

Thursday, 23rd February, 1922

THE
COUNCIL OF STATE DEBATES
(Official Report)

SECOND SESSION
OF THE
COUNCIL OF STATE, 1922



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	PAGE
THURSDAY, 23RD FEBRUARY, 1922	837-894
Questions and Answers.	
President's ruling in connection with the Withdrawal of Resolutions.	
Indian Lunacy (Amendment) Bill.	
Indian Income-tax Bill.	
Bills passed by the Legislative Assembly.	
Governor General's assent to Special Laws Repeal Bill and Indian Criminal Law Amendment Repealing Bill.	
Resolution <i>re</i> : Right Hon'ble Winston Churchill's Speech at the East African Dinner on Status of Indians in East Africa.	
Indian Emigration Bill.	
Adjournment of Council.	
MONDAY, 27TH FEBRUARY, 1922	895-928
Questions and Answers.	
Resolution <i>re</i> : Reduction of the United Provinces Government Contribution.	
Resolution <i>re</i> : Constitutional Practice of Voting an Address after Speech from the Throne.	
Adjournment of Council.	
TUESDAY, 28TH FEBRUARY, 1922	929-963
Questions and Answers.	
Message from the Legislative Assembly.	
Desirability of Quorum at Council Meetings.	
Indian Emigration Bill.	
Indian Merchant Shipping Bill.	
Delhi University Bill.	
WEDNESDAY, 1st MARCH, 1922	965-980
Civil Procedure (Amendment) Bill.	
Indian Limitation (Amendment) Bill.	
Message from Legislative Assembly <i>re</i> : Income-tax Bill.	
Budget for 1922-23.	
Date for Discussion of Budget.	
President's ruling <i>re</i> : Lists of Business.	
Registration of <i>Chelas</i> Bill.	
WEDNESDAY, 8th MARCH, 1922	981-1053
Questions and Answers.	
Message from H. R. H. Princess Mary.	
His Excellency's orders <i>re</i> : Discussion on Budget.	
Governor General's assent to certain Bills.	
Facilities to Members of Indian Legislature visiting London.	
Discussion on the Budget.	
Adjournment of Council.	

COUNCIL OF STATE.

Thursday, the 23rd February, 1922.

The Council of State assembled at Metcalfe House at Eleven of the Clock. The Honourable the President was in the Chair.

QUESTIONS AND ANSWERS.

BOMBAY AGRICULTURAL DEPARTMENT AND ITS METHODS OF WORK.

88. The HONOURABLE MR. KALE: (a) Has the attention of Government been drawn to an article appearing in the *Servant of India* of 19th January, 1922, under the heading "The Bombay Agricultural Department. Its methods of work?"

(b) Will Government be pleased to state if the criticism, contained in that article, of the so-called Manjri method of sugar-cane cultivation, will be given due weight in considering the recommendations of the Indian Sugar Committee, particularly those set forth in paragraph 185 of its Report, relating to the appointment and the work of Professor Knight of the College of Agriculture, Poona?

The HONOURABLE MR. B. N. SARMA: (a) Yes.

(b) The Sugar Committee proposed that Research Stations in the Provinces should be brought under the control of, and be paid for by, the Government of India. The Government of India are not at present prepared to accept this proposal, and the subject of the Honourable Member's question is therefore one for the consideration of the Bombay Government.

TREATMENT OF POLITICAL PRISONERS.

89. *The HONOURABLE MR. BHURGRI: Will the Government be pleased to state:—

(i) Whether they are aware that prisoners, including those convicted for political offences, of high education and social status are made to do the following:—

(a) stretch out their hands with palms open and upraised, (one of the poses in which Muhammadans stand while offering prayers), or sit in crouching posture at the approach or in the presence of Jail Officials;

(b) repeat either of the formulæ, "Sarkar-ek-hai," or "Sarkar Salaam"; and

(c) allow frequent searches of their whole person?

(ii) Whether this is simply by custom or practice, or is prescribed in any Jail Regulations?

(iii) What is the significance and object of and what useful purpose is served by (a), (b) and (c), respectively: *firstly*, in the case of ordinary prisoners, and *secondly*, in the case of persons of high education and social status convicted of political offences, and whether Government have considered there are sufficient grounds to enforce them in the latter case?

* The Honourable Mr. Bhurgri was not present.

(iv) Whether Government are aware that resort to these practices in the case of political prisoners is calculated to humiliate and degrade them and extort expression of loyalty, that there is a strong feeling in the public to that effect, and that it has given rise to strong indignation whenever these have been enforced under penalty ?

(v) Whether Government are prepared to consider the desirability of the total abolition of the practices above mentioned in the case of political prisoners ?

The HONOURABLE MR. S. P. O'DONNELL: Inquiry has been made from the Bombay Government, and answer will be given in due course when a reply has been received.

DAILY ALLOWANCES FOR MEMBERS PERMANENTLY STATIONED IN DELHI.

90. *The HONOURABLE MR. BHURGRI: Is it a fact that members permanently resident in Delhi are not allowed their daily allowances during the time the meetings of the Legislature are on ? If so, will the Government be pleased to quote any rule in their support to that effect ?

The HONOURABLE MR. H. MONCRIEFF SMITH: The Honourable Member's attention is invited to the Resolution of the Government of India in the Finance Department No. 2441-E. B., dated 13th December 1920, prescribing the scales of daily and travelling allowances admissible to Members of the Indian Legislature. Under this Resolution daily allowance is admissible only to those Members who are required to leave their official headquarters or usual places of residence to attend meetings of the Legislature.

A Member who is a permanent resident of Delhi would, therefore, not be entitled to the daily allowance when attending meetings in Delhi, but he would be so entitled should he attend a Session in Simla.

THE HONOURABLE MR. BHURGRI'S ABSENCE.

The HONOURABLE THE PRESIDENT: I should like to ask if the Honourable Member received private notice from the Honourable Mr. Bhurgri of his intended absence ?

The HONOURABLE MR. S. P. O'DONNELL: Yes, I had information that Mr. Bhurgri was not attending.

PRESIDENT'S RULING IN CONNECTION WITH THE WITHDRAWAL OF RESOLUTIONS.

The HONOURABLE THE PRESIDENT: Before we proceed to the business of the day, there is one matter I should like to mention to the Council. Apparently there was some misconception in connection with the Honourable Dr. Ganganath Jha's Resolution. The Honourable Member informs me that he was under the impression that his Resolution had been accepted, and he desired that the question should be put. I should like to explain to him and to other Members of this Chamber that when I take the pleasure of the House on the question of the withdrawal of a Resolution, any Member who desires that the question should be put has merely to say 'No.'

* The Honourable Mr. Bhurgri was not present.

If he says ' No ' I am bound to put the question. Therefore the Honourable Member had his own remedy.

INDIAN LUNACY (AMENDMENT) BILL.

The HONOURABLE MR. S. P. O'DONNELL: Sir, I beg to move that the Bill further to amend the Indian Lunacy Act, 1912, as passed by the Legislative Assembly be taken into consideration. The Bill is of a simple character, and it will not be necessary for me to detain the Council for more than a few minutes. The first object which this Bill seeks to effect, is to emphasise the curative treatment which should be available for the persons detained in these asylums. That, I think, is a provision which will commend itself to all Honourable Members. Most asylums are at present maintained by the Government, and in the case of such asylums it will be for the Local Governments to provide the necessary facilities. The Lunacy Act, however, contains provision also for the licensing of asylums, and in the case of such asylums the Bill provides that in future no licence shall be granted unless adequate facilities are available, also that if a licence has been granted it may be revoked if adequate facilities are not provided. The next provision is consequential on the measure of financial autonomy which has been conferred on Local Governments. Under the Devolution Rules payments made to a Local Government by other Local Governments are allocated to the former Local Government as a source of Provincial revenue. Now obviously if a lunatic belonging to one province is maintained in an asylum of another province, and his maintenance is a charge on Government then a service has been rendered to the former Government. The Bill accordingly proposes that in accordance with the principle recognised by the Prisons Acts in England, the cost of maintenance should be payable by the province in which the lunatic has last resided for five years. That will be the position as regards lunatics domiciled in British India. In the case of lunatics not so domiciled the cost will fall upon the Local Government of the province from which the lunatic was sent to the asylum. The Bill also provides that in such cases the cost of maintenance may include charges on account of the upkeep of the asylum and the capital cost of the establishment of the asylum. It will, I think, be obvious that the charges which have to be met by Local Governments include many items other than the cost of maintenance, clothing, care, etc. Incidentally this provision is likely to facilitate the establishment of large and therefore more economical asylums. The provisions of the Bill, I may add, have met generally with the approval of the Local Governments.

The HONOURABLE THE PRESIDENT: The question is:

' That the Bill further to amend the Indian Lunacy Act, as passed by the Legislative Assembly, be taken into consideration.'

The motion was adopted.

Clauses 1, 2, 3, 4 and 5 and the Preamble were added to the Bill.

The HONOURABLE MR. S. P. O'DONNELL: Sir, I beg to move that the Bill, as passed by the Legislative Assembly, be passed.

The motion was adopted.

INDIAN INCOME-TAX BILL.

The HONOURABLE MR. E. M. COOK: Sir, I beg to move that the Bill to consolidate and amend the law relating to Income-tax and Super-tax, as passed by the Legislative Assembly, be taken into consideration. It will be within the recollection of Honourable Members that at the September

[Mr. E. M. Cook.]

Session, when I asked the House to accept a motion to refer the Bill to a Joint Committee, I gave an account of the events which had led up to the introduction of the Bill. I also gave a summary of its general principles and a brief account of the more important changes and improvements that the Bill seeks to make in the existing law. I need not recapitulate what I then said. Since September we have received a large number of opinions from Local Governments, Chambers of Commerce and various other non-official bodies. These opinions were considered extremely carefully by the Joint Committee. I should like to say here, Sir, that one only has to read the Report of that Committee—I can say so without any hesitation because I was not myself a member of it—one only has to read the Report of that Committee to see how extraordinarily thoroughly and carefully they have examined the clauses of the Bill, and how they have throughout sought to hold the balance even between, on the one hand, the National Exchequer and, on the other hand, the tax-payer. On the one hand, I think it is quite clear from their Report that they have endeavoured to see that the Exchequer gets its fair dues, and that opportunities and loopholes for evasion are reduced to a minimum; while, on the other hand, I think it is also clear that they have endeavoured to see that the honest tax-payer is not unduly harassed, and that every possible facility and safeguard is introduced, in order to see that his assessment is made properly and accurately and with the minimum of hardship. I think, Sir, that we can safely say that the work of this Council has been enormously facilitated by the very careful and thorough examination of this Bill which was made by the Joint Committee. When I spoke on the Bill in September I said that I thought that the Council owed a great debt of gratitude to those numerous non-official gentlemen throughout India who had served on the Provincial Committees, and on the All-India Committee, which made the preliminary recommendations of which this Bill is the outcome. I now suggest, Sir, that we owe an equal debt of gratitude to those members of the Joint Committee who so ungrudgingly gave so much of their time to make this a good Bill. I beg to move.

The HONOURABLE MR. LALUBHAI SAMALDAS: Sir, I rise to support the second reading of this Bill. Sir, I believe this is the first time when we have had a non-official Chairman of a Joint Committee over a Bill of such an important nature, and I think I am voicing the feelings of all the Members of the Joint Committee when I say that we owe a debt of gratitude to Sir Alexander Murray for the very capable manner in which he carried on the work as Chairman of the Joint Committee. (Cheers). My friend, the Honourable Mr. Cook, said that we, the members of the Committee, had done very good work and had worked hard also. He was not a member of the Joint Committee. Fortunately for him he was not. Had he been there, he would have known how my Honourable friend, Sir Alexander Murray, slaved us for four days. He actually slaved us, Sir, and got all that he wanted. He tried to put the case very fairly as between the general tax-payer and the assessee to income-tax, and he almost always had the support of the majority, if not the whole, of the members of the Joint Committee. We had our differences of opinion, Sir, but it was because—I am speaking for myself and I think others will agree with me—we had for the first time a non-official Chairman that we did not want to have our minutes of dissent. We thought that the first non-official Chairman should be able to present a unanimous report. With these

remarks, Sir, I merely wish to refer to two or three points. The Honourable the Finance Member, when he introduced the Bill in the other House, said that the chief aim of this Bill was to secure both certainty of assessment and ease of collection. The Bill as it has been amended by the Joint Committee secures both these things much better than the original Bill. Without meaning any disrespect to the legal Pandits of the Government of India we may say that we have been able to amend the Bill in such a way that we have been able to secure certainty of assessment and ease of collection much better by the amendments made by us than under the original Bill. The Bill is a great improvement on the old Act chiefly as regards reference to the High Court. Clause 66 makes it quite clear that the reference to the High Court is not in the discretion of the Income-tax Commissioner, but that it has to be made if any assessee is prepared to put down Rs. 100 and say that he wants it to be referred to the High Court. That is a great improvement. There are many other features of the Bill which perhaps other Honourable Members will refer to. But there is only one to which I will just refer to, and that is about the name given to the chief officer who will be in charge of the Income-tax portfolio, if I may call it so, Sir, on behalf of the Government of India. We had a very lengthy discussion on the subject. We thought that the expression 'Board of Inland Revenue' would mean not one man but two or three men. At present, under the vigilant eye of the Honourable the Finance Member and the Honourable Mr. Cook I do not think there is any possibility of more men being appointed, but the time may come when our finances are in a better position and we may have men who are not so strict as the present officers. I want it to be definitely understood, Sir, that we agreed to the term 'Board of Inland Revenue' on the clear understanding that only one officer will be appointed.

There is only one other remark which I want to make before I sit down. I would like on behalf of the Committee to say—we have put it on record, but I would like to express it here—that we owe also a very great debt of gratitude to Mr. Sim for the able way in which he has helped us all through our proceedings.

THE HONOURABLE SIR ARTHUR FROMM: Sir, with reference to the remarks that have fallen from my Honourable friend, Mr. Lalubhai Samaldas, I should like to make a reference to what he said about the creation of this new post of Board of Inland Revenue. We certainly agreed and we were of opinion that in the immediate present there should be only one member, but we had in mind the future when we hope the income-tax revenue will be very much larger than it is at present, and we thought that the Board of Inland Revenue might then easily consist of more than one Member. I concur with what my Honourable friend has said that we did agree in the Committee that at present we were of opinion that there was only room for one member, but we were also looking to the future, and that is why the new post is called 'the Board of Inland Revenue'.

THE HONOURABLE COLONEL SIR UMAR HAYAT KHAN: Sir, I welcome this Bill, because this is the first time that agriculturists can congratulate themselves that some others have also been taxed. I will put it to you, Sir, that we have all to bear the burden of India equally. Unfortunately, hitherto, always the agriculturist has borne the brunt of it. If I may be allowed to say, Sir, if we look into history, men from Alexander downwards have come to India with sword and fire, and the men who

[Colonel Sir Umar Hayat Khan.]

had money have buried their money in the ground. So, they could not get at that. But the land could not be buried under the land. So we were taxed. That has been the inheritance, but our present Government is such a civilised Government that it should not inherit what the others have brought to India. All the time it has been thought that the whole land belongs to the State. This idea should at any rate be considered again. We people, Sir, who live in this land and have to die in it, I think, have got some right to claim that the land belongs to us. . . .

The HONOURABLE SIR MALCOLM HAILEY: After the State.

The HONOURABLE COLONEL SIR UMAR HAYAT KHAN: All I want to put before the House is that the burden should be equalised. For Rs. 2,000 a person has only just to give one anna in the rupee, whereas we have to give something like eight annas. That is not equal. I can give an instance. Take a certain place where there is water and land. The man who possesses the land is properly taxed. That is the whole tax which really ought to be taken by the Government. But the man who gives water is also taxed, and over all that, the man who gets water and gets money is taxed; that is, three times taxed. If Government knew it and knew also that it was working as a hardship, that would be abolished. But that is a thing that has to be put forward by an agriculturist who knows that this is wrong. I think that the principle underlying the equalisation of the burden of taxation is a thing which ought to come and will come naturally because those who are suffering, like the zamindars now—it is their duty to bring it forward, and if it does not come on this occasion it will come later on, and I hope that this question will be considered.

The HONOURABLE SIR DINSHAW WACHA: It is a source of gratification that the Income-tax Act has so far been improved. I will only make one remark, and that is, that the administration of the Act on the executive side may be as good, because it happens very often, at least so far as Bombay is concerned, that the tax-gatherers, from the highest to the lowest, oftener than not look at it in a very different light, that is to say, they interpret the provisions of the Act literally when they ought to do so in their spirit. They are too meticulous: I, therefore, wish to say that the Finance Member will do well to circularise all the administrators of the Act to see that the spirit of the Act is maintained and not the letter of it.

The HONOURABLE THE PRESIDENT: The question is:

‘That the Bill to consolidate and amend the law relating to Income-tax and Super-tax, as passed by the Legislative Assembly, be taken into consideration.’

The motion was adopted.

Clause 1 was added to the Bill.

The HONOURABLE MR. H. MONCRIEFF SMITH: Sir, I beg to move:

‘That in clause 2 (1) (b) (iii) of the Bill for the words ‘when he does not keep a shop or stall for the sale of such produce not being the produce of his land’, the following words be substituted, namely:—

‘In respect of which no process has been performed other than a process of the nature described in sub-clause (ii).’

Sir, the Council may possibly assume from the fact that I am moving this amendment instead of my Honourable Friend, Mr. Cook, that it is

purely a drafting one. I am afraid I cannot claim that for it, but I can claim that the object of this amendment is to clarify the drafting of the clause as passed by the Legislative Assembly.

When the Bill was introduced this clause did not contain the words which appear at the end of it, 'not being the produce of his land.' Those words were introduced by the Assembly, and since the Bill was passed in this form the draftsmen and the income-tax experts of the Government of India have been trying to ascertain what the clause means as it now is, and Sir, they have failed. We are now trying to give effect to the intention of the Assembly. We have the advantage of knowing what that intention was, and what was the intention of the Honourable Member in that House who moved this amendment. It appears that there was some apprehension there that this portion of the definition of 'agricultural income' was not sufficiently watertight and that agriculturists and land-owners who sold their produce would, in every case almost, be liable to pay income-tax on the profits that they derived from that sale. The words of the clause which caused particular doubt were the words 'shop or stall'. In fact, a definite suggestion was made in the Assembly that those words should be deleted or some attempt should be made to define them, but in the end the Assembly accepted this amendment which added the words 'not being the produce of his land.' The Government propose, therefore, to remove this reference to a shop or stall and to substitute the words which I have read in my motion. The clause as it will be amended now will enable a landholder or a cultivator to sell his produce—the produce of his own land—provided he has not employed in regard to that produce any process other than the process referred to in the preceding sub-clause, that is to say, he will be able to employ a process with regard to it which will enable him to take it to the market for sale, but will not be allowed to perform any further process. Otherwise the income which he derives from the sale will be liable to pay tax under this Bill.

THE HONOURABLE MR. V. G. KALE: I support the amendment. As the sub-clause originally stood, any one who could read it, could not fail in thinking that it was clumsily worded. The object of that sub-clause was clearly to distinguish what are purely agricultural operations from those which are purely commercial operations. While the profits on commercial operations would be subjected to income-tax, purely agricultural operations were not intended to be subject to that tax. This was the object which it was sought to bring out in the words of that sub-clause, but as it was worded, it confounded the confusion still further, and the amendment which has now been moved clearly shows what would be agricultural income and what would be agricultural operations. The cultivator, it was feared, would not be allowed to sell his produce without being subjected to the income-tax, but that point has now been placed beyond all doubt. The cultivator can not only produce his crops, but he can sell them, and he can take them to the market without any fear of being called upon to pay income-tax on this operation. This being the object of the amendment, I support it.

