاروں جرم خلاف قوانین عمل میں لاتا ہے جہاں تک دیکھا گیا ہے کہ اکثر ڈاکے مارنے والے اسکا استعمال کر کے وہ کام ظلم و ہدعت کا کرتے ہیں جسکو عقل قبول نہیں کرتا گرچہ جاہل بھی ہووے دوسرے یہ شراب ہندوستانی اصحاب کیلئے اور بھی باعث مہربانی ثابت ہو چکی ہے کہ اکثر رؤساء مسلمان و ہندو صاحبان کے خاندان میں جب یہ نا پاک شے استعمال ہونا شروع ہوتا ہے تو تہوڑے ہی دن میں بڑی بڑی اسٹیمت تباہ و برباد ہو کر اوس کے ممبران نان شہینہ کیلئے محتاج ہو جاتے ہیں جو کہ ہمارے آنر بیل ممبران ہوس پر روشن و ظاہر ہے میں نہایت ادب و ہمت کے ساتھ ہوم ممبران کی خدمت میں عرض کرتا ہوں کہ زراہ ملکی فائدہ و انسانیت ہمدردی اس ریزولوشن کو تا ئید فرما کر تمام ہندوستانوں کے دلونکو مسرور اور مہزون فرمائیں گے گرچہ تہوڑی سی نقصان گورنمنٹ کو اوسکی بددش سے ہونگے لیکن یہ گورنمنٹ جسکو اخلاق و تہذیب پہلا نیکا خاص خیال و فخر تمام ممالک دنیا میں حاصل ہے تو ایسی تہوڑی سی کمی کی طرف خیال نہ کرے اسکی بددش کی تا ئید میں حکم نافذ فرمائیں گے اب ہمارے محترم ممبران ہوس اسمبلی کی خدمت میں سفارش کرتا ہوں کہ اس ریزولوشن کی تا ئید فرما کر دنیا میں نیکی و بہبودی پہنچانیکا باعث ہونگے