THE HONOURABLE DIWAN BAHADUR V. RAMABHADRA NAIDU: The amendment as proposed by the Honourable Mr. Moncrieff Smith is welcome to landholders. It places beyond doubt that the landholder can sell his produce. Much doubt was raised the other day by the Members of the Assembly and it was more or less met by the Honourable the Finance Member, and now it is very clear that the amendment

[Diwan Bahadur V. Ramabhadra Naidu.]

now proposed by the Legislative Secretary places the point beyond all doubt.

The HONOURABLE RAJA P. N. ROY OF DIGHPATIA: Sir, may I ask a question? Supposing a man has a sugar cane plantation and uses machines for making sugar, would he come under this Act? Or if a man has a husking machine and sells rice after husking it, would it come under this Act or not? I am merely inquiring.

The HONOURABLE MR. H. MONCRIEFF SMITH: In those circumstances I do not think that the profits derived from the performance of the process referred to would be liable to tax.

The motion was adopted.

Clause 2, as amended, and clause 3 were added to the Bill.

The HONOURABLE MR. H. MONCRIEFF SMITH: Sir, I beg to move:

'That for the *Explanation* to clause 4 (2) of the Bill the following *Explanation* be substituted, namely:—

'*Explanation*:—Profits or gains accruing or arising without British India shall not be deemed to be received or brought into British India within the meaning of this sub-section by reason only of the fact that they are taken into account in the balance sheet prepared in British India.'

This amendment merely redrafts the *Explanation* which was introduced into this clause in the other Chamber. The position of Government towards it is that they consider the *Explanation* is not necessary, but, if the Legislature desires to have it there, it does no harm. I have slightly redrafted it to bring it into conformity with the rest of the Act.

The motion was adopted.

The HONOURABLE MR. LALUBHAI SAMALDAS: Sir, there has been a misunderstanding in some quarters about the actual meaning of this clause and I want the Finance Department to take note of it, so that the matter may be made clear when issuing instructions. Some Members have told me that they feel that if you invest one lakh out of India and make a profit within 3 years of say 2 lakhs and brought up both the capital and profits, namely, 3 lakhs, income-tax should be charged on 2 lakhs only and not on the capital which was brought back. I believe that is the clear meaning of the clause as it stands, but I would like that to be clearly stated in the instructions sent out by the Department to Income-tax Collectors.

The HONOURABLE MR. E. M. COOK: We will see that that is done. I agree with my Honourable friend.

Clause 4, as amended, and clauses 5, 6, 7 and 8 were added to the Bill.

The HONOURABLE LALA SUKHBIR SINHA: Sir, I beg to move:

'That in clause 9 (2) of the Bill before the word 'sum' where it occurs for the first time the following words be inserted, namely:—

'the actual rental received, or in the absence of any satisfactory evidence.'

The clause, as amended, will run thus:

(2) For the purposes of this section, the expression 'annual value' shall be deemed to mean the actual rental received or in the absence of any satisfactory evidence the sum for which the property might reasonably be expected to let from year to year.'

In clause 9 (1) it is provided that—

the tax shall be payable by an assessee under the head 'Property' in respect of the *bonâ fide* annual value of property consisting of any buildings or lands appurtenant thereto of which he is the owner';

and in sub-clause (2) it is stated that—

'annual value' shall be deemed to mean the sum for which the property might reasonably be expected to let from year to year.'

The object of my amendment is that in cases where the actual rental received is found to be satisfactory, the assessing officer should and must assess on that actual rental. If he finds that the real rents have been concealed or that the rents received are not satisfactory, then he may use his discretion. In these clauses (1) and (2) the meaning is not clear. It may be said that generally the assessing officer shall take into consideration the actual rent received, but I want it to be provided in the Act that if the actual rents received are satisfactory and reasonable and the assessing officer finds no concealment, then he ought to charge income-tax on the actual rent received and should not use his discretion in those cases, and if he finds that the rents received are not actual or that some concealment has been made, in that case only he should use his discretion. This is the object of my amendment, and I put it forward for the acceptance of this Council.

The HONOURABLE MR. E. M. COOK: There is an air of sweet reasonableness about my Honourable Friend's amendment, but I am afraid this disappears on closer examination. If this amendment is passed, the result would be that any owner of a house who likes to let it to his son or nephew or second cousin, or to anybody of that sort, for Rs. 10 or 15 a year can do so, and he will only have to pay tax on that rental, because, according to my Honourable Friend's amendment, he would be perfectly able to produce 'satisfactory evidence' that the rent received by him was only that amount. He could easily fix up matters with his son, nephew or second cousin. I am afraid if this amendment goes through, human nature being what it is, there will be a quite substantial loss to the public revenues, and therefore I must oppose it. My Honourable Friend also said that the present clause is not clear. I think it is quite clear. It says that the annual value shall be the sum for which the property might reasonably be expected to let from year to year. If the actual rental received, or the actual rental shown in the deed or whatever it is, is not less than the sum for which the property might reasonably be expected to let, then he will be assessed on that amount. I personally cannot see any ambiguity at all in this clause.

The HONOURABLE COLONEL SIR UMAR HAYAT KHAN: Sir, I strongly support this amendment. I know the difficulty myself, because I have got some houses in Simla which are never let out to any one, but it is supposed that they are let out, and I am charged on them. Income means money derived by letting out the houses, but when a house is not let out or rented, it will not be reasonable for Government to charge anything. If I don't get anything it is rather hard that I should be taxed. In the same way, as my Honourable Friend pointed out, if some body else's house is in the occupation of a man who does get any income, it is not right that he should be taxed.

The HONOURABLE SIR ALEXANDER MURRAY: Sir, I beg to support the Honourable Mr. Cook in his reading of the clause and to differ strongly

[Sir Alexander Murray.]

from the Honourable Mover of the amendment, and also from my Honourable Friend, Sir Umar Hayat Khan. The latter has told us that he has got in Simla three houses for which he gets no rent. It is most unfair that he should have three rent-free houses there and that I should pay a very expensive rent to live there. If my Honourable Friend has got a house there, and if I am willing to live in it and pay rent, I think he is not entitled to say that he ought not to be taxed in respect of the annual letting value of that house. It ought to be taken into account in calculating the income of the Honourable Sir Umar Hayat Khan. Now, similarly, take my Honourable Friend, Lala Sukhbir Sinha. I do not know whether he owns any house in Calcutta. . . .

The HONOURABLE LALA SUKHBIR SINHA: Yes.

The HONOURABLE SIR ALEXANDER MURRAY: I see he does. He is a good friend of mine. It is quite possible that its annual rental value is at the rate of Rs. 1,000 a month, yet he may let me the house for, say, Rs. 10 a month. Now is it reasonable to suggest that he ought only to be taxed on the Rs. 10 a month for which he will be able to adduce satisfactory evidence that that is all I pay him? I maintain, Sir, that the rent in respect of which he ought to be taxed ought not to be the Rs. 10 that I shall be paying him, but the annual rental value in the ordinary sense of the term, namely, Rs. 1,000 a month which the house is worth. I think all Honourable Members will agree that that is the proper interpretation of the clause. It may be that my Honourable Friend, Lala Sukhbir Sinha, is mixing up the amount stated in the lease and the annual letting value. Let us assume that the annual value of this house in Calcutta is at the rate of Rs. 1,000 a month, that is the annual value to-day. Let us assume that I had taken the lease of the house, say 5 years or 10 years ago, when the *bonâ fide* annual value was at the rate of Rs. 500. I assume in that case that the Income-tax officer would take Rs. 500 monthly as being the annual value of that house as contained in the *bonâ fide* lease entered into by me at the time when that was the *bonâ fide* annual value of the house. This definition of 'annual value' is in accordance with the existing practice. This particular clause is word for word in the existing Act. And I may say this is also pretty much the practice at Home where—I am reading from a text book on taxation at Home,—'the assessment is based on the full rent which the property would command if let on an ordinary yearly tenancy.' Much as I would like to support my Honourable Friend, Lala Sukhbir Sinha, in any attempt of his to let me have his house in Calcutta cheaply, I am afraid in justice to other tax-payers, I cannot support his proposition.

The HONOURABLE THE PRESIDENT: The question is:

'That in clause 9 (2) of the Bill before the word 'sum' where it occurs for the first time the following words be inserted, namely:—

'the actual rental received, or in the absence of any satisfactory evidence.'

The motion was negatived.

Clause 9 was added to the Bill.

The HONOURABLE MR. H. MONCRIEFF SMITH: Sir, I beg to move:

'that in the *Explanation* to sub-clause (iii) of sub-clause (2) of clause 10, for the words 'a Mutual Benefit Society as defined by rules made under this Act', the words 'such Mutual Benefit Societies as may be prescribed' be substituted.'

I did not give the formal two days' notice of this amendment for reasons which I need not enter into now. It is purely a drafting amendment. The *Explanation* was introduced into the Bill in the Legislative Assembly. It ignores the definition of the word 'prescribed' which occurs in sub-clause (10) of clause 2 of the Bill, and my amendment is merely intended to make use of that definition.

THE HONOURABLE MR. V. G. KALE: Sir, I have not been able to follow the amendment.

THE HONOURABLE THE PRESIDENT: I have read the amendment to the Council.

THE HONOURABLE MR. V. G. KALE: I have not been able to follow what has been said by the Honourable Member.

THE HONOURABLE MR. H. MONCRIEFF SMITH: May I further explain, Sir? In the *Explanation* in clause 10 (2) (iii) of the Bill occur the words 'a Mutual Benefit Society as defined by rules made under this Act.' Sub-clause (10) of clause 2 of the Bill defines the word 'prescribed'. 'Prescribed' means prescribed by rules made under this Act. Therefore, I am simply substituting the word 'prescribed' for the lengthy phraseology in the *Explanation* as passed by the Legislative Assembly.

THE HONOURABLE THE PRESIDENT: If the Honourable Member (addressing the Honourable Mr. Kale) will carry his eyes down to the *Explanation* given at page 7 in the Bill, he will see where this amendment is proposed.

The motion was adopted.

Clause 10, as amended, and clauses 11, 12, 13 and 14 were added to the Bill.

THE HONOURABLE SIR ARTHUR FROMM: Sir, I now beg to move the following amendment:

'That in clause 15 sub-section (2) of the Bill, for the words 'any male member', the words 'any adult male member' be substituted.'

I think, Sir, that I should explain at once to the Council that the word 'adult' which I seek to introduce, appeared in clause 15 (2) of this Bill as amended by the Joint Committee which devoted a considerable amount of time and care in the discussion of this Bill, clause by clause. On the Joint Committee there were a large number of distinguished Hindu gentlemen, some of whom are Members of this Council and none of them took exception to the deduction of sums paid to effect the insurance on the life of any male member of a Hindu undivided family, and of the wife of any such member, being confined to the adult male members and their wives.

It appears that during the passage of the Bill in another place the word 'adult' has been dropped out which, as will be at once apparent to the Honourable Members of this House, would have the result of admitting as a deduction the premia paid to effect the insurance on the lives of children.

Now as Honourable Members are aware, a Hindu undivided family is recognised and treated under the Income-tax Act as a unit for Income-tax purposes, much in the same manner as an unregistered firm is dealt with, but with this difference that each individual member is not required to bring into his statement of income derived from other sources the amount

[Sir Arthur Froom.]

he receives from, or his share of, the income of the undivided family. This concession in many cases has an appreciable advantageous effect in determining the scale under which the individual has to pay income-tax or super-tax. I mention this to show that we in Select Committee carefully considered the interests of Hindu undivided families.

There is also the further concession in the Bill, as presented by the Joint Committee, of the insurance premium of each adult member of the undivided family, and of his wife being allowed as a deduction in preparing the statement of the family as a whole. That is, although a Hindu undivided family pays income-tax as a unit, the insurance premium of each member of that undivided family and of his wife is allowed as a deduction. That, I think, Honourable Members will agree, is a further concession. But I do not think, Sir, that it is either reasonable or fair to expect that this deduction should be extended to include the insurance premia on the lives of children. I contend that such a claim is unreasonable, as were it to be admitted, it would at once promote an undesirable tendency to insure on a large scale the lives of children and escape income-tax on the premia paid. I describe such a claim as unfair as no such concession is allowed in connection with the life insurance of the children of any other families than those of a Hindu undivided family. Why should they therefore get this exceptional treatment in respect of children?

I feel sure, Sir, that this Council will recognise the objection there is to the omission of the word 'adult' in clause 15, sub-clause (2) of this Bill, and I have little doubt that Honourable Members will agree with me as to the Joint Committee's decision to insert the word being both wise and just, and that they will readily pass the amendment I have moved.

The HONOURABLE LALA RAM SARAN DASS: Sir, I am sorry I have to oppose the amendment. My Honourable Friend, Sir Arthur Froom, seems to be quite unaware of what a Hindu undivided family is. As soon as a male infant is born in a Hindu undivided family, it becomes a shareholder in that family, and I see no reason why insurance premia paid on individuals or boys should not be deducted from the total income of that family. This matter was thoroughly discussed in the other House and it was adopted. It is quite common, and it is a fact quite well-known, that minor members of Hindu families do work in shops or other trades or professions along with their parents, and it is also known that among Hindus minors are married. In that connection it is essential that their life insurances if not other insurances should be allowed as a deduction from the total income. I will not insist on other insurances being deducted, for instance, education, marriage or other kinds of insurance, but as far as life insurance is concerned, I strongly insist on deduction being made in the case of children. With these words, Sir, I oppose the amendment.

The HONOURABLE COLONEL SIR UMAR HAYAT KHAN: Sir, I am very sorry to oppose the amendment, because it is absolutely against any law. If a boy is born, is he going to be non-existent? There is somebody else there to put his claim forward. If he has got a proper legal man who can put his claim forward, why should it not be considered that he is living? The whole law is that if there is a minor, as long as he is a minor, all the things that he ought to get are given to him by a proper person who is authorised by the Government. In this case, if a boy is

living, why should you consider that he is not living? For this purpose I am against the amendment. He should get his right.

The HONOURABLE LALA SUKHBIR SINHA: Sir, I also rise to oppose the amendment, and I do not see any valid reason why only an adult male member should be exempted and not the others. The system of Hindu joint families among the Hindus is of great value, and no effort should be made to destroy it. I see that those who are not living as a joint Hindu family do not value the system and they do not care about it. They seem to think that individuals and joint families are on the same basis. But, Sir, I strongly bring to the notice of my Honourable Friends that the system of joint Hindu family is a great thing in India especially among the Hindus, and no effort should be made to destroy it. If this amendment is carried, it will mean that the life insurance on only adult male members will be deducted and not on others. It will be very hard on these families and I think all the adult as well as minor members should be given this privilege. Therefore, I strongly oppose this amendment. This question was discussed in the other House also and the word 'adult' was deleted there. In such a case there seems to be no reason why in this House the same question should be raised and we should be asked to undo what the Assembly has done, without any cogent reasons.

The HONOURABLE SIR MALCOLM HAILEY: The remarks of Lala Sukhbir Sinha make it necessary that I should intervene at 12 NOON. once on behalf of the Government in this debate. Surely he cannot think that Government (which as he knows opposed the amendment that was put forward in the Legislative Assembly to remove the word 'adult') wishes to injure the Hindu joint family system; he must realize on the contrary that we have given the most anxious consideration to the protection of the system and the most exceptional privileges to the Hindu joint family in the matter of income-tax. Other people, before they are charged to super-tax are allowed to make a deduction of Rs. 50,000; the Hindu joint family is allowed a deduction of Rs. 75,000. Further, we now propose that in taxing a man's individual income, we should relieve him of taxation on account of any income derived from a Hindu joint family. We have finally in this section put forward yet another concession (and a new concession) in favour of the Hindu joint family, namely, that such families should not be taxed on insurance premia paid on behalf of any of their adult members. Throughout, our purpose has been to recognise the Hindu joint family and protect it from injury; and I must say that after we have been at the pains to secure these concessions to the Hindu joint family, I feel that the insinuation that we are seeking to do harm to that system is entirely unjustifiable. And indeed, how can we in any way injure the Hindu joint family system by refusing to relieve from taxation premia paid on behalf of children? Obviously it would have no detrimental effect at all on the Hindu joint family system as such. Well, Sir, in another place we were obliged to oppose the omission of the word 'adult' from the Bill, and I think that the attitude of the Government in this House must be the same, in other words, that we must support this amendment.

Lala Ram Saran Das has said that the infant member of a Hindu joint family is a full shareholder. That is perfectly true, but before accepting the conclusion which he draws from that fact, I should like to go back to the reason why we relieve from taxation premia paid on

[Sir Malcolm Hailey.]

account of insurance. The reason is simply this, that when the principal member of a family dies, the head and sustainer of the family, then there is a great economic loss to that family; that also to some extent is the case when his wife dies. Since there is a real economic loss, it is to the interest of the State that the life of the principal wage-earner should be insured in order to protect the family from the whole effect of that loss which would otherwise reduce its earning capacity in the future by breaking it up, or by rendering it unable to educate itself to the same level which it had formerly enjoyed. It is, therefore, entirely to the economic interest of the State to encourage the insurance of the life of the head of a family and his wife. I see, however, no reason why we should go further in regard to the members of a Hindu joint family and in their case, and their case alone, encourage the insurance of children. Sir, I do not base my objection on the ground which some people feel (indeed, I think most people feel) that the insurance of infant lives is itself open to considerable objection. I argue merely on economic grounds. When an infant dies there is obviously not the same economic loss to the family as there is when the head of a family dies. Take the case of a Hindu joint family. You insure the life of an infant and that infant dies, the money goes back in full to the family; there has in the meanwhile been no economic loss by the death of an administrative or wage-earning member; indeed, in some instances there might be almost an economic gain. That is why we do not think it justifiable to relieve from income-tax the premia paid on non-adult lives

The HONOURABLE LALA RAMA SARAN DAS: What about the minor members of a Hindu joint family, who are aged seventeen, and are working in a trading firm?

The HONOURABLE SIR MALCOLM HAILEY: That is very near the adult age. Our law is so framed that it would apply equally to real minors, namely, infants, as well as boys of seventeen. After all, if you insure a boy of seventeen, the disability will apply only for one year and do little harm. My main objection is this that, having done everything we could to protect the Hindu joint family system, having done everything we could to shield it from any injury in the case of our income-tax legislation, we are not inclined to give to Hindu joint families a concession which we have sound reasons for denying to families of every other description.

The HONOURABLE MR. SETHNA: My friend, Lala Sukhbir Sinha, said that no good reasons were advanced for bringing forward this amendment. The Honourable Sir Malcolm Hailey has answered in full, but the main point is this. In any legislation that is introduced the Government certainly aim at seeing that all communities are equally affected. As the Honourable Sir Malcolm Hailey pointed out, in regard to joint Hindu families, their case has been recognised and they have enjoyed certain advantages so far as the payment of income-tax and super-tax is concerned. In fact, it is a matter of common knowledge that, because Government recognises this system, the Government lose a very considerable amount of income both by way of income-tax and super-tax which they would not do if the joint family system were not recognised. But the main point is this. The Honourable Sir Malcolm Hailey has also introduced a very important point, namely, that the loss of life of a child is not an economic loss. No one understands that better and recognises that

better than our Hindu friends. As one who has something to do with life insurance I may inform my Honourable Friends, if they know it not, that perhaps child insurance in this country does not represent even one per cent. of the total insurance effected on other lives. Therefore, I put to them if it is—at all worth their while to argue this point and oppose this motion, which motion only aims at equality. If other than Hindu communities were allowed the right of excluding the premia on children's lives, the Hindus would be perfectly entitled to claim the same concession, but because they are not, I appeal to my Hindu friends to consider the injustice of the amendment which was passed in the lower House and agree to the amendment as moved by my Honourable Friend, Sir Arthur Froom. I am sure that if any other amendment were moved by any other Member to the effect that the same effect be given to other than Hindus, my Honourable Friend, Sir Arthur Froom, would be only too willing to accept that change with the main point that there should be equality in regard to this concession for all communities.

The HONOURABLE SIR ALEXANDER MURRAY: Sir, I rise to support the amendment moved by Sir Arthur Froom. I think he is indeed a bold man to have brought up an amendment of this description dealing as it does with the Hindu joint family system. I may say that I was a member of the Committee that considered this question in Calcutta, and even in Bengal we found very great differences in the reading of what actually a Hindu undivided family was. When we came up to Simla and sat on the question there we found that there were still greater differences of opinion as to what it really was. We have been told here that it includes all the children born, but we were assured as a matter of fact up in Simla that in certain parts of India it even included children unborn. This allowance is something entirely new for the Hindu undivided family and we thought that we were giving a very great concession in agreeing to allow a deduction of this description. First of all, the Committee thought that it would be sufficient if we gave a deduction in respect of the head of the family only and of his wife. Afterwards, thinking it over, we wished to be particularly generous to the Hindu joint family and we decided that not only the head of the family and his wife, but also all his brothers and their wives, all their adult sons and their wives, every one of these, should be entitled to have the premia paid on their lives deducted in arriving at the income-tax assessment of the joint family. In the other House I find that the word 'adult' has been dropped out and the intention there was that every child born may have its life insured and that the premium should be a good deduction for income-tax purposes. I personally feel that this is carrying it too far and that really it is not a reasonable proposition to put up. The Honourable Sir Umar Hayat Khan argues that it is quite a good principle, but probably he does not realise that only he himself and no member of his family will be allowed that deduction. Is the Honourable Member aware of that? . . .

The HONOURABLE MR. LALUBHAI SAMALDAS: That shows his impartiality.

The HONOURABLE SIR ALEXANDER MURRAY: It is the case that only members of Hindu joint families will be entitled to this deduction. I maintain that, having given not only to the head of the family and his wife but also to every adult male member and his wife, the right to have their insurance premia deducted for income-tax purposes, that is as far

[Sir Alexander Murray.]

as the Members of this Council should reasonably be expected to make concessions in favour of the Hindu joint family system.

The HONOURABLE MR. V. G. KALE: Sir, I do not want to look at the question raised by the amendment from the point of view of the preservation of the undivided Hindu family. People are not agreed as to the advantages of the joint Hindu family. What I want, however, to consider is, whether the concession which is said to have been given to undivided Hindu families in the Bill, as it stands, creates any injustice to other communities or involves a sacrifice to the public exchequer. My friend, the Honourable Mr. Sethna, has pointed out, so far as I could follow him, that the amount of the insurance of child life does not represent even one per cent. of the total life insurance in this country. If that is so, why should he be afraid? . . .

The HONOURABLE MR. SETHNA: Because other communities are not getting it.

The HONOURABLE MR. V. G. KALE: Then I come to the question of inequality of treatment. So much has been made of the so-called sacrifice made by the public treasury on behalf of the undivided Hindu family. If I understand the question correctly, however, I think it is the undivided Hindu family which is making a sacrifice on behalf of the public treasury. (Laughter). For example, if the members of the undivided Hindu family were to be separately taxed as different units, each one of them may be called upon to pay a certain amount of income-tax but many of them would be exempted from the payment of tax altogether, while others may have to pay at a lower rate. When the income of different members of the family is brought together, the exemption disappears and the family becomes subject to the payment of the income-tax and perhaps income-tax at a higher rate. (A voice: Super-tax also). Is this not a sacrifice made by the joint Hindu family in favour of the public treasury and of the other communities? I think this point has been altogether lost sight of in the discussions which have taken place on this question. Then the undivided Hindu family being what it is, I do not think Government would be making any special concession in favour of the family if all the members of that family were allowed exemption on the amounts paid for life insurance. The undivided Hindu family is a kind of a co-operative society, if not for production, at any rate for consumption, slightly for production but mainly, for consumption. That being so, if the family were to be divided and the property were to be partitioned, there will be so many separate, independent families and they may not be brought into the net of the Income-tax at all. Here are so many members living under the same roof, having one joint income out of which to draw their shares according to their needs; and naturally it is but reasonable and fair that the members of the family should be allowed exemption on the ground of life insurance. As the Honourable Mr. Sethna has pointed out, the total amount of the insurance on behalf of the life of children and infants is insignificantly small. I do not, therefore, think that we ought to be frightened into refusing what is called a concession. I do not regard it as a concession and I do not believe that there is any injustice involved to other communities in this matter at all. If the other communities were to live, as some Hindu families live, jointly, certainly I shall be prepared to give them that concession. I myself am not much in favour of the system of the joint Hindu family because it involves some disadvantages. There you have got

the joint Hindu family all the same, and you have to take it as it is, and as I believe that there is no injustice caused and that there is also no inequality arising out of what is regarded as a concession. I oppose the amendment.

The HONOURABLE MR. G. S. KHAPARDE: I want to oppose the amendment on the ground that it does not take account of all the elements of an undivided Hindu family. At present the tendency is to say that there are so many people here and so many people there living together and their income is so much and so on. But there is an outer fringe to an undivided family which up to this time has not been referred to, namely, there are other persons who do not take a direct share and yet are entitled to maintenance. These people also come in. As mentioned by the previous speakers, people that are born and unborn, people that are still in the womb, all have claims and these claims extend from the share of the family to only a claim to maintenance. Now all these liabilities fall on the members of the undivided family. If all the members of the family were separated and their income divided, you will find that they all are entitled to exemption that is given by Government, because the incomes of individuals are so infinitely small. It is only when they are brought together that they come under the operation of the Income-tax Act. So I submit, Sir, that there is no question of any exceptional concession to the joint Hindu family, and in view of the fact that the outer fringe of members is entitled to maintenance and there are other burdens falling on the undivided family, I do not think that the Government has been lenient to them. If anything, it has been stringent. I do not think it necessary to urge all these considerations here on behalf of the undivided Hindu family because they were considered by the Joint Committee and allowed. For these reasons I oppose the amendment that has been proposed.

The HONOURABLE MR. LALUBHAI SAMALDAS: I dissociate myself from my Honourable friend, Lala Sukhbir Sinha, when he said that he thought that Government were going to disturb the Hindu joint family. I agree with what was said by the Honourable the Finance Member, namely, that they had done their best as far as they could to support the Hindu joint family system. Then he went a little further and said that the child was of no economic value either to the family or to the State. I am prepared to join issue with him here. The child, Sir, is after all the citizen of the future. He is of economic value both to the family as well as to the State, and to say that the child is of no value shows a want of humanitarian feeling. . .

The HONOURABLE SIR MALCOLM HAILEY: May I rise to a point of order, Sir? I am very loth to interrupt the Honourable Member. I should be the last person to suggest that a child is of no economic value. But it is an entirely different proposition which I stated, namely, that the death of a child is not the same economic loss as the death of the head of a family.

The HONOURABLE MR. LALUBHAI SAMALDAS: I thank the Honourable the Finance Member for his explanation. I say that during the war we were told very often there should be an increase of population, if not for anything else, at least to increase the economic value as common fodder. Now coming to the main point at issue, as my Honourable Friend, Mr. Kale, said, the loss to the State if this concession is granted, will be very little. As my Honourable Friend, Mr. Sethna, said, the income from insurance is

[Mr. Lalubhai Samaldas.]

hardly 1 per cent. I think it might be less, because only in some cases insurance on children is effected to make provision for their education. very few people care to insure their children's lives, on ordinary tables. . . .

The HONOURABLE SIR ARTHUR FROMM: They could be insured.

The HONOURABLE MR. LALUBHAI SAMALDAS: My Honourable Friend, Sir Arthur Fromm, says they could be insured, but the parents in this country will not, because the insurance premium will be charged at the same rate as if the proponent was twenty-one. Nobody would like to go on paying this large premium practically for nothing. Except for educational purposes for which special concession rates are given children's lives are not insured. I am prepared to prove what I have said about the rates. I am open to correction by the Honourable Mr. Sethna if that is not so. Very few people go in for children's insurance. I appeal to the Honourable the Finance Member to consider, that as the loss to the income-tax revenue is very little why he should not respect the sentiments of my Hindu friends. Moreover, if the amendment is carried the Honourable the Finance Member will have to take it to the other House and that means delay and conflict between two Houses. I, therefore, appeal to my Honourable Friend, Sir Arthur Fromm, to withdraw his amendment for the grounds I have given.

The HONOURABLE MR. E. M. COOK: Sir, I rise to support this amendment, and I should like, if I may, to bring the Council back to the real point at issue. The Joint Committee in their Report, which both of my Friends, the Honourable Lala Sukhbir Sinha and the Honourable Mr. Khaparde, have signed without Minutes of Dissent, set out to make a concession in favour of Hindu joint families in this respect. They said in their Report:

'We have amended this clause for the purpose of securing that in the case of a Hindu undivided family the premia paid for insurance on the life of other members than the head of the family shall be allowed.'

Their intention obviously was to include all the adult male members, which in itself was a concession. Now, judging from some of the heart-rending appeals which we have had on behalf of the Hindu joint family, one really might have thought that the proposal was to undermine the whole Hindu joint family system. This, Sir, is a question of principle. The Joint Committee endeavoured to make a concession by the insertion of this provision in the Bill. The question now before the Council is, whether we should gratuitously go beyond that concession, and give to Hindu joint families something which hitherto it has never been proposed they should have. The Honourable Mr. Kale and various other Members have spoken of the position and responsibilities of the head of a Hindu joint family, and the sundry disabilities under which the members live, namely, the maintenance of a lot of people under one roof. On the other hand, the Honourable Sir Arthur Fromm, the Honourable Sir Alexander Murray and one or two other Honourable Members have specified the very liberal concessions that are already given to Hindu joint families in our Income-tax and Super-tax law. That is not the only concession they get. I think that the position of the Hindu undivided family in the ordinary civil law of the country is rather an enviable one. I do not know if any Honourable Members have tried to collect a debt from a Hindu undivided family. You would find it a most elusive body, it is a 'corporation sole', and I think one has to take the position of the family under Indian law as a whole.

I say that the time must come when you have got to draw a line somewhere. It is quite true that this concession possibly might not involve a very great loss to the Exchequer, but I consider that, as a matter of principle, this Council should not allow this further concession to be inserted. If it appears in the Bill it will be a distinct defect in it as finally passed.

The HONOURABLE THE PRESIDENT: The question is:

'That in clause 15 (2) of the Bill, for the words 'any male member', the words 'any adult male member' be substituted.'

The Council then divided as follows:

AYES—21.

Amin-ul-Islam, Khan Bahadur.
Baker, Mr. C. M.
Barron, Mr. C. A.
Cook, Mr. E. M.
Edwards, Major-General Sir W.
Forrest, Mr. H. S.
Froom, Sir A.
Ganga Nath Jha, Mahamahopadhyaya Dr.
Lindsay, Mr. H. A. F.
Lloyd, Mr. E. S.
Maricair, Khan Bahadur A.

Mayhew, Mr. A. I.
Murray, Sir A. R.
O'Donnell, Mr. S. P.
Sarma, Mr. B. N.
Sethna, Mr. P. C.
Shafi, Mian Sir M.
Smith, Mr. H. Moncrieff.
Tek Chand, Diwan.
Wacha, Sir Dinshaw.
Wood, Sir J. B.

NOES—12.

Acharyya Chaudhuri, Maharaja S. K.
Akbar Khan, Major Mahomed.
Kale, Mr. V. G.
Khaparde, Mr. G. S.
Lalubhai Samaldas, Mr.
Naidu, Diwan Bahadur V. R.

Rampal Singh, Raja Sir.
Ram Saran Das, Rai Bahadur Lala.
Roy, Raja P. N., of Dighapatia.
Sukhbir Sinha, Lala.
Umar Hayat Khan, Colonel Sir.
Zahir-ud-din, Khan Bahadur S.

The motion was adopted.

Clause 15, as amended, and clauses 16 and 17 were added to the Bill.

The HONOURABLE MR. LALUBHAI SAMALDAS: Sir, sub-clause (7) of clause 18 lays down that any person who does not deduct and pay the income-tax as required by this section is liable as if personally in default in respect of that tax. This expression was debated in the Select Committee and it was suggested that a provision should be added to say that in case the employer had to pay the income-tax on behalf of the employee, he could take action against the employee on account. That question was debated, and the legal officers of Government told us that no such provision was necessary, as every person who pays on account of another has a right of recovery. That is what was said in the Select Committee. What we wanted to lay down was this. If an employee has a deposit in an employer bank or has some amount in the Provident Fund, can the employer deduct of his own accord the amount of income-tax on behalf of the employee without going to the Court? We were given to understand that he had a right of deducting it either from the Provident Fund or from the deposit in the bank as occasion arose. But I want it to be clearly stated here by the legal officers of the Crown that that is the procedure that will be allowed to be followed if an employer had to pay under sub-clause (7) of clause 18 for the employee.

The HONOURABLE MR. H. MONCRIEFF SMITH: Sir, I understand that the Honourable Member does not propose any amendment to the sub-clause as it stands. I think he may rest satisfied that the advice which

[Mr. H. Moncrieff Smith.]

the Joint Committee was given with regard to this point was sound, and that any person from whom income-tax is recovered on behalf of another person, though the Act says that he is personally liable, will have a remedy in the Civil Courts against the person on whose behalf the tax is taken from him. I understand that that is the only point raised by the Honourable Member in his remarks on this clause, and I think that the clause might very well be passed by the Council as it stands.

Clauses 18, 19, 20, 21, 22 and 23 were added to the Bill.

The HONOURABLE MR. H. MONCRIEFF SMITH: Sir, I beg to move:

‘ That in sub-clause (2) of clause 24 :—

- (a) after the words ‘ income, profits or gains ’ the words ‘ of the year in which the loss was sustained ’ be inserted; and
- (b) the words ‘ in the year in which the loss was sustained ’ be omitted.’

This is also a purely drafting amendment, Sir. The sub-clause, I think, was clear enough in the Bill as introduced. The amendment made in the other Chamber has left some doubt regarding the year in respect of which the set-off which this sub-clause of the Bill allows is to be made. My amendment merely takes certain words from one part of the sub-clause and puts them back to another place so as to make it quite clear that the assessee shall be entitled to have a set-off against any income, profits or gains of the year in which the loss is sustained.

The motion was adopted.

The HONOURABLE MR. LALUBHAI SAMALDAS: Sir, there is a proviso to clause 24 which lays down that if the assessee is a registered firm and the loss sustained cannot wholly be set-off under sub-section (1), any member of such firm shall be entitled to have set-off against his own personal income. It has happened that a person is a member not only of one registered firm but of two or more registered firms, and I want the Finance Department to take note in issuing instructions to say that if a person is a member of two or more registered firms the same concession will be granted as in sub-clause (2) of clause 24.

The HONOURABLE MR. E. M. COOK: It shall be done.

Clause 24, as amended, and clauses 25, 26, 27, 28, 29 and 30 were added to the Bill.

The HONOURABLE MAHARAJA SHOSHI KANTA ACHARYYA CHAUDHURI: Sir, I beg to move:

‘ That in sub-clause (3) (a) of clause 31 of the Bill, the word ‘ enhance ’ be omitted.’

In moving this amendment I wish to point out that if the power to enhance an assessment be vested in the Assistant Commissioner, it will ultimately act as a bar to appeals; for human nature is such that we naturally support our actions. Now let us take the present case in particular. Suppose the Assistant Commissioner has over-taxed an assessee, and he appeals against the assessment. The very first thing that will predominate in the mind of the Assessor will be that the taxpayer is unduly troubling him with an appeal and to put a stop to such future annoyances, he might enhance the tax as a lesson for others. I do not say that he will, but the probabilities are there. However, if

during the hearing of an appeal it transpires that the assessee has been under-taxed, it is quite open to the Assistant Commissioner to send a report to the Commissioner who has full power to annul the assessment and deal with it afresh. It might be contended that the assessee has also the right of an appeal to the Commissioner against the orders of the Assistant Commissioner, enhancing the assessment. But in this case the assessee will have to refute the two orders of assessment—one original and the other on appeal. On the other hand, if the Assistant Commissioner makes the report to the Commissioner recommending reassessment, it is he who will have to satisfy the Commissioner as to the merits of the case. This procedure will be a great safeguard against abuse of power and will inspire greater confidence in tax-payers. Under these circumstances I hope that my amendment will commend itself to the House.

The HONOURABLE SIR ALEXANDER MURRAY: I beg to oppose this amendment. This particular phase of section 31 was fully discussed in Committee. Under the existing Act there is the same right of enhancement given on appeal. As a matter of fact, if you go back to the old Act of 1886, you will find that the Collector had the power to pass such orders as he thought fit on any petition that was presented to him. Further, the Commissioner when appealed to similarly was given the right to pass any order that he chose in the way of reduction or enhancement or anything else. When we come to the Act of 1918, we find that details were given, and instead of the general phrase 'to pass such order as he thinks fit', the words used were 'pass such order thereon, whether by way of confirmation, reduction, enhancement or cancellation.' Now, in the existing Bill we have introduced nothing new. We have simply repeated the words of the Act of 1918 and kept in existence the power that has been in force since the income-tax was introduced over thirty years ago. That being so, I do not think that there is any justification for the suggestion made by the Honourable Maharajah that the assessee may not receive fair treatment in a matter of this description. As a matter of fact, we have introduced an additional safeguard in this Bill. You will find in section 32 we are giving the assessee the right to appear and show cause against the enhancement. Formerly he had no such right. If his tax was enhanced he had to take it lying down. Now he has the right to appear and appear against enhancement that he had never before. I maintain, Sir, that the Act is much more liberal towards the income-tax payer now. My Honourable Friend has expressed a fear in case the assessee might be hardly treated under this section. Might I say what the practice is at Home in cases of this description? If the Commissioners who hear the appeal at Home find that enhancement of the tax is necessary, they have the power to treble the tax, not merely to take from him the tax that he ought to pay, but take from him treble the tax. I think the Joint Committee and the drafters of this Bill have been very considerate in simply insisting that all that will be taken from the assessee is the tax that he is legally and justly entitled to pay to the Government.

The HONOURABLE RAJA PROMODA NATH ROY OF DIGHAPATIA: The Honourable Sir Alexander Murray has just now said that no appeal lies now from the Collector to the Commissioner. . . .

The HONOURABLE SIR ALEXANDER MURRAY: I never said so. I said under the new Act you will have a right of appeal against any enhancement.

The HONOURABLE RAJA PROMODA NATH ROY OF DIGHPATIA: It was there all the time

The HONOURABLE THE PRESIDENT: The Honourable Member must not enter into a conversation with another Honourable Member.

The HONOURABLE RAJA PROMODA NATH ROY OF DIGHPATIA: I beg to support the amendment moved by the Honourable Maharajah. I think that if the power for enhancement lies only with the Commissioner, the object of this section will be fulfilled, and that the lower and lower we go in the matter of appeal the less and less justice will be done. It is the Collectors and Sub-divisional officers who always try to enhance assessments and they being the people who settle the tax payable by the assessee originally if the appeal lies with them again, it would be appealing to the same man against his own decision. I think therefore that if the appeal lies only with the Commissioner it will be far more satisfactory.

The HONOURABLE LALA RAM SARAN DAS: I beg to support the amendment which has been moved by my Honourable Friend. As regards the objection which Sir Alexander Murray puts forward, I think that in case the Assistant Commissioner is satisfied that the assessment has been low he can simply set aside the assessment and direct the Income-tax Officer to make a fresh assessment after making such further inquiry as he may think fit and so on. So, I think the word 'enhance' in sub-clause (3). (a) does not serve any useful purpose. On the other hand, it simply remains as a source of fear on the part of the appellant who may be appealing to the Assistant Commissioner, and who might always be saying 'my tax will be enhanced.'

The HONOURABLE COLONEL SIR UMAR HAYAT KHAN: I shall just give an example. In revenue matters, the Financial Commissioners and Commissioners say such and such a district should give enhanced revenue, and the districts do it. We are ordered to go to the same authorities for appeal. It is exactly the same thing in this case. If a man says, 'I am right and I assess this much', it is rather difficult for him to again say, 'I am wrong'. He will always support what he has already said and so he cannot be the proper person to reconsider his decision. It is for this purpose that I would suggest that it is not always the Members of Government who can give a correct decision, but it would be better if now and then, not our non-official Members, but some representatives of the people are allowed to consider such cases. It is for this reason that I support the amendment.

The HONOURABLE SIR MALCOLM HAILEY: Sir, the Honourable Sir Umar Hayat Khan has introduced into the discussion an element that is not, I think, distinctly germane either to the amendment or to the original clause as drafted. Whether or not we should have non-official assessors is not a matter that arises in this particular connection. But, Sir, both he and the Honourable Maharaja who spoke before him seemed, I think, somewhat to confuse the issues by referring to the Assistant Commissioner both as an assessing authority and as the authority who hears the appeal; they suggested that he should not be given the power of enhancement because he had that dual authority. Now, what are the facts? The assessments are to be done by the Collector; and we simply propose that when a man comes up to appeal to the Assistant Commissioner the Assistant Commissioner should go *de novo* into the whole case. Obviously what he is setting out to arrive at and what I think the assessee himself

should welcome is a correct assessment on his income, nothing more and nothing less. It was said by the Honourable Mover that the assessee would go in fear before the appellate authority if he thought that the assessment might be enhanced. In fear of what? In fear of having to pay more than he originally thought? Why, Sir, his duty as assessee is to pay just so much as the law lays down, nothing more and nothing less. If, in the course of the proceedings, it is found that the subordinate authority has not assessed him to the proper amount, why should he live in fear if all that happens in the long run is that the proper assessment is put on him? This is not a criminal proceeding. The whole object of this assessment procedure, a procedure which we are trying day by day to make more expert, is to get a correct assessment according to the law. My own view is that every citizen has a perfect right honestly to avail himself of every provision of the law to get off assessment if he can do so. No one could criticise him or take offence at his utilising the law to the very best for his own advantage, but, Sir, it is equally his duty to welcome any procedure which gives a correct assessment as laid down by the law. We only seek by this procedure to allow the Assistant Commissioner to go into the case absolutely with a fresh mind as appellate authority. If he finds that the assessment is too low, then he should be able to raise it to the amount which the assessee has to pay according to the law. I see no reason for fear, and I deprecate very strongly indeed the suggestion put forward by the Honourable Mover that there is a probability, (those are the words he used) that the Assistant Commissioner will endeavour to teach the assessee a lesson that he should not come before him with an appeal a second time. That is a charge that I am indeed sorry to see brought against our authorities

The HONOURABLE MAHARAJA SHOSHI KANTA ACHARYYA CHAUDHURI: I said he might be vexed and he might sometimes increase the assessment.

The HONOURABLE SIR MALCOLM HAILEY: The Honourable Mover used the word 'probability' and he cannot escape from the implications which arise out of the use of that word. I can only repudiate very strongly that charge against our assessing authorities.

The motion was negatived.

Clauses 31 and 32 were added to the Bill.

The HONOURABLE MR. LALUBHAI SAMALDAS: A few minutes before, my Honourable friend, Sir Umar Hayat Khan, raised the question of non-official Assessors. That question arises here and I take this opportunity of congratulating the Bengal Chamber of Commerce for having taken the lead in suggesting that, whenever the petitioner so desires, his petition shall be heard and disposed of by the Commissioner assisted by two non-official Assessors. This question was discussed in the Select Committee. There is no dissenting minute, and I hope the Honourable Mr. Cook will not take us to task for that, as it is clearly stated that the majority was against the proposal. The minority, of which I was one, was in its favour. The majority, I am sorry to say, was composed of some of my Bombay friends who opposed the suggestion and the amendment was lost. I do hope, Sir, that the Finance Member, will instruct Income-tax Commissioners to have non-official Assessors associated with him, whenever an opportunity occurs, if the assessee so desires.

The HONOURABLE SIR MALCOLM HAILEY: I should have been very much more willing to accede to the desire of the Honourable Member if he himself in his turn had been willing to take the sense of the House on his proposal.

Clauses 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43 and 44 were added to the Bill.

The HONOURABLE LALA SUKHBIR SINHA: Sir, I beg to move:

'That in clause 45 of the Bill for the words 'may in his discretion' the word 'shall' be substituted.'

In this clause it is provided that if an assessee prefers an appeal, the Income-tax officer may in his discretion treat the assessee as not being in default so long as such appeal is undisposed of. The object of my amendment is to provide that the Income-tax officer shall treat the assessee as not being in default and not use his discretion, that is so long as the appeal is not decided, he should not take action against the defaulting assessee and should not treat him as a defaulter. If my amendment is accepted, the result will be that so long as the appeal is not decided the Income-tax officer shall not treat the assessee as a defaulter.

The HONOURABLE SIR ALEXANDER MURRAY: Sir, I rise to oppose this amendment. Here, again, I would point out that no change
1 P.M. whatever has been made in the present Bill. As a matter of fact, the words have been retained in their entirety, namely:

'the Income-tax officer may in his discretion treat the assessee as not being in default as long as such appeal is undisposed of.'

We discussed this not only in the Joint Committee, but also when the other income-tax committees were sitting, and we felt that no change ought to be made here. If any change were made, it might result in numberless appeals being lodged simply as an excuse for deferring payment. Income-tax officers in big towns, especially in bad times, might be overwhelmed by appeals; simply because the assessee, having lodged an appeal, could not be called upon to pay until such time as the appeals were disposed of. I think the discretion given to the Income-tax officer to decide when payment may or may not be taken is all that can reasonably be expected by an assessee.

The HONOURABLE COLONEL SIR UMAR HAYAT KHAN: Sir, I am sorry to have to oppose this amendment. It is common knowledge that sometimes when appeals are filed in the High Court, they last a man's life time. In that way a man will go on filing appeal after appeal at various places as far as the law allows him to do so, especially the English law, and it may last his life time. The whole question is if the money could be refunded if he succeeds in the appeal.

The HONOURABLE SIR MALCOLM HAILEY: Sir, I only wish to make it clear to the House the reasons why we have hitherto opposed any amendment of this nature. A man who may be assessed to pay a large sum of income-tax may agree that the assessment as a whole is justifiable, but he may object to some particular item. Now, Sir, in those circumstances, it is reasonable that he should say to the income-tax assessing officer:

'I am willing to pay up practically the whole of this assessment, but will you in your discretion allow the remainder to remain over until I can appeal on the subject?'

Such an application could and no doubt would be accepted under our Bill as framed and this is entirely reasonable. But the case is very different where you have an assessee who, whatever his own views may be as to the justice or injustice of his assessment, desires to put off till the very last moment the payment of his legal dues.

Now in theory we are all good citizens, and we all no doubt welcome in theory the opportunity of contributing to the just demands of the State. But when the time comes to sign the cheque, human nature asserts itself, and there are some people, and I find by experience a great many people, who desire to put off the period of payment for an unconscionable time. An Honourable friend of mine quoted in another place the figures in regard to Madras; there we succeeded in collecting in last year only 76 per cent. of our assessment. I know one town in India, a large town, where to the best of my knowledge there are something between $1\frac{1}{2}$ and 2 crores of arrears still outstanding. Now suppose that money is tight, and an assessee wishes to put off as long as possible the payment of a large sum which may amount to some thousands of rupees. The House will realise that if this amendment is accepted he can, by the simple process of filing an appeal at a cost of 8 annas or a rupee, save the payment of that sum of money for some months, perhaps for nearly a year. Obviously, Sir, we should be placed at a very considerable disadvantage by such a procedure. For while the assessee would be enjoying the use of the money we should be out of the use of it. In the circumstances, I think it is not unreasonable that Government should oppose, and oppose very strongly, any amendment of the nature put forward by the Honourable Mover.

The motion was negatived.

Clauses 45, 46, 47, 48, 49, 50, 51, 52, 53 and 54 were added to the Bill.

The HONOURABLE MR. LALUBHAI SAMALDAS: Sir, I beg to move the following amendment:

'That at the end of clause 55 of the Bill the following words be added, namely:—
'Provided further that where the profits and gains of a company have been assessed to super-tax, exemption shall be made of the amount of super-tax in assessing the super-tax to be paid by another company or individual holding shares in the first company in respect of the amount of dividend received by the holding company or individual.'

I fear, Sir, that this amendment will perhaps appear a little complicated to those who do not know the way in which one company holds shares in other companies. I will try to make the whole question as clear as possible. Without mentioning names I will say there is a big company A. In that company another company, say B, a private limited company, holds shares to the extent of 50 lakhs or a crore. Now the company A when it prepares its balance sheet has to make provision for the payment of income-tax as well as super-tax, at the flat rate of one anna. The dividend from this company goes to the private limited company B. Then when this company makes its own balance sheet it has also to make its own provision for income-tax as well as super-tax at the flat rate of one anna because it receives income from other sources. Then the money is divided between three or four partners, as the case may be, and each one of them who has received an income of more than 2 lakhs 50 thousand will have to pay 4 annas as super-tax over and above what was charged at the head. That is to say, the same individual has to pay on the same

[Mr. Lalubhai Samaldas.]

amount six annas. It has been accepted as a rule, and it is a very sound rule, that if a man pays income-tax at one place he need not pay it again in another in the same year on the same income. I merely want that principle to be extended to super-tax. We represented this matter before the Joint Committee. The Joint Committee, however, thought that as the persons who are likely to be affected are very few and as they are very rich persons, they need not extend the principle of justice and fairness to these rich persons. I say, Sir, that if the poor has a right to justice, the rich has an equal right to justice, and that is why I have come before this House with this amendment. The amendment merely says, if I may put it in ordinary language, that a party who has paid super-tax in one or two private companies should not be asked to pay the same over again. I want that only 4 annas should be charged. He should only get any exemption if he has to pay more than 4 annas to the extent of the super-tax charged on his holding in the company. I think my proposal is a fair one, and I hope the House and the Honourable the Finance Member will accept it.

THE HONOURABLE SIR ALEXANDER MURRAY: Sir, the Honourable Mover of this amendment has stated the position very fairly, but if you can spare me a few minutes, I will state the other point of view as we saw it in the Joint Committee. Under the first Indian Super-tax Act of 1917, super-tax at the sliding scale was imposed on the incomes of companies in excess of Rs. 50,000 excepting amounts paid away in dividends and after deducting an allowance of one-tenth of the income; that is to say, the super-tax in those days on companies was on the undivided profits less 10 per cent. Everybody objected to the incidence of that tax with the result that by the Super-tax Act of 1920, the 1917 Act was repealed, and the taxable income of a company for super-tax was made the same as that for income-tax and a super-tax at a flat rate of one anna in the rupee was levied upon the taxable income of every company excepting the first Rs. 50,000. When that Bill was under discussion the very objections now put forward by the Honourable Mr. Lalubhai Samaldas were put forward then. The Honourable Sir Malcolm Hailey, who was then Finance Member also, in moving that the Bill be referred to a Select Committee, said that the main purport of the Bill was to substitute a super-tax at a flat rate of one anna on the income of companies for the then rate of 1 to 3 annas on their undivided profits. He then referred to the reproach that they were departing from the true principle of super-tax, which is taxation of the individual, but he said that the old tax was admittedly undesirable, and that they were under an obligation to amend it, but could not afford to forego the revenue which companies brought in under the head of super-tax. He further stated that the new form of taxation involved in some cases a payment of both kinds of super-tax, but he could not agree that this would be an undue hardship. Further discussions on the same lines took place when the Bill was being passed into law. I have here sufficient quotations from the speech of the Honourable Member to justify his attitude, but I will not detain the Council at this late stage with them.

Since the 1920 Bill became law, one or two companies have raised the point that it is unfair to levy super-tax more than once on income derived from companies. The Government of India, however, have not given much encouragement to the suggestion that the basis of assessing companies to super-tax should be changed. Their main objection is that

a limited liability company enjoys certain advantages of corporate capital and defined liability, and it is in respect of these privileges that it is being taxed at this flat rate of one anna in the rupee. Immediately after the Indian Super-tax Bill of 1920 became law, a tax pretty similar, called the Corporation tax, was introduced in the United Kingdom. That tax was the first tax that I know of at Home that went away from the principle of the taxation of the individual and ultimate receiver of the income. In some ways the Corporation tax at Home and the tax on companies in this country are very similar, with this difference however that in England, dividends received from a company that has already paid this Corporation tax of one anna in the rupee are not again liable to that tax in the hands of another Company. That is what my Honourable Friend, the Mover of this amendment, has suggested we ought to do in this country; that is, not to tax companies twice in respect of the same income. There is, however, a distinct difference between the practice at Home and the practice here. First of all, the allowance at Home in respect only of the first company that pays the Corporation tax is only £500, but here the allowance for each company that pays the super-tax of one anna is half a lakh of rupees. Further at Home debenture interest is not allowed as a good deduction, and the amount that can be deducted as remuneration to Directors or Managers is also limited. For these amongst other reasons the Government of India have so far refused to alter the basis of taxation on Indian companies.

The question came up for discussion before the All-India Income-tax Committee that sat at Simla last July, but the Committee considered that there should be no alteration, more particularly in view of the loss of income involved. The matter again came up for discussion before the Joint Committee here last month, and the Committee expressed the opinion that the provisions of the Bill and the present Act should be retained, but that, if the rate of this tax is to be enhanced in future, the Government of India should consider whether the whole basis of the method of assessment does not require revision. The Joint Committee felt that so long as the rate on companies did not exceed one anna in the rupee, and so long as the first Rs. 50,000 was allowed as a deduction to every company paying the tax, and so long as debenture interest and full Managers' commissions and Directors' fees were allowed to be deducted, there was no special urgency in revising the method of assessment, and in any event there was no alternative suggestion put before the Committee to recoup the loss of tax that would undoubtedly be incurred by giving the concession that has been asked for by the Honourable the Mover of the amendment. It was for these reasons that the Committee on the whole felt that no change ought to be made now in the existing law. But I would just remind the Honourable Mover of the amendment that the Government of India have recognised that in the event of this company tax being materially increased, it will be necessary to reconsider the whole basis of taxation of companies. In the circumstances, Sir, I beg to oppose the amendment.

THE HONOURABLE COLONEL SIR UMAR HAYAT KHAN: Sir, this amendment has got no sympathy from me, because the income-tax payers have always been treated lightly, and as long as they are not taxed up to agriculturists, I would always ask that they should be taxed in one way or the other. For this reason, I am against the amendment.

THE HONOURABLE SIR MALCOLM HAILEY: Sir, when the Honourable Mr. Lalubhai Samaldas spoke of this Bill as one the primary object of

[Sir Malcolm Hailey.]

which was to attain correct assessment and ease of collection, I did not expect to see him come forward with a proposition which would have a result of going far beyond the original purpose of the Bill, the result, namely, of relieving certain wealthy individuals and certain wealthy companies of part of the taxation they have now to pay. Throughout the Bill we have done nothing in order to benefit ourselves by increasing our revenues, and we very naturally deprecate, that anybody should take the opportunity of our bringing forward a Bill of procedure and assessment, in order to benefit or relieve any class of the community of a substantial part of their present taxation. The Honourable Mover spoke of the unanimity of the Select Committee of which he was a member. He agreed, I understand, then, with this proposition of the Committee:

'We are of opinion that the provisions of the Bill and the present Act should be retained but that if the rate of this tax is to be enhanced in future the Government of India should consider whether the whole basis of the method of assessment does not require revision.'

Since then, apparently, the claims of assesseees to whom I have referred have been too strong with my Friend, and he has decided to introduce this amendment. Finally, he has elsewhere appealed to us not to differ from the other House. But this amendment, not perhaps in an identical form as I shall point out afterwards, but in purport the same, was introduced in the other House and I am justified in saying that it was withdrawn because no one seemed likely to sympathise with it. Sir Alexander Murray has given, if I may say so, with admirable lucidity and precision the reasons for which the Select Committee came to the decision I have read, reasons which are fully accepted by Government. I do not, therefore, wish to go into the history of the case again. Let me merely repeat that this particular form of tax, the flat company tax as it may be called, takes the place of an assessment to a graded super-tax of the undistributed profits of companies. The companies themselves objected to that form of assessment, and it was at their instance that we introduced the flat super-tax. Apparently some companies now repent of their representations to us and desire that we should introduce another variation that will assist the richer holding companies to escape part of the taxation falling on them

The HONOURABLE MR. LALUBHAI SAMALDAS: Unfair.

The HONOURABLE SIR MALCOLM HAILEY: Is it really unfair? Why is it that we put this tax on companies? Because they enjoy the protection of the law in respect of their limited liability, and they enjoy all the advantages of the market in regard to their corporate capacity for raising money. Each of the companies connected with the holding company enjoys these facilities and are individually rightly taxed in respect of those facilities. It seems to me immaterial where the profits of a company come from; I mean that your company may, if it likes, put its money in any other company, or it may put it in an industrial concern such as a factory. If it puts it into an industrial concern, not a company, then the receipts from that concern, of course, would be charged to income-tax. Why should not receipts from investments in any other company be equally charged with company tax? I take a second point. The Honourable Mover puts forward the proposition that holding companies should be given the full benefit of any tax that has been charged on what I might call a subordinate company. Does he really propose that if we do this we should continue to give those subordinate companies all the advantages which the law at present secures

to them, namely, that they should, first of all, deduct Rs. 50,000, that they should deduct all their fixed charges, mortgages, debentures and the like? If we acceded to his proposition we should have to make a radical alteration of the law in order to protect ourselves from loss. We should have to withdraw entirely, as they have withdrawn in England—(it would be more correct to say that they have never granted in England) those advantages which the companies enjoy under our present law, and the general withdrawal of those concessions would not be of advantage to poorer companies. But let me point out, that he goes much further still. The original proposition that was discussed by the Select Committee referred only to protection of a holding company in respect of taxation that already paid in regard to the profits of what I have called subordinate company. What he now proposes is this, that in assessing super-tax to be paid by an individual, that individual should receive a concession in regard to dividends which have been received from a company or companies charged to our company tax. He does not therefore only propose to exempt the holding company; his charity, or his disregard of the interests of the general tax-payer goes very much further indeed. He proposes to give a concession to the individual holding shares in the holding or 'subordinate' company. We tax an individual as individual to super-tax, and we tax a company as company at a flat rate. So, the individual is apparently to get a concession which he has never had, which we have never hitherto contemplated, which could not have been granted under the original law under which undistributed profits of a company were taxed. Is that a reasonable proposition, Sir? I might almost say that we might, if we accepted this proposal, have to abandon our super-tax on companies altogether; it will hardly be worth keeping. I, on the part of the Government and on behalf of the general tax-payer, am at all events not prepared to agree to so wide a proposition, so detrimental to the general tax-payer. I believe that the company is at present much more favourably situated than were companies under our old law which imposed a graded super-tax on their undistributed profits. I ask the Honourable Member to point out a single company which is proportionately more heavily taxed under this procedure than under the old procedure. Indeed, I might almost go further and challenge him to point out a company which has not profited by our present procedure, as against the old procedure. For these reasons I fully assented to the proposition as it was put forward by the Select Committee. Our taxation on companies is by no means heavy. I quite agree that if the flat rate is at any time increased we might have to reconsider the position, in the light of the fact that the holding companies might have to pay a really heavy tax. But I maintain on behalf of the general tax-payer that there is at present in view of the pitch of the present tax,—there is, in the circumstances as they now stand,—no reason why we should reconsider the position.

The HONOURABLE THE PRESIDENT: The question is:

'That at the end of clause 55 of the Bill, the following words be added, namely:—

'Provided further that where the profits and gains of a company have been assessed to super-tax, exemption shall be made of the amount of super-tax in assessing the super-tax to be paid by another company or individual holding shares in the first company in respect of the amount of dividend received by the holding company or individual'.

The motion was negatived.

Clause 55 was added to the Bill.

The Council then adjourned for Lunch till three of the Clock.

The Council reassembled after Lunch at Three of the Clock. The Honourable the President was in the Chair.

BILLS PASSED BY THE LEGISLATIVE ASSEMBLY.

The SECRETARY OF THE COUNCIL: Sir, in accordance with rule 25 of the Indian Legislative Rules, I lay on the table the Bills which were passed by the Legislative Assembly at its meeting of the 22nd February 1922. They are as follows:

- (1) A Bill further to amend the Indian Limitation Act, 1908.
- (2) A Bill further to amend the Provincial Small Cause Courts Act, 1887, and the Code of Civil Procedure, 1908, in order to provide for the award of costs by way of damages in respect of false or vexatious claims or defences in civil suits or proceedings.
- (3) A Bill to establish and incorporate a unitary teaching and residential University at Delhi.

GOVERNOR GENERAL'S ASSENT TO CERTAIN BILLS.

The SECRETARY OF THE COUNCIL: Sir, information has been received that His Excellency has been pleased to grant assent to the following Bills:

- (1) The Special Laws Repeal Act, 1922.
- (2) The Indian Criminal Law Amendment Repealing Act, 1922.

INDIAN INCOME-TAX BILL—(contd.).

The Bill to consolidate and amend the law relating to Income-tax and Super-tax, as passed by the Legislative Assembly, was then taken up for further consideration.

Clauses 56, 57, 58 and 59 were added to the Bill.

The HONOURABLE MR. LALUBHAI SAMALDAS: Sir, I hope that I shall not rouse the ire of the Honourable the Finance Member as I did on a previous occasion. He waxed eloquent on my bringing up the amendment to oblige friends. He would on the same principle be more correct in saying that I refer to this matter on personal grounds, as I am interested in some feeder railways which are affected by the levy of super-tax. When we speak here on these clauses we do not do so on personal grounds or on grounds of charity or on grounds of unfairness to the general taxpayer. We only want justice and fairness, and I am sorry that the Honourable the Finance Member attributed these motives to me when he said that I was speaking on behalf of a particular party.

Clause 60 was considered by us in the Joint Committee, and it was said that the question of the levy of super-tax on the profits of feeder railway companies could not be taken up by the Committee and that it should be taken up later on by the Department. The feeder railways have not

usually been able to declare big dividends. As a matter of fact, to attract money for the feeder railways, the Government have to give a guarantee. The guarantee that Government give is not now sufficient to attract capital, and I believe there are proposals to the effect that, unless the guaranteed interest is raised to something near what the Government borrows at, it would not be possible to attract money for feeder railways. To levy super-tax merely because of the total amount of the annual income of a feeder railway does no harm to the shareholders of such Railway Companies. The bigger the feeder railway, the greater the harm. I shall give a hypothetical case—suppose a big feeder railway earns 5 per cent. on 50 lakhs. That is, it makes 2 lakhs 50 thousand, and it would be liable to super-tax, although after paying super-tax it shall not be able to declare a dividend of 5 per cent. I want the Finance Minister to consider this question when he takes up the general question of feeder railways and also the question of increasing or decreasing the super-tax.

The HONOURABLE SIR MALCOLM HAILEY: I may say, Sir, that the Honourable Mr. Lalubhai Samaldas knows me too well and if I may say so we are too good friends for him really to take umbrage at any little point I make against him in debate, just as I should never think of taking umbrage at any point that he may make against me.

With regard to this particular point, it will be agreed, I think, that the matter which he has raised really lies outside the Income-tax Bill. It really concerns our relations with the railways which have been constructed on branch line terms. We are considering that as a separate matter, and we shall give the point which he has referred to our very best consideration. Further, I need hardly say that when any question comes up of revising those terms, we shall also take this particular point into consideration.

Clauses 60, 61, 62, 63, 64, 65, 66, 67 and 68, the Schedule, the Preamble and the Title were added to the Bill.

The HONOURABLE MR. E. M. COOK: I beg to move:

‘That the Bill, as passed by the Legislative Assembly and amended by the Council of State, be passed.’

The HONOURABLE SIR MALCOLM HAILEY: Before you proceed, Sir, to put this motion to the House, I desire with your permission to address a few brief remarks to the Council in connection with the Bill which has now reached its final stage. It has been welcomed on two different grounds in the Council to-day. It was welcomed by Sir Umar Hayat Khan on the ground that it placed a substantial burden on persons other than agriculturists. We have, however, claimed ourselves that this was not a taxation measure at all, but a measure of procedure and assessment only, and I am afraid I must assure the Honourable Member that, much as he may desire to raise taxation on those who gain their living by commerce and not by agriculture, this Bill does nothing to forward his ambition. I mention the point, Sir, because I think I can convey to him at the same time a little comfort. He said that the main burden of taxation fell on the agriculturists and that the proportion of the general taxation falling on the country paid by other classes is far too small. I am not going to state that the agriculturist does not still pay more than other classes, but the figures are to a certain extent reassuring from his point of view. The amount of money raised in land-revenue throughout India in 1920-21 was 35 crores; the amount raised by income-tax and super-tax was 22 crores; so that I think he will agree with me that other

[Sir Malcolm Hailey.]

classes are also doing something in the interests of the State. But, Sir, the Bill has also been welcomed on other grounds, grounds which are more directly in consonance with the views with which we put it forward. The Honourable Mr. Lalubhai Samaldas and Sir Dinshaw Wacha welcomed it on the ground that it did really tend to greater correctness of assessment and greater ease of collection. That, Sir, is what we set out to obtain. The House knows well the history of this Bill. Some of our Legislative Acts are framed entirely in the Secretariat, and are the product of purely official energy; this is emphatically not one of that class. When we realised that the old Act needed revision, we set to work in a spirit which has I think commended itself to the House. We first of all assembled non-official committees in each of the provinces, and the case was thoroughly discussed with them. They sent up their representatives to a central committee sitting in Simla. The case was discussed by us with that central committee. Then, Sir, when the Bill was framed and introduced, it was discussed in a Joint Committee which had before it the views of all commercial bodies who had in the meanwhile been consulted. The Joint Committee itself was very largely non-official, and it was presided over by a distinguished non-official, an eminent authority in Income-tax law and procedure. That is how we have arrived at this Bill, and I should be only too glad if in practice it achieves the purpose which we set before ourselves, namely, to make the administration of this important part of our taxation easier for the tax-payer, simpler for ourselves, and more just all round. It has been produced, as I said before, not purely as a Government measure designed to raise the amount of taxation or to prevent evasions of the law; it has neither been framed nor drafted in that spirit, but it has been forged on the anvil of free debate between Government and those who are most concerned in paying the tax.

THE HONOURABLE MR. W. G. KALE: Sir, I support the motion which has been placed before the House. I have great pleasure in doing so because this Bill represents our income-tax machinery in a greatly improved form very different from what it has been in the past. The success of the income-tax machinery represents the progress of the country so far as the economic condition of the people is concerned. My Honourable Friend, Sir Umar Hayat Khan, pointed out that under the Income-tax Act a larger amount of money is being taken now from the non-agricultural classes, and he noted this fact with very great pleasure. But the reason why more money is being taken out of these non-agricultural classes than before lies mainly in the fact that India has been progressing very rapidly in matters of commerce and industries. There was a time when half or one-third of the total revenue of the Government in India came from the land. From the present position of the finances of Governments in India it will be found that land-revenue is only 1-7th of the total revenue of the country taken as a whole. Now, why this difference? The difference is due entirely to the fact that we have now more industries and larger industries, and commerce is carried on on a much larger scale. India is no longer an entirely agricultural country, but it is becoming partly a manufacturing and a commercial country. Certain classes of people are earning huge profits and getting large incomes by foreign and internal commerce and by large-scale industries. It will be realised that while about 2 to 3 lakhs of people pay an amount of 22 crores of rupees by way of income-tax, I may say that about 5 crores of people pay only 35 crores. Taking the agricultural population of the country at, say, 21 crores in British India and taking 5 persons

in a family, I may say that there are five crores of heads of agricultural families, and between them, these five crores of people pay 35 crores of rupees, so that each family pays about Rs. 7. On the other hand, so far as the income-tax is concerned, about 2½ lakhs or 3 lakhs of persons are paying 22 crores of rupees. Now this difference represents, as I have said, the industrial progress that the country is making, and I welcome this Bill because it shows the directions in which we are advancing. The Bill embodies a great improvement upon the old machinery of income-tax, and I hope that in years to come we shall get more and more out of this source of revenue. From the point of view of the general tax-payer, I am not sorry* that people of wealth and large incomes,—I hope my friend, Mr. Lalubhai, will pardon me for saying that—have to pay larger amounts, and that we are progressing along lines of Western countries. Our income-tax is a tax of the Western type, particularly of the British type, and we are following the fiscal example of England. And if we pursue the British system, many more improvements will have to be introduced, and I am sure they will come in time. Many reforms like the differentiation of incomes, the distinction between 'earned' and 'unearned' incomes and exemptions of various kinds, are bound to come. However, at the stage which we in this country have reached in our economic development, I very heartily welcome this Bill and I support the motion.

THE HONOURABLE MR. H. MONCRIEFF SMITH: Sir, I should like to take this opportunity to correct a mistake into which I inadvertently fell this morning. My Honourable Friend, Raja Promoda Nath Roy, asked a question as to the effect of a portion of the definition of 'agricultural income' which appears in clause 2 of the Bill. Unfortunately, Sir, I only heard a very small part of his question. I understood him to refer to the winnowing of grain by a cultivator before he took his grain to the market, and I told him that, in my opinion, any income derived from the performance of such a process would not be liable to tax. In the interval, however, I have been supplied with a transcript of the Honourable Raja Promoda Nath Roy's remarks, and I should like to remove any misapprehension which may have been caused by what I said. I find that he was referring to the use of machines for turning sugar-cane into sugar and of machines for husking rice and to the sale of rice after it has been husked with the aid of machinery. These are matters for the Income-tax Courts and the income-tax authorities to decide, but if I am asked for an opinion, I should say that these are not processes ordinarily used by a cultivator for the purpose of rendering his produce fit for the market. Under these circumstances, I think profits derived from such processes would be liable to the tax.

THE HONOURABLE COLONEL SIR UMAR HAYAT KHAN: Sir, during the debate I had already welcomed the Bill for this purpose; that at any rate, it has made a beginning, and that is very gratifying, because, if it has begun to go in a direction, it can be developed. I hope that in course of years it will be further developed. Again I welcome the Bill, Sir, because it is said that we agriculturists do not pay a sufficient amount. Sir, any man who is born in the country at any rate has his right to eat a sufficient amount so as to live. Supposing a man has got only 10 *bighas* of land. From those 10 *bighas* he cannot possibly. . . .

THE HONOURABLE THE PRESIDENT: Order, order. The Honourable Member is again becoming irrelevant. I have given him much latitude in this debate, but he cannot raise such questions here. This is a Bill dealing with income-tax and super-tax.

The HONOURABLE COLONEL SIR UMAR HAYAT KHAN: I would not say anything more, Sir.

The HONOURABLE THE PRESIDENT: The question is:

'That the Bill to consolidate and amend the law relating to Income-tax and Super-tax, as passed by the Legislative Assembly and amended by the Council of State, be passed.'

The motion was adopted.

RESOLUTION *RE* RIGHT HONOURABLE WINSTON CHURCHILL'S SPEECH AT THE EAST AFRICAN DINNER ON THE STATUS OF INDIANS IN EAST AFRICA.

The HONOURABLE THE PRESIDENT: With reference to the next business on the paper, *viz.*, the Resolution to be moved by the Honourable Mr. Lalubhai Samaldas:

'That this Council recommends to the Governor General in Council that he should communicate to the Right Honourable the Secretary of State for India the strong feeling of resentment aroused in this Council and in the country generally by the speech of the Right Honourable Winston Churchill delivered at the East African dinner in London, and that in the opinion of this Council any further restriction on Indian immigration into East Africa, or any differentiation against Indians as such with regard either to the ownership of land or the franchise, or any extension of such differential treatment to Indians in the mandated territory of Tanganyika will be inconsistent with the principle underlying the Resolution passed at the last Imperial Conference regarding the status of Indians in the Empire.'

I should like him to explain to me in what manner the last portion of the Resolution differs from the Resolution which was moved and debated at great length in Simla. I see that it was debated on the 22nd of September 1921 and that the debate was finished on the 23rd September, and there were 12 speakers.

The HONOURABLE MR. LALUBHAI SAMALDAS: Sir, the last portion of my Resolution arises out of the Right Honourable Winston Churchill's speech. I do not want, as far as I possibly can, to go beyond the speech of the Right Honourable Winston Churchill and the points raised therein. I realise that I should not in any way repeat myself or argue the points which I argued in September 1921. I will try my best to confine myself to the Right Honourable Winston Churchill's speech and to some information which I have received thereafter which is new but germane to the point at issue.

The HONOURABLE THE PRESIDENT: In so far as the Honourable Member proposes to re-argue the general case that he argued in September, and in so far as the speech in question raises those points, he cannot be in order. In so far as the matter is new and he is not re-arguing those points which he has argued in September, he is entitled to speak.

The HONOURABLE MR. V. G. KALE: Will it not be permissible, Sir, to make references to the whole situation of Indians in East Africa?

The HONOURABLE THE PRESIDENT: That was argued at great length in September. I think the Honourable Member himself argued it at great length. The standing orders are perfectly clear and strict on the subject. We cannot discuss within one year a Resolution which has already been discussed. I quite admit that it will be difficult to keep Honourable Members to this point, and therefore I trust to them to keep themselves in order. I am sure they will do it.

The HONOURABLE MR. LALUBHAI SAMALDAS: Sir, I beg to move the following Resolution:

'This Council recommends to the Governor General in Council that he should communicate to the Right Honourable the Secretary of State for India the strong feeling of resentment aroused in this Council and in the country generally by the speech of the Right Honourable Winston Churchill delivered at the East African dinner in London, and that in the opinion of this Council any further restriction on Indian immigration into East Africa, or any differentiation against Indians as such with regard either to the ownership of land or the franchise, or any extension of such differential treatment to Indians in the mandated territory of Tanganyika will be inconsistent with the principle underlying the Resolution passed at the last Imperial Conference regarding the status of Indians in the Empire.'

The HONOURABLE THE PRESIDENT: I think I must rule the whole of the latter portion of the Resolution—'and that in the opinion of this Council, etc.' out of order. The Honourable Member can deal with the speech of the Right Honourable Winston Churchill, but I think that all the words from and including 'and that in the opinion of this Council in the Empire' must go out.

The HONOURABLE MR. SETHNA: Sir, in the speech of the Right Honourable Winston Churchill there are points which refer to words in the second part of the Resolution. How can speakers possibly restrict themselves?

The HONOURABLE THE PRESIDENT: I think the Honourable Member has heard my ruling. My ruling is this. Anything arising out of the speech of the Right Honourable Winston Churchill can be referred to. But I will not allow the re-arguing in breach of the Standing Orders of a Resolution which has already been argued at great length in this Council.

The HONOURABLE MR. LALUBHAI SAMALDAS: Sir, I am rather in a difficult position. I will try my best to restrict myself to the points mentioned in the speech of the Right Honourable Winston Churchill, but if at any moment I go a little further, I shall not do so, I can assure you, Sir, in contravention of your ruling, but because it will be difficult even to keep myself entirely within the remarks of the Right Honourable Winston Churchill, without referring to the general question of the East African policy of Government.

The HONOURABLE THE PRESIDENT: I shall not restrict the Honourable Member unduly.

The HONOURABLE MR. LALUBHAI SAMALDAS: Before I refer to the subject-matter of the Resolution, may I ask a direct question of the Honourable Member in charge? A Resolution, as you have observed, Sir, was moved in the Simla Session on the 22nd and 23rd of September. I would like to know what action Government have taken on that Resolution. We have heard rumours and we do not know how far they are justified. So, a definite information on the subject would go to clear any misunderstanding that may have been created.

Coming now to the scope of my Resolution, Sir, I will try not to repeat myself. I have included herein Tanganyika, because the Right Honourable the Secretary of State for the Colonies has said that the question of amalgamation of Kenya with Uganda, Tanganyika and Zanzibar has been delayed solely to bad times rendering it unwise to disturb the existing order. He anticipated in a few years the creation

[Mr. Lalubhai Samaldas.]

of the great East African Federation taking its place in the Empire on equal terms with the great West African Colonies now so prosperous. I have tried to explain why I had included Tanganyika, and the reason why I did not include Uganda and Zanzibar, was that Tanganyika was a mandated territory while Uganda and Zanzibar were not. I will, however, confine myself to what the Right Honourable Winston Churchill said and what followed thereafter. The Right Honourable Winston Churchill said 'East African Federation'. He did not say what sort of Federation. But Lord Delamere who followed him says it very clearly that what the Right Honourable Winston Churchill meant was a 'white colony with the gradual evolution of Self-Government'. His words are these:—

'Lord Delamere representing the European settlers, replying to Mr. Churchill, expressed pleasure at Mr. Churchill's confirmation of the constitution of Kenya as a white colony with the gradual evolution of Self-Government.'

He then went on and said that he hoped that the control of Indian emigration would mean its practical prohibition. That is the reason why, Sir, I had included the question of Indian emigration, because Lord Delamere goes much further than what we have discussed. He said that the utmost care was necessary to see that Western ideals and Government were not swamped by the ideals of another civilisation. Sir, I do not want to use any strong language, but when we are reminded in season and out of season that the ideals of Western civilisation are higher than those of the Eastern civilisation, may I say that a majority of my countrymen believe that the ideals of Western civilisation are material and are not up to the mark as the ideals of Eastern civilisation, that we in the East have been more spiritual and less material than the West, and if anything, we do not like to have the material ideals of Western civilisation but like much better the ideals of Eastern civilisation. Merely to have been told that would not however have mattered much. What causes pain is that it is used as a bar to the entry of the Indians to East Africa. A pure academic discussion does not help us much. Here there are definite proposals made by the Right Honourable Winston Churchill which were sent to me confidentially by the East African Indian Congress,—but they have been now published by Mr. Andrews and so I need not treat them as confidential,—where the question of immigration has been, if I may use the word, camouflaged. Saying that there would be equality for the Indian immigrants and the European immigrants, they are now laying down special restrictions. Till now an Indian immigrant was paying, I speak subject to correction, about Rs. 100 as a deposit before he was allowed to get in. He was not required to have a knowledge of English. The new rules say that the immigration regulations for Indians should be made the same as for Europeans. So far it looks as if we are to be on an equality with the Europeans. But when we go into the details, I hope the Council will see how it affects the immigration of the Indians because the rule lays down in addition to the existing amount of deposit further money deposit of florins 375, which may be increased to 500 florins, an educational test similar to that required for admission to the electoral roll and that there should be provision against fraud. We all agree that we are prepared to have all effective provision against fraud. But when it is said that the educational test shall be the same as that required for the electoral roll I must refer to the electoral roll test. That test is a reasonable knowledge of written and spoken English. I want to put it to

the Council whether they realise the hardship to the Indians who are now in that country. I will take one or two specific cases. It is just possible that the wife of one of the biggest Indians there like Mr. Jeevanji or Mr. Abdul Rasul may not know English. Is she always to be prohibited from entering that country? Is that the test to be laid down? If the test is to be a literacy test it ought to be one in one's own language. If an English settler comes, is he required to know two languages? Why should a man going from this country to that place know not only his own vernacular but also another language, namely, the English language? Therefore while to all appearances it may appear that equality was given, in actual practice it is not equality but it is hardship. Then it may be said, as I have been asked by many of my friends to-day, if a European immigrant pays 500 florins why should not an Indian immigrant pay the same? This sounds at first sight quite plausible. I have been told by a gentleman who had been in East Africa that the deposit money required from either an Indian immigrant or an English immigrant is required to enable the Government to repatriate the man.

An Indian immigrant does not require more than Rs. 100 because he is about one-third nearer to Kenya than the English immigrant would be. I am not quite sure about the figures, but I take it that the distance from Kenya to England will be about three times the distance from that place from India, I am taking Bombay as the centre, for India. Is there any reason, therefore, for laying down this condition under the name of equality of status? The Right Honourable the Secretary of State for the Colonies goes much further than this, and I do not know whether he will now stick to the rules which were given out by Sir Edward Northey under his instructions, as I have been told. The Secretary of State for the Colonies says:

'The interests of British settlers and native population alike require that the future immigration of Indians should be strictly regulated, and the Rhodes principle,'

by which is meant I believe equality for all civilised people, and equality for all civilised people means knowledge of English language *plus* 500 florins,

'should rule in respect of the immigration laws as in other laws all of which would be'—

and here I should like to draw the attention of the Council to this phrase:

'all of which would be subject to the closest consultation between the official Government and the existing residents.'

Of course, the Right Honourable the Secretary of State for the Colonies has not said what he meant by the existing residents. But reading between the lines it is not very difficult to say that by the existing residents he meant the European settlers only. Are we then to have no voice even in settling these terms and rules for immigrants? Would the Right Honourable gentleman, Mr. Winston Churchill, in spite of this speech of his—I do not wish to use any adjective to characterise it—would he try to be as fair to the Indians as he could possibly be? Is he always to consult the existing residents, that is the European settlers, and get their consent before the final rules are framed? That is a point which I want the Council to very carefully consider and say definitely whether they want that our people in that country should have a voice at the time of settling the rules for immigration. Sir, the Right Honourable Winston Churchill proceeded to emphasise in these words,—these are Reuter's words, and I take it that the telegram correctly represents his views—emphasise the fact that the Highlands of East Africa should be reserved exclusively for the European

[Mr. Lalubhai Samaldas.]

settlers,. That has been done and there is absolutely no land, according to my information, which could be given to any one. All the lands are in the hands of the Highlanders, but he goes on to say that the position must be regarded as final. I hope I am speaking for all my countrymen when I say that we do not want it to be considered as final. We will go on fighting and fighting, fighting not in the sense that we will send our army there to fight, but fighting in the Council, putting pressure through the Government of India and the Secretary of State for India, on the Secretary of State for the Colonies and the Cabinet till this wrong has been righted. I shall not go into the history of the Highlands and how they were reserved. It has been said that it was discussed at the last Session and I need not refer to it, but from that debate and those which have followed it, it will appear that the question now is not the grant of the Highlands to the Indians, but only the grant of the right of transfer which we know has been refused. An Englishman who had lands granted to him for Rs. 1,700 was able to sell it to an Indian for Rs. 82,500. Naturally he wanted to make money. Our men are prepared to pay the price and yet the Government there state that this is not an opportune time for considering the question of granting them lands in the Highlands. An area of land suitable for Indian settlement roughly in the area lying between Voi and the Vatta plains has been ordered to be set aside for Indian ownerships with exactly similar restrictions against European ownership. My countrymen there have refused to accept these terms and they do not want to prevent Europeans coming to them. As an instance of what I have said that they do not want to boycott Europeans I shall refer to the opening ceremony of the Khoja Jamatkhana at Nairobi. The Governor was invited. Not only was the Governor invited, but also the European settlers and they were all prepared to meet Indians on equal social terms. If that spirit is continued, and I do not see why it should not, perhaps the whole problem will solve itself. But when Ministers of the Crown make such wild speeches which in one sense give false hopes to the European settlers and at the same time depress the Indian settlers, then the trouble arises. I want, Sir, that the Government of India should represent, as strongly as they possibly can, the matter. With all due apologies to the Honourable Member in charge, I must say that the telegram which was sent after the Resolution in the Assembly was more of an apologetic nature, and it looked as if the Government of India were trying to find some excuse for listening to that debate. That is not at all what I want. I want the Government of India to adopt a tone, not a mandatory tone, of firmness and tell the Secretary of State and through him the Cabinet and the Secretary of State for the Colonies that Indians will not rest satisfied till they get all the rights for which promises have been given. In my Resolution I want the Governor General in Council to communicate to the Right Honourable the Secretary of State the strong feeling of resentment in India. No one who has read any Indian paper or even sober and moderate English papers like the 'Times of India' will fail to realise that there is a strong feeling of resentment in the country. I believe the resentment is not confined to my countrymen. I think it must also be in the minds of many Englishmen who view this question impartially. It appears, moreover, that two important bodies, the Indian Merchants Chamber and Bureau and the Imperial Indian Citizenship Association have sent wires to the Prime Minister and the Secretary of State. They appeared in the Indian papers and I do not want to read them again. That would show the strength and the bitterness of the feeling in the minds of my

countrymen here. As a result of this Mr. Andrews who has been to East Africa, who has seen the country and knows the people, has actually advised the Indians in East Africa to reject the interim proposals. We wired to them some months back that it will be better for them to accept the interim proposals, of course taking it for granted that they do not give up the right of fighting for other rights. They are reasonable men. I want to show to the House how very reasonable they were. Although they had made up their minds not to accept the interim proposals, on the advice of the Government of India and on our advice they accepted these proposals. But after the speech of the Right Honourable Winston Churchill they are not going to accept them. I have received a letter and with your permission I shall read a portion:—

'We have received to-day very much depressing news as regards the Indian policy in Kenya which has been announced by Mr. Churchill at the East African dinner. You must have heard about it also. The position is really critical, nay, dangerous, and we have received information from our delegation in London to the effect that they are trying hard to stop confirmation of this announcement by the Cabinet. We are, however, of the opinion that Mr. Churchill will win the day and Mr. Montagu will be unable to stand or get the majority in his favour in the Cabinet.'

How much they were justified in coming to that decision one cannot say, but this is the information which they have received from their representatives in England. Their representatives have not been idle. Their deputation there has forwarded to Mr. Churchill a strong protest. When I say in my Resolution that there is a strong feeling of resentment in this country and Council, I am merely stating the facts. It may be said that this is not a general resentment in the minds of the people in East Africa and that it is due to political agitation here. I have got here a letter an extract from which I just read to show that this is not due either to the non-co-operation movement or to the political agitation in the country, but that it is due to the genuine feeling in that country. It appears that the Right Honourable Winston Churchill's proposal about the amalgamation of the various divisions of East Africa including the mandatory territories of Tanganyika is likely to fructify soon, because Europeans there have asked for reservation of certain lands and my countrymen there have sent a telegram to the Governor of Tanganyika objecting to any reservation. This is the telegram sent by the General Secretary to the Congress to Sir E. H. Byatt, Governor of Tanganyika:

'Strongly protest against settlers petition reservation of Arusha Highlands for Europeans. Trust your Excellency would not listen.'

The remarks about amalgamation of all parts of East Africa were perhaps made by the Secretary of State for the Colonies to find out how far he could go in this matter. He said in his second speech that he had not consulted the Cabinet and the Right Honourable the Secretary of State for India said the same thing. To tell the truth, I myself was not satisfied with what the Secretary of State for India said. We expected him to stand out for the rights of the Indians. What does he say? He says that he is hopeful to see that the proposals will be modified. Can he not go a step further and say that India will stand by her rights? He merely said that he devoutly hoped that some way would be found of accommodating the views of Mr. Winston Churchill to the policy announced by the Government. That means a compromise, but we do not want a compromise, Sir. We want to stand by our rights; we want to assist our brethren who have gone there as much as we possibly can. It is a debt that we owe to the people who have gone there and who are now suffering innumerable difficulties. Some of us probably do not realise the trouble that they are put to.

[Mr. Lalubhai Samaldas.]

I now come to Mr. Churchill's second speech. Were it not for the unreasoning attitude he has adopted throughout in this matter, I would not have referred to his second speech which one Indian paper calls as 'unrepentant'. He is not still seeing that he has made a mistake. He still thinks that he will be able to bring round the Secretary of State for India to his point of view. It is rather strange, Sir, that these views should come from a Minister who, when he went to East Africa in 1907, recognised the good work that the Indians had done there. In his second speech, Sir, another addition has been made by Earl of Winterton about the third party to the contract meaning thereby the Natives. I ask, Sir, whether Lord Elgin, Lord Milner or the Right Honourable Winston Churchill had been at all careful regarding the interests of the Natives of that place in giving away the lands on the Highland to European settlers, at a low price and now to talk of the Indians coming there and taking precedence over the Englishmen or the Natives is, I think, the worst possible thing that a Minister of his position can do.

Sir, I shall now refer only to two small extracts. In 1918 at the Imperial War Conference, Sir S. P. (now the Right Honourable Lord) Sinha quoted from my late lamented friend, Mr. Gokhale.

The late Mr. Gokhale was speaking to the European community in Pretoria, and I now make the same appeal to the British Cabinet in England.

Mr. Gokhale said :

'You have all the power, and yours, therefore, is the responsibility for the manner in which the affairs of this land are administered. You owe it to your good name, you owe it to your civilization, you owe it to the Empire of which you are a part and whose flag stands for opportunities, for progress for all who live under its protection, that your administration should be such that you can justify it in the eyes of the civilized world.'

That is a speech which I would commend to the Right Honourable Winston Churchill and to the British Cabinet.

I have only one word more, Sir, and I have done. It is not only we who desire that there should be unity, and it is not only the Dominions that desire for unity. I want to make it quite clear here that, whatever arrangements we have made or we may have to make with the Dominions, we have nothing to do with the Crown Colonies. They stand apart by themselves, and we have every right to expect the British Cabinet and the Secretary of State for the Colonies not to allow the Crown Colonies to be created into a Dominion.

Sir, in 1907, in reply to the address given to His Majesty the King-Emperor by the War Conference, His Majesty said :

'It is fitting also that I should here specially refer to the munificent gifts of money made towards the expenses of the War by the Government, Princes and Peoples of India. May this comradeship in the field, this community of suffering and sacrifice, draw together still closer than ever all parts of my Possessions establishing fresh bonds of union that will endure to our mutual advantage long after the War and its horrors have passed away.'

His Majesty does not of course exclude India. He could not have wished it. But now that the War has been won, are we to be treated once more as serfs and not as equals? I appeal to the Secretary of State through this Chamber, and through the Secretary of State, to the British Cabinet to see that the appeal made and the hope expressed by His Majesty the King-Emperor is justified and nothing is done to go against the wishes expressed

by His Majesty. With these words, Sir, I commend this Resolution to the Council.

The HONOURABLE MR. SETHNA: Sir, may I now be permitted to move the amendment of which I gave notice this morning?

The HONOURABLE THE PRESIDENT: No.

The HONOURABLE MR. SETHNA: If it is your ruling that we should not cover the same ground as was covered in the Simla debate, I shall try to adhere to it as closely as possible, though I understand it will be very difficult to lay down a correct line of demarcation. The Honourable Mover observed that very considerable resentment has been caused in this country by the very ill-advised speech of the Right Honourable Winston Churchill. Mr. Churchill has urged that the points he made out at that banquet must be considered as final. If they are to be treated as final, it means that Great Britain will have to go back on its pledged word. Great Britain, in accordance with the Resolution passed at the last Imperial Conference, has solemnly pledged herself to recognise the principle of equality for Indians. If, therefore, she now falters from that decision, it will be tantamount to an act of betrayal. We very often hear the talk of raising the Indian to equal partnership in the Empire, but when it comes to practising what is preached, we find that the reactionaries of the type of the Right Honourable Winston Churchill are prepared to lay down principles for the rigid exclusion and the cruel oppression of all Indians lawfully residing in a Colony where they had settled long before any British settler had proceeded there. Sir, Kenya is not a South African Dominion. Kenya is a Protectorate, and therefore if the British Government fails to enforce its pledged word in regard to a country which it governs, I am certain all right-thinking Englishmen will deplore the consequence thereof in a country like India, firstly, because British prestige will very considerably suffer, and secondly, because it will tend to aggravate, and aggravate greatly, the present discontent and disaffection that prevails in the land. In regard to this matter, we are indeed very grateful, nay more than grateful, to the Government of India as well as to the Secretary of State for the very bold and vigorous stand they have taken up, and I am sure the hands of Government here and at Home will be very greatly strengthened if my English non-official friends, none of whom I am sorry to find are present at this very moment, but I hope they will turn up, will not only support this Resolution by their votes, but also by their speeches, because if they do so they will go a long way to convince British statesmen at Home that Englishmen out here, because of their first-hand knowledge of the conditions in this country, do not approve of what has been said by Mr. Churchill and to admit the justice of our claims and recognise the intensity of the discontent which this has brought about. I understand, Sir, that much of the existing conditions in the Colonies prevail because of the majority of Indians who proceed there being what are called coolies. Perhaps conditions may alter as time goes on. But incidentally I would appeal to the Government of India to bring about a change in the direction themselves. I am tempted to quote from paragraph 89 of Lord Esher's report in which the recommendation is made as follows. This is in regard to the granting of land to soldiers who have come back from the war zone:

'We also recommend that the matter of grants of land abroad to deserving Indian officers and soldiers should be kept in view by the Government of India and that if, as seems possible, grants of land in British Guiana or East Africa are to be made to Indian settlers, any deputation sent to these, or other, countries to make inquiries should be accompanied by one or two selected Indian officers.'

[Mr. Sethna.]

I am aware Sir, that one such deputation has gone to Fiji and it is accompanied by an Indian officer, Lieutenant Hissam-ud-Din. I hope the result of his inquiries will enable the Government of India to send out a colony of desirable soldiers to Fiji and particularly to the places where there is so much trouble extended to Indians colonising. Any proposal, Sir, to colonisation as opposed to mere importation of labour will be adaptable in principle to any other colony as in Fiji, and I believe, Sir, that there is no better type of colonists for a tropical country than the Indian officer and soldier who is an agriculturist, and quite different from the coolie and petty trader who are the only types one has hitherto seen in these colonies. Therefore, Sir, if the Government of India itself takes a hand in the matter and sees that a better class of Indians do go, perhaps the solution of the difficulty will be much nearer than is the case at the present moment.

In conclusion, Sir, I would only like to say that what is puzzling us and what we cannot possibly understand, is the attitude of the Right Honourable Winston Churchill, to judge from the speech referred to by the Honourable Mover and to compare it with his own pronouncements, with his own writings, to which reference has been made on previous occasions, and in which he condemns, and condemns in the strongest language possible, the deliberate squeezing out of the native of India from the region in which he has established himself under every security of good faith. And he adds:

‘Most of all, we ask, is such a policy possible to the Government which bears away over 300 millions of our Indian Empire?’

This self-same Mr. Churchill to-day is a member of this self-same Government, and we appeal to him to recall what he said in the past and to adopt an attitude which will bring about a very happy solution of the existing difficulty and remove the contention that exists in connection with this question between India and the Empire.

4 P.M. The HONOURABLE RAJA SIR RAMPAL SINGH: Sir, I rise to associate myself with the Mover of the Resolution. How sad it is that under the dictates of the present day politics, pledges and promises are given only to be cast asunder when the time may suit and justice—pure and simple justice—is denied between man and man on racial grounds. Well, has the renowned Hindi poet Tulashi Das said ‘*Yadyapi jag darun dukh nana; sabse kathin jati apmana.*’ The purport of this couplet is that although there are great many sufferings in the world, the humiliation or the contemptuous treatment of one’s race or nation is the worst of all. Sir, it is the duty of this House to declare in unequivocal and emphatic terms that India shall not brook any differential treatment or inequality of status between Indians and Europeans either in India or abroad. I wonder how the Honourable Mr. Winston Churchill, a responsible minister of the Crown, thought it prudent and justifiable to say that the Highlands of Kenya shall remain reserved for the European settlers and the lowlands for the Indians. It was an after dinner speech and perhaps the Right Honourable Minister, in absent-mindedness, wanted to tickle the vanity of the whites in the colony without realising the seriousness of what he was uttering. It was Mr. Churchill himself who in his book ‘My African Journey’ has proved beyond a shadow of doubt that the Indians’ claim for equality of treatment is based on solid grounds and cannot in any manner be brushed aside by sophistry or agitation. We cannot be too grateful

to Lord Hardinge for the courage and earnestness with which he espoused the cause of the Indians in the colonies and it is gratifying that the Government of Lord Reading is dealing with the question with no less sympathy. The Right Honourable Secretary of State for India has given us assurance by his speech delivered a few days ago that the pronouncement made by the Colonial Secretary was not the decision of the British Cabinet but his own personal view, and that the solution of the question will not be arrived at without the full considerations of the claims of India. That will surely give solace and ease the agitated mind of India, but it should be impressed on the British Cabinet and the Parliament with all the emphasis that this House may command that the maintenance or the forging of racial bars will produce great resentment and indignation in this country and make it a still more congenial soil for the revolutionary ideas, that are being propagated to germinate and bear fruit, poisonous and disastrous to its best interest.

With these words, Sir, I support the Resolution.

The HONOURABLE DIWAN BAHADUR RAMABHADRA NAIDU: Sir, in according my hearty support to the Honourable Mr. Lalubhai Samaldas' Resolution, I shall confine myself to an observation or two. One would have expected that with the famous despatch of His Excellency Lord Hardinge, the Indian question in Africa, East or West, was on a fair way to solution. And with the conclusion of the Great War for the success of which India did her bit, the inequalities of treatment meted out to Indians in the colonies, should have naturally disappeared. On the other hand, persistent attempts are now being made to perpetuate those inequalities and the Imperial Government look on the antics of the Colonials with tolerance, if not with unconcern, on the extremely unconvincing plea that the self-governing dominions and the colonies must be allowed a fair latitude in making their own laws and regulations. We, Indians, can have no objection to a fair latitude being allowed.

Our objection is that the latitude allowed is altogether unfair. No colony or Dominion which owes allegiance to the British flag can be allowed to flout the elementary rights of British citizens to any class of His Majesty's subjects. It is this principle that must be insisted upon by the Imperial Government, but I fear Mr. Winston Churchill is quite oblivious of it and he would still segregate Indians from the white settlers, as if their neighbourhood would detract from the standard of civilization of the latter. Especially in East Africa such a differentiation of treatment can only be characterised as a glaring breach of promise. When our soldiers were fighting the Germans in East Africa and wresting it from them, repeated promises were held out that East Africa would be marked out for an Indian colony, and it was even whispered that it was going to be entrusted to an Indian High Commissioner and all the high officers under him would be Indians.

The HONOURABLE THE PRESIDENT: I do not wish to interrupt the Honourable Member; he is shying from my ruling, though from the manner in which he is delivering his speech, I recognise that he is in a difficult position.

The HONOURABLE DIWAN BAHADUR RAMABHADRA NAIDU: But the performances of the Colonials and of responsible British statesmen since the conclusion of the war have been in a totally different view and the climax was reached by Mr. Churchill's speech at the East African dinner. It is true that Mr. Montagu attempted a refutation of the sentiments of

[Diwan Bahadur Ramabhadra Naidu.]

the Colonial Secretary. But I fear that the Secretary of State for India will not be able to counteract this new move by Mr. Churchill, unless the Imperial Government as a body put their foot down on the attempt. I am ready to acknowledge gratefully the efforts of the Government of India and the Secretary of State to have bare justice done to the claims of Indians as British citizens. But even their united efforts will not avail much against the dead-set made by the Colonials to deprive Indians of what is only their due, unless the British Cabinet join hands with them and teach the colonials a sharp lesson. Resolutions in this Council and professions of good-will to Indians by British politicians are not going to help in the solution of what is called the Indian problem, unless the Imperial Government is made aware of the depth of resentment felt in India at the shabby treatment to which Indians are subjected in the colonies.

The HONOURABLE SIR DINSHAW WACHA: Sir, I am not going to travel over the same grounds which the other speakers have taken, but I generally agree with all that has fallen from my Honourable Friend, Mr. Lallubhai, and with what has been effectively said by Mr. Sethna. I wish, however, that this House will primarily bear in mind that a post-prandial speech by any Minister is not to be taken very seriously, and least of all, by a Minister of the erratic calibre of Mr. Winston Churchill. In fact, I have not taken this speech of his, this post-prandial speech of his, very seriously. I think it was Disraeli who once said (1880) of Lord Hartington that he was a man of 'sound sense', but there were other people in his time who talked nothing but 'earnest nonsense,' and I believe that Mr. Winston Churchill belongs to the latter species. When he was making that speech he was doing nothing more than uttering what Disraeli called 'earnest nonsense' as a Minister. The fact is this that he revels to be in limelight. Political opinions may differ as Lord Morley has observed. They are susceptible of adjustment, not so political temperament which is fundamental. It is fundamental and in the case of the South African trouble, particularly the Kenya trouble, it is a fact that they have been much more a question of political *temperament* than political opinion,—Political temperament in this way, that the White colonists, more or less, are like the Bengal and Bihar planters of the time of the Ilbert Bill, who always boasted that they were superior creatures, made of porcelain clay, whereas they were nothing of the kind. They were all made of the common clay of humanity and there is hardly any difference between the colonies and the Indians in Kenya. I consider, therefore, that Indians anywhere have to stand firm on the common ground of being all common clay and have to show their teeth in order to prove to these boastful white colonists that they are no better. When Indians thus conduct themselves they will bow and kiss them. That would be happening very soon in the case of our countrymen in Kenya. But having said so much I do say that I will not take Mr. Churchill too seriously. Whatever the facts may be, here is the Government of India who have time out of number determinedly taken up the cause of Indians in South Africa. They have formulated, and defined what status the Indians should have, namely, equality of status and other kindred privileges. I, therefore, strongly appeal to my Honourable Friends here to depend more upon the persistent representations of the Government of India than on the limelight harangue of Mr. Churchill. I do not believe that the Cabinet has still and finally decided the question, and I am very sceptic about the ultimatum Mr. Winston Churchill is reported to have announced in that speech to earn some ephemeral kudos from his dinner audience. Again, taking

into consideration that Lord Reading is our Viceroy who has over and over again said that he has come here to see stern justice done between man and man, between European and Indian, I consider that we can take his word as gospel and be fully confident that he will never allow this opportunity to pass but will do all in his power to see justice done to Indians in Kenya and fight out the cause with the Secretary of State in the manner that every Indian unit desires. Let us wish him success and hope that the Government of India will be successful and that we shall have cause to congratulate them. With these words I support the Resolution.

The HONOURABLE RAJA SIR HARNAM SINGH: Sir, the question of India's relation with other parts of the Empire has evoked a good deal of interest in recent years. The subject has produced an amount of bitterness which it is not happy to remember. The treatment meted out to the Indians in British Colonies is contrary to the principles of justice and fairplay which are characteristics of British politics. Serious complaints have been made from time to time of the indignities and oppressions to which the Indians have been subjected to in the Colonies.

The recent observations of Mr. Churchill are extremely unfair to the Indians in Kenya, although it is they who have toiled for generations to develop the country. They express a sentiment which is certainly inconsistent with racial equality within the Empire. They violate the Imperial Conference Resolution according to which Indians are supposed to have an equal status with other subjects of the Empire.

It is only natural, therefore, that we take exception to the views expressed by Mr. Churchill, and I take this opportunity to express the strong indignation that I with my fellow Indians feel.

With these few words I support the Resolution.

The HONOURABLE MR. V. G. KALE: I wish I could share the optimism of my revered leader, Sir Dinshaw Wacha, in the matter of this East African question. He has told us that we ought not to take Mr. Churchill very seriously. I know it has been said about Mr. Churchill that he is the spoilt child of the household of the British Cabinet, and therefore his antics and freaks must not be seriously considered. However, I think in this question there is much more than what we see in the words used by Mr. Churchill. We know what is the agitation that is being carried on against Indians in East Africa, and consequently the words of Mr. Churchill convey to us what is likely to happen if we do not stand by our rights and refuse any compromise that will be opposed to our self-respect and our natural rights. The Government of India, we are all aware, is constitutionally subordinate to the British Cabinet and Parliament. Unless the Government of India, therefore, makes it clear to the British Cabinet that it will be impossible in any way to reconcile public opinion in this country to the formula of a compromise and unless they say that it will be impossible for them to carry on in this country, unless and until the legitimate claims of Indians are satisfied, I do not think that a strong impression will be created upon the Cabinet and generally upon the British public. What the British Parliament and the British public are told by the white settlers in East Africa is that the word of the British Cabinet is pledged, pledged in favour of Europeans and against Indians. Supposing for a moment that there is such a pledge, which I dispute, the British public has to decide whether they will keep

[Mr. V. G. Kale.]

their pledge given to Indians or will sacrifice it in favour of the European settlers in East Africa. The Right Honourable Mr. Sastri said, the other day, that it is a question of a test. It is, Sir, a question of a test for Indians as well as for the British Cabinet. We have been told that Indians have been placed upon a footing of equality in the Empire. Now the time has come to test the sincerity of that declaration, and if the British Cabinet is not resolute enough to stand against the demand that has been made by Europeans in East Africa, then it will be very difficult for the Government and for those who are co-operating with them to allay public feeling in this country. It may be that the British Parliament and the British Cabinet do not realise the depth and the strength of the feeling that exists in this country on this question. In fact, the very civilisation and the rights of citizenship of the Indians in the British Empire are called in question. It is said that if Indians are allowed to live in East Africa in large numbers and in the enjoyment of civil and political rights, Western civilisation would be swamped. India cannot allow this line of argument to be taken up against its own civilisation and legitimate rights, and consequently the Government of India should make a very strong representation, that is the only thing they can do, to the British Cabinet and point out how deeply wounded Indian feeling has been by the speech of Mr. Winston Churchill. They should stand to the last by the Indian public and then and then only will a strong impression be created upon the mind of the British Parliament. With these words, I support the Resolution.

The HONOURABLE RAJA PROMADA NATH ROY OF DIGHPATIA: Sir, I beg to associate myself with the remarks made by the Honourable Mover of this Resolution. I cannot too strongly condemn the speech of the Right Honourable the Secretary of State for the Colonies, even though it was a post-prandial speech. To say the least it is very unfortunate that a responsible Minister of the Crown like him should have said things even in a post-prandial speech, calculated to wound the feelings of Indians, especially at a time like this. It only showed that he went back on his own words and had little respect for the Resolution that was passed at the last Imperial Conference regarding the status of Indians. With these words, I support the Resolution.

The HONOURABLE MR. G. S. KHAPARDE: It appears to me that this is largely a question of interpretation. We have got a proverb, and I suppose it is an English proverb too,—‘all is fair in love and war.’ That is one rule of interpretation. A man under certain circumstances may say anything, but you should not take him at his word strictly. Then there is another rule of interpretation and that is, that the promises of politicians have to be taken with a grain of salt. Then there is a third rule also which says that pledges partake of the nature of contract and that pledges are things which can never be violated and so on. When this matter came up in September last, I endeavoured to point out that we are what I then called members of a joint Hindu family. Since then I thought over the matter, and I think we are members not of a joint family, but of a reunited family, that is to say, in English terms, we are not strictly speaking coparcenary but we are tenants in common of the whole British Empire. We are like tenants in common living in one place and have therefore certain amenities and certain things to be done to make it possible for everybody to live peacefully. My friends who depend upon the words and pledges and introduce into the matter the law of contract and who talk

of peace and war introduce a common element of humanity. A man when fighting and loving may say a number of things and you should not hold him to it strictly. Then comes the word of the politician. I am sorry it is late in the evening and there is no time to develop it any further, but on this occasion I can develop it to this extent—that we must take so many things into consideration, that we are tenants in common, that we are brethren rather than brothers, and also that these pledges were given under certain circumstances. That leads me to the consideration that the Right Honourable Winston Churchill made a speech on a particular occasion and that occasion was after dinner and people after dinner generally say things which I suppose they do not mean to be taken seriously. Taking everything together the Government of India have taken the only step that was possible to take, namely, that they have been fighting from the days of Lord Hardinge to the present day tooth and nail and as strongly as they can to represent our point of view. This matter was also discussed at another place, and since then the Government of India have telegraphed the whole of the Resolution which was passed on that occasion, and I have no doubt that in the covering letter they have made their recommendations in much stronger language, because they command higher position. Taking everything together, the question is what rule of interpretation are we to adopt? I personally belong to an older generation and I have some superstition and that superstition is this—that when you are in great doubt about anything and you are deeply considering what is going to happen and what is not going to happen, sometimes even a stray word spoken by a third person with reference to a different subject serves as an omen. The site of Rome was selected in this way by the flight of Vultures. Then again some people were going out discussing where the palladium could be built. They did not know what to do, and they were considering various sites just as we were considering the sites at Delhi some time ago. Some people were passing by and one of them said, 'look here, this is the best site.' They were only people who were passing by and who had nothing to do with the palladium to be built, but the people who were discussing where the palladium could be built took it as a good omen, and built the big temple on that spot. May not something of that sort happen now? We are now considering seriously not only our own rights, but the rights of people residing in other Colonies also about which I have a Resolution which will come later on. But in the meantime there is the speech made by the Right Honourable Winston Churchill. I quite admit that it was made in the genial atmosphere of a Banquet Hall. We do not want to take it as an omen. We have been of course assured by the Secretary of State, as is usually done on occasions of that kind, not by direct negation but by insinuation, that it is not the decision of the Cabinet, but it is the view of a particular person, and ultimately it has come back to the solution that it will be reconciled with all the aspirations of the Indians. It is with this last portion that I wish to associate myself. I hope the solution will be consistent with our aspirations, but if it does not turn out like that, then we shall have to choose from one of the various sources which I have quoted, namely, whether it was a compromise made in love or in war or was it a stray word merely uttered and it has been taken up by the Empire. That will be the test, the crucial test, the acid test. I do not like to call it an acid test, because there is acidity in it. I like to believe that all those things that were said by the Secretary of State are true, that we are brothers, we belong to the same stock though we live differently. We are brought together by Providence, and I hope Providence will so incline

[Mr. G. S. Khaparde.]

persons who have a voice in this matter and whose voice carries weight, to decide this matter entirely in consonance with our aspirations. With these words, Sir, I heartily support the Resolution brought forward by my Honourable Friend Mr. Lalubhai Samaldas.

The HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: Sir, the recent speech of the Right Honourable Winston Churchill has added insult to injury to Indians and comes as a death-blow to their aspirations in the Colonies. Sir, Indians in India and the Colonies feel extremely offended. In Article 14 of the London Convention of 1884 full rights of citizenship were given to Indians. They were being equitably treated, and their rights were equal to the rights of other foreigners. In 1885 Republicans wanted to take away these rights . . .

The HONOURABLE THE PRESIDENT: I may point out to the Honourable Member that we are not here to re-argue the Resolution which we discussed in September. Therefore he must not give a history of the previous events in the Kenya Colony.

The HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: As I have been ruled out by the Chair from stating the arguments which have produced so much discontent among Indians, I shall not state them. But I cannot refrain from expressing our deep gratitude to the Government of India for their strong and persistent support in this matter. They have been fighting our cause for years now, and even if they now fail, notwithstanding their strong advocacy in the right cause, the people of India expect that they ought to resign in a body as a constitutional protest. The British Government has established by winning the great War that Right is Might and not that Might is Right.

The HONOURABLE MR. B. N. SARMA: Sir, if I did not rise to answer the Resolution earlier, it was to enable the Members to express freely their opinions on a subject on which there seems to be such strong feeling in the Council and outside it in the country. There is so very little of difference between the Government of India and the attitude taken up by the Members here, that I shall not be justified in detaining the Council for more than a few minutes. If I trespass upon your patience for a little while longer, it is because there are one or two issues which have been introduced into the question by Mr. Churchill or by the Colonial Office which require an explanation of the position of the Government of India. I am glad, and I am thankful to the Members of this Council that they appreciate what is being done by the Government of India. I have no hesitation in saying on behalf of the Government that the attitude which has been taken up by Lord Hardinge, Lord Chelmsford, Lord Reading and by the Government of India in their Despatch published last year and in their Resolution published on the 5th October last and which has been appreciated by every one in this country, is the correct attitude and they stand by every one of the principles enunciated therein as regards the position of the Government of India with regard to the Kenya question. They do not wish that there should be any departure either in spirit or in word from the main conclusions formulated in those documents. A question has been put to me by the Honourable Mr. Lalubhai Samaldas as to what has been done with reference to the Resolution passed by the Council of State last September. I may inform him that we communicated our views to the Secretary of State as regards

that Resolution, and we intimated to him clearly that any departure from the principles advocated by the Government of India and on which insistence was laid by the Members of the Council of State would be looked upon by the country as a grave departure from the principles for which the British Government has been fighting hitherto. That ought to satisfy, I think, Honourable Members that the Government has acted duly and promptly in representing the unanimous voice of this Council to the proper authorities for action being taken thereon. Nor have we been idle on this subject after Reuter cabled to us the substance of Mr. Churchill's speech which appears in a clearer form in the 'Times' which was received here a few days ago. We cabled to the Secretary of State that we were disagreeably surprised, pained and disappointed that such an attitude should have been taken up by Mr. Winston Churchill, and Mr. Montagu has informed the general public already that the views that were expressed by Mr. Churchill may be the views of the Colonial Office, but did not express the decisions of the Cabinet. We have no reason, therefore, to despair or to abandon hope that the views which have been formulated by the Government of India would not ultimately be accepted by the British Cabinet and the British Parliament. Since the date of the Council's September Resolution, the Colonial Office's attitude has brought into prominence only two points to which I shall refer. Those are the questions as to the future immigration policy of Kenya and as to the reservation of the Highlands for the Europeans. It is rather difficult to read a clear meaning into the statement of policy which has been made, but there is no doubt that the Colonial Office desire to impose some restrictions upon the free migration of Indians into Kenya. It is upon the following passage that reliance may be made in favour of that interpretation:

'We consider that the interests of British settlers and the native population alike require that all future immigration of Indians shall be strictly regulated and that the same principle of equal rights and conditions for all civilised men shall rule in respect of the immigration laws as in all others. We recognise that the laws relating to immigration and the administration of those laws more than almost any other matter must be a subject of the closest consultation between the official Government and the existing residents in the country.'

And then lower down, there are some other remarks which seem to throw some doubt as to the policy which the Colonial Office means to adopt on this question. The attitude of the Government of India may be described to be one of substantial agreement with what the Honourable Mr. Lalubhai Samaldas has asked that it should be on this subject. They feel that there is no necessity under existing circumstances for imposing any further restrictions upon the free emigration of Indians to East Africa. The existing restrictions are embodied in Ordinance No. 17 of 1906, and they are of a general character. The prohibited immigrant is a person without visible means of support or any person who is likely to become a pauper or a public charge or an undesirable person as described therein. Clause 11 gives an explanation as to why a deposit is required:

'Any person appearing to be a prohibited immigrant within the meaning of section 5 of this Ordinance, and not coming within the meaning of any other sub-section (that is, dealing with undesirable emigrants, sub-sections (b), (c), (d), (e), and (f)) may be allowed to enter the Protectorate upon the following conditions:

'He shall, before landing, deposit with the Immigration Officer, if a native of Asia or Africa, the sum of Rs. 50; any other person a sum of Rs. 375.'

Originally, it was intended that the sum should be Rs. 750. We take it that the object of the deposit is to repatriate any person who has no means

[Mr. B. N. Sarma.]

of support and who may become a public charge, and inasmuch as the cost of repatriation in the case of an Asiatic—Indian is included in the term Asiatic—may not have exceeded Rs. 50 at that time, the amount was fixed at Rs. 50. The Government of India until recently fought for the right of free emigration of Indians, and their settlement in other parts of the British Empire. They stuck to that position notwithstanding the grave inconveniences which were being caused by the adoption of that policy and made a departure therefrom in deference to the wishes of the Self-Governing Dominions for the sake of harmony, for the sake of promoting the solidarity of the Empire, and of securing the equality of status and free citizenship of Indians lawfully residing in the Self-Governing Dominions when once the fear that those Colonies may be swamped by the entry of numerous immigrants from India was removed. The Government of India has agreed to that, and the Resolutions of the Imperial Cabinet and Conferences have given effect to that departure of policy on the part of the Government of India. The Government of India do not mean to go back upon that policy, but may justifiably look to the fulfilment on the part of what I may put it as the other contracting party to fulfil the promises—I need not say promises, the hopes and expectations that were aroused then. But with regard to the Crown Colonies and Protectorates and British Possessions, the old policy under which the Indians could migrate and freely settle down in any part of His Majesty's Dominions still remains unaffected, and Lord Chelmsford has therefore taken a firm stand in declining to be a party to the rights of Indians being frittered away for any reason whatsoever, and has insisted upon equal rights for all His Majesty's Indian subjects along with the rest of the subjects of the British Empire, and Lord Reading has adhered to the same view. Now, the question arises as to why this question of restriction should come up now. Fears have been expressed in India that the object of these restrictions is to prevent Indians from migrating freely into East Africa. I do not think it would be justifiable to read such an uncharitable meaning into Mr. Churchill's pronouncement. His view seems to be that inasmuch as it is desirable in the interests of the present settlers including Indians, natives of Africa and Europeans, that the future migration should consist only of persons cultured, civilised and well-to-do, it is desirable that there should be some limitations prescribed therefor. *Prima facie*, it looks as if no one can quarrel with a proposition of that kind. But I would suggest that there is no reason whatsoever to depart from the existing policy under which there is a right to free movement throughout the Empire barring self-governing Dominions of all classes of His Majesty's subjects. That would be misinterpreted and as Mr. Lalubhai Samaldas has put it, the imposition of a knowledge of English or other European language would effectually debar the entry of merchants, artisans and other persons who may wish to migrate or may be needed for the development of Africa, or *bona fide* agriculturists who may be required for the improvement of East Africa in the interests of Africa herself, and consequently care would have to be taken in formulating an immigration policy. I shall just quote one sentence from Lord Milner's Despatch to show that Mr. Churchill could not have had in his mind any wide departure from the policy recently formulated by Lord Milner on this subject.

'As regards Indian immigration into East Africa I cannot countenance any restrictions which would place the natives of India at a disadvantage as compared with other immigrants, and subject to the Protection Immigration Ordinances which are of a general application there must be no bar to the immigration of Indians.'

That has been the policy of His Majesty's Government, and I am quite confident that, when the inconvenience and the grave injustice that will be caused to Indians if there should be a departure in policy are pointed out to Mr. Churchill and to the British Cabinet, none would be permitted.

The only other subject, and that I may dispose of in a few words, is with reference to the Highlands. Mr. Churchill's pronouncement with regard to the Highlands is of a very general character. The Colonial Office seems to have come to a decision that the Highlands should be reserved for the Europeans. The Government of India has already pointed out that a reservation in practice does already obtain and has obtained for some time past, and consequently the question does not arise for a solution in that form. Therefore, attention has been concentrated upon the question of transfer, and here again it is difficult to believe that the previous policy of His Majesty's Government can be construed as having given any pledge to anybody that there would be a disallowance of transfer to Indians. In a Despatch which was published in 1908 by the British Government it is stated:

'It is not in consonance with the view of His Majesty's Government to impose legal restrictions upon any particular section of the community.'

As a matter of administrative convenience it was decided that the Highlands should be reserved only for the Britishers and we need not now go into that question. But I think I can define the position of the Government of India and of the Indian public alike to be that the Indians are not asking for too much if they ask for freedom of contract, and I am not quite sure as to whether the British settlers like some of the ancient Hindus are not doing something gravely imperilling their own future in asking for protection of this type.

The Government of India has been found fault with by Mr. Samaldas for being apologetic in their tone in communicating the Assembly's Resolution to the Secretary of State. I must take exception to that remark. I know that in certain quarters nothing that the Government of India may do or has done can be rightly construed. . . .

The HONOURABLE MR. LALUBHAI SAMALDAS: I do not belong to that school.

The HONOURABLE MR. B. N. SARMA: I am glad to hear that. When I asked the Assembly to be a little patient and that they should not look upon the solution of one item of a problem, however important in itself it may be,—against the Indians as a test of sincerity—I was found fault with as giving the case of the Indians away. Words have been attributed to me which I have never uttered, and I repudiate on behalf of the Government any charge that they have ever weakened in their advocacy of the Indian people's rights in this struggle, if struggle it may be called, of the two views, the view which at present seems to be favoured by the Colonial Office and the view for which the Government of India and Mr. Montagu are fighting. I think my Honourable Friend, has alluded, just as was done in the Assembly, to the fact that the Indian community has done a great deal and deserved better. I deprecated on the last occasion any reference to comparisons as to what the British and the Indian public have done for the benefit of East Africa, and I still adhere to my recommendation that there should be no question of twitting the British that the Indians have done more and therefore deserved better treatment at the hands of the Parliament or the British public. That is an attitude which I firmly deprecate, but in

[Mr. B. N. Sarma.]

deprecating that attitude I am not abandoning the case of the Indians, nor has the Colonial Office at any rate at one time abandoned it. In a letter (published) to the Governor of East Africa Colonel Montgomery pleads the case of the Indians much more strongly than any of us could have done. He puts it thus :

‘Indians have been in this country notably in the (Sultan’s Dominions) for many generations and came long before the Europeans came. The really greatest factor in the development of the country was the Indian labour. But for such labour it would never have been constructed at all. The main trade and wealth of the country is in the hands of Indians. Finally, Indians are British subjects.’

I am sure, therefore, that the traditions of the Colonial Officers and of the Colonial Office would rise to the occasion and would do justice to Indians. I would, therefore, request this Council just as I have requested the Members of the Assembly to be patient, not to lose courage and hope and not to be easily discomfited. It may be that the Government of India or the India Office would have to give in on one or two points, not of substance or principle, but on questions on which having regard to the strong prejudices and passions on both sides and the expectations which a long course of conduct has raised in the minds of the European settlers, a compromise may have to be effected. An Empire consisting of numerous divisions, of such vast dimensions and with a variety of peoples must enter into a compromise

The HONOURABLE MR. LALUBHAI SAMALDAS: Not on principles.

The HONOURABLE MR. B. N. SARMA: Not on essential principles, that would be immoral and suicidal. But some adjustments would have to be made in order that the solidarity of the Empire may not be imperilled, that all views may be reconciled and that there may be harmony and peace. I, therefore, hope that this Council will recommend to the people whom they so well represent not to lose courage, not to be disheartened, but to rest content in the firm conviction that Great Britain never can or will do consciously any injustice.

The HONOURABLE COLONEL SIR UMAR HAYAT KHAN: Nobody could have done better than my friend, the Honourable Mr. Samaldas, to bring this Resolution before the Council. I think it would have been even better if the House had adjourned that day because that would have shown how Indians felt on this question. We are all brothers, but it looks to me that the rule of primogeniture is being followed. But, Sir, the Government of India has done all that it could, and I think that is all that they can do. But the difficulty is that people say that the Right Honourable Winston Churchill said things after dinner. I think sometimes after dinner one says what one has got in his mind. Seeing a settler in Kenya, I was told that people in Kenya were very much against Indians, and I think that, unless a real big struggle is made by the Government of India, I do not think we will gain much by simple representation. . . .

The HONOURABLE MR. B. N. SARMA: You may adopt a policy of non-co-operation.

The HONOURABLE COLONEL SIR UMAR HAYAT KHAN: Not non-co-operation but strong co-operation. I hope that the Government will put these things more strongly than has been done.

The HONOURABLE MR. LALUBHAI SAMALDAS: Sir, I shall not take more than two or three minutes as it is getting late. I have got 5 P.M. to make a personal explanation in regard to what was said by the Honourable Mr. Sarma about the phrase 'apologetic.' When I read the telegram sent to the Secretary of State it looked to me as if it was an apology, saying that the Government of India was doing all it can to put the difficulties in the way of the Imperial Government, before the Assembly. The words used are these:

'The Resolution as moved was couched in stronger terms but was modified at the suggestion of the Government of India who did not fail to emphasise the difficulties confronting the Imperial Government.'

I do not think it was absolutely necessary to put this before the Secretary of State. It shows as if the Government wanted to defend the action of the Right Honourable Winston Churchill and not to condemn it as we want it to be condemned.

The HONOURABLE MR. B. N. SARMA: It says that notwithstanding all that the Government had to agree to the people's wishes and adopted their Resolution.

The HONOURABLE MR. LALUBHAI SAMALDAS: I think there has been another misunderstanding on the part of the Honourable Mr. Sarma. I never referred to the work done by the Indians. I could not do it because the Honourable the President had ruled that I should not refer to what had happened in the last Session. I am sorry that Sir Dinshaw Wacha is not here, but my friend, Mr. Khaparde, said the same thing, namely, that we need not attach much importance to a post-prandial speech. It was not a post-prandial speech in the sense that it was a speech delivered after dinner. It was a speech specially got up by the East African delegates, and I do not think it was a speech that was delivered when the Right Honourable the Colonial Secretary was under the effects of a stimulant. His speech shows that he was in a mood of anger at Asiatics asking for self-determination. He says:

'The discontented elements in African and Asiatic countries seemed to think that they had only to express a wish that Great Britain should lay down the government and Great Britain would comply.'

Nobody has asked Great Britain to lay down the government. Nobody in this Chamber or in the other Chamber or in the moderate section of the country has ever asked Great Britain to lay down the government either in India or in East Africa. The whole speech is as the 'Times of India' pointed out in an Ercles' vein. If the second speech had been more conciliatory, we might perhaps have thought that the first speech was a post-prandial speech. The second speech is equally bad, and that is why I had to lay so much stress on it. The Honourable Mr. Sarma said that they had cabled to England after the September Resolution was carried. If Government was really fighting for us, why should they hide their light under their bushel? They have a Publicity Bureau. Why don't they use it and publish the facts, so that they may stand well with the thinking part of the Indian population? The Honourable Mr. Sarma said that the question of transfer of lands on the Highland would be very carefully considered. In that connection I would like to state one fact. I was told by a gentleman who is an authority in East Africa, that some Europeans there said that if a referendum of European settlers were taken by ballot, the majority will vote for free transfer because they can get more money from Indian traders and merchants.

[Mr. Lalubhai Samaldas.]

I am very thankful to all the Members who have supported me and to Government also for having given me a special day for this Resolution. One word more. The suggestion was made by the Honourable Lala Ram Saran Das that Government should resign. This suggestion has been made by Mr. Andrews also. I do not know whether Members have seen it. It has been said that the Viceroy and the Secretary of State and the three Indian Members of the Executive Council should resign if their recommendations are not accepted. I do not want the Government of India to resign now. I have faith in the strength of my conviction, I have faith in the strength of my countrymen. The Government of India are with us, and I am prepared to say that there is still in me faith in British justice. Therefore, I want this Resolution to be accepted unanimously by the Council and that it should be strongly supported by the Government of India, and if I may quote a precedent, as boldly as Lord Hardinge did in his Madras speech.

THE HONOURABLE THE PRESIDENT: The question is that the first part of the following Resolution be accepted.

'This Council recommends to the Governor General in Council that he should communicate to the Right Honourable the Secretary of State for India the strong feeling of resentment aroused in this Council and in the country generally by the speech of the Right Honourable Winston Churchill delivered at the East African dinner in London.'

The motion was adopted.

THE INDIAN EMIGRATION BILL.

THE HONOURABLE MR. B. N. SARMA: Sir, I beg to move:

'That the Bill to amend the law relating to emigration, as passed by the Legislative Assembly, be taken into consideration.'

At this late hour I shall not take up the time of the Council with any long preface. The Bill has been circulated to Honourable Members. It was introduced last year into the Legislative Assembly, was referred to a Select Committee and it was passed by the Legislative Assembly practically without any amendment whatsoever. The Bill has been before the public for over a year and seems to have been received with satisfaction. The Government of India decided many years ago that they would be no parties whatsoever to the continuance of indentured emigration as it obtained for many years past. During the War the Defence of India Act and the Rules framed thereunder were utilised for the purpose of prohibiting the indentured emigration of Indians into the remaining countries of the world. Those rules will soon cease to be operative, and the Government of India felt that the time had come when a revision of the Act of 1908 would have to be taken up and a departure might be made in essential particulars especially in the direction of associating the Members of the Legislative Assembly and the Council of State in formulating the emigration policy of the Government in the future. The Government have been acting upon the principle that ordinarily no emigration shall be permitted to countries where the Indian community is not given the same rights and privileges and status as His Majesty's British subjects. It was on the condition that no such differentiation would be made that two deputations were allowed to go to British Guiana and Fiji to investigate as to whether those British possessions were suitable for Indian

settlement. I may state that the policy which the Government has adopted has had very beneficial results inasmuch as the penal provisions hitherto obtaining in the Statutes, Laws and Regulations in the various Colonies have been or are being repealed. But an Emigration Law is still necessary. An Emigration Law has been on the Statute-book for nearly a century, and it is absolutely necessary in the interests of ignorant workmen, and of ignorant rustics, to provide safeguards for their benefit, and hence the need of an emigration law especially in a country like India. I need not dilate upon the necessity for an Emigration Law further. I shall only allude to three or more prominent features of this piece of legislation. I have alluded to the fact that the Government have resolved upon taking the Legislative Councils into their complete confidence in regulating their future emigration policy. Therefore, clause 10 has been introduced into the Bill under which no emigration would be possible to any country in the case of unskilled workmen except on a Resolution passed by the two Houses. I need hardly say that it is a very wide departure from the existing practice, and that is a departure which has been taken, because the Government have nothing to conceal, there is no reason as to why their policy should depart in any respect whatsoever from what may be dictated by the will of the people as expressed in these two Legislative bodies, especially in the case of unskilled workmen with regard to whom alone protection is really necessary. I may also inform Honourable Members that the Government propose to appoint an Advisory Board from amongst the members of both the Houses, subject to such rules as may be framed from time to time to help the Government in formulating a policy and possibly to furnish assistance by way of advice in the administration of such matters as may be referred to them. This Bill does not deal with free emigration. It does not impose any restriction whatsoever upon a free emigrant. Any person is free to migrate to any country he pleases, so long as he does so without entering into any contract to labour for hire in the manner referred to in detail in the various provisions of the Bill or unassisted as defined therein. The Bill provides safeguards for the treatment of unskilled workmen and skilled workmen also who may enter into engagements to work for hire, and the restrictions have to be a little more rigorous in the case of unskilled workmen than in the case of skilled workmen. So separate provisions have been made in dealing with these two classes. The Government propose to take power for the appointment of advisory bodies in the various provinces to help the Protectors of Emigrants in the practical administration of the emigration policy of the Government. I think Honourable Members will welcome this provision. They wish also, with the consent of the States to which emigration is permitted, to appoint agents to protect the interests of emigrants, to interpret their wishes to the Governments concerned, and to be a first-hand source of information to the Government of India on the subject. That is the reason why power has been taken to appoint agents. Power has been taken to frame rules which may have to be modified from time to time for the purpose of carrying out the provisions of the Act. I do not think that at this stage I need take up the time of the Council further beyond expressing the hope that this piece of legislation will be highly beneficent, would remove any grievance that may hitherto have been felt that the Government has not taken the people into their confidence on this vital and important subject, and would bring about harmony between the people and the Government, while promoting at the same time the safety,

[Mr. B. N. Sarma.]

comfort and well-being of the poor ignorant population who may have to go abroad in search of a livelihood.

The HONOURABLE KHAN BAHADUR AHMEDTHAMBY MARICAIR: Sir, I welcome this Bill. Emigration from India is absolutely necessary. India has got such an overwhelming number of labourers that there is not sufficient work for all the labourers. Unless emigration is allowed, the labouring class will find great difficulty in maintaining themselves. Any restriction imposed upon emigration will no doubt bring a hardship on these coolies, as India cannot afford to feed them.

(At this stage the Honourable Sir Alexander Murray took the Chair).

Of course emigration to places where Indians are not well treated no doubt should be prohibited. On looking into this Bill I find that every protection and safeguard has been provided to Indians going from here and working on the other side. From what I heard from the Honourable Member in charge of the Bill, I understood that this Bill does not apply to the free emigrants that are going freely to some countries. May I know, Sir, whether it is not intended to apply to Ceylon and the Straits Settlements and the Federated Malay States? I see that section 32 says:

‘Notwithstanding anything contained in this Act, the provisions of this Act shall not apply for a period of 12 months from the date of the commencement of this Act to persons emigrating to Ceylon, the Straits Settlements, or any protected Native State adjoining the Straits Settlements.’

That means, Sir, that after 12 months this Act will apply. . . .

The HONOURABLE MR. B. N. SARMA: This Act will not affect free emigration. It will come into force only in respect of aided emigration.

The HONOURABLE KHAN BAHADUR AHMEDTHAMBY MARICAIR: The Straits Settlements, Ceylon, and other places are absolutely free. As it stands at present, emigration to these Colonies is not on the indentured system. They are going on the free system. So it won't affect them

The HONOURABLE MR. B. N. SARMA: I am not quite so sure whether the present system does not come within the purview of this Act. If people are being assisted to go from India to the Straits Settlements and Ceylon, or if they enter into engagements to work there for hire and bring themselves within the provisions of this Act, then the Act would apply. But if they freely emigrate of their own will and with their own means, without entering into contracts to labour for hire, then the Act does not affect them.

The HONOURABLE KHAN BAHADUR AHMEDTHAMBY MARICAIR: The present system with regard to these two places, namely, Ceylon and the Straits Settlements, is that they go freely. No contract or agreement is taken in India as to their working there. They are free from debts. They are allowed to go free. As long as the Honourable Member says that the Bill is not intended to apply to these two Colonies. . . .

The HONOURABLE MR. B. N. SARMA: I do not say that.

The HONOURABLE KHAN BAHADUR AHMEDTHAMBY MARICAIR: Provided they are shipped under the indenture system.

The HONOURABLE MR. B. N. SARMA: Yes.

The HONOURABLE KHAN BAHADUR AHMEDTHAMBY MARICAIR: I welcome this Bill, Sir.

The HONOURABLE MR. LALUBHAI SAMALDAS: Sir, I rise to welcome this Bill, because it is laying in the grave the dead indentured emigration system. That is the chief reason why I welcome this Bill. The second reason is, that the Government of India have perhaps for the first time decided to take both the Houses of Legislature into their confidence at the time of preparing the rules for deciding to which countries emigration will be allowed. It may be that the procedure may be complicated, but it shows the *bona fides* of the Government in the matter. It has been suggested, Sir, that both the Houses, and especially this House, composed as it is more of the representatives of the Zamindar and capitalist type, may use their power to restrict emigration so that labour may be cheap in this country. I rise here to repudiate such a statement. We owe a duty to our countrymen and should never do anything that will in any way restrict the right of free labour to go to any country under due protection to earn better wages. With these words I welcome the Bill.

The HONOURABLE COLONEL SIR UMAR HAYAT KHAN: I am absolutely in favour of this law that emigration should be restricted because if the only result of their going out is that the Indians are considered as merely coolies, their emigration should be stopped. If their honour and the country's honour is at stake, it is much better to die of hunger in the country than go out. There are many projects coming. For instance, there are the big canal systems in Bahawalpur, in Bikanir and Sind, etc., and if Government were to ask Local Governments to see the surplus men who desire to go out provided for, I think we have got quite sufficient labour and quite sufficient lands to give to these people, instead of sending them out and getting into trouble such as that we have been dealing with to-day, and putting also the two Houses to a lot of trouble for their sake. I therefore welcome this Bill which will give the Government power to settle whether the labour can go out or not, and I hope that if occasion arises they will rather restrict their emigration than let them loose into the open and be dishonoured.

The HONOURABLE THE PRESIDENT: The question is:

'That the Bill to amend the law relating to emigration, as passed by the Legislative Assembly, be taken into consideration.'

The motion was adopted.

Clauses 1, 2, 3, 4 and 5 were added to the Bill.

The HONOURABLE KHAN BAHADUR AHMEDTHAMBY MARICAIR: The amendment I beg to move is that clause 6 of the Bill be deleted. Clause 6 reads as follows:

'The Local Government may appoint one or more Medical Inspectors of Emigrants at any port from which emigration is lawful or at any other place, and where more than one are appointed, may apportion their respective duties.'

These are not necessary because there are already in all the ports where passengers and emigrants are shipped the local Civil Surgeons who are appointed as Port Health Officers with a small allowance. They are also given a sub-assistant surgeon to assist them as assistant Port Health Officer. They go on board the steamer and examine each and every passenger medically and grant a bill of health, only upon which the vessel is allowed to proceed. If there is no Port Health Officer, no passenger traffic is allowed which has not Port Health Officers. So, if the

[Khan Bahadur Ahmedthamby Maricair.]

appointments under this section are also created there will be a waste of money and unnecessary expenditure to the Government. The present system is working satisfactorily where passenger shipment and also emigration shipment is going on all right.

With these remarks I recommend that clause 6 may be deleted.

(At this stage the President resumed his seat.)

The HONOURABLE MR. B. N. SARMA: It is clear that the Honourable Member has given notice of this amendment and moved it under a misapprehension. The statements that are made by him go to confirm the necessity for the retention of clause 6. Of course, it will be the civil surgeon or the officer doing duty in the locality that will be employed by the Government ordinarily for the purpose of inspecting passengers on ships. No departure from existing practice is likely. All that the Honourable Member means is that the civil surgeon should be employed hereafter for the purpose of inspecting passengers just as they have been employed hitherto.

The HONOURABLE KHAN BAHADUR AHMEDTHAMBY MARICAIR: They are already employed.

The HONOURABLE MR. B. N. SARMA: Yes. It is clear that somebody has to be appointed and power has to be taken under Statute to appoint them, and this clause gives Government power to appoint a medical inspector. Otherwise the civil surgeon would be *functus officio* and he would have no jurisdiction to discharge his duties. I, therefore, hope that the Honourable Member has understood the meaning of this clause.

The HONOURABLE THE PRESIDENT: I understand that the Honourable Member (Mr. Maricair) has been opposing this clause and wants it to be deleted. If so, all he has to do is to vote against the question I am now putting. The question is that clause 6 do stand part of the Bill.

The motion was adopted.

Clause 6 was added to the Bill.

ADJOURNMENT OF COUNCIL.

The HONOURABLE THE PRESIDENT: The hour is late, the attendance is very thin. As there is barely a quorum, I adjourn the Council till Monday, the 27th February, 1922, at Eleven of the Clock.