

Monday, 8th September, 1924

THE

# COUNCIL OF STATE DEBATES

(Official Report)

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*(3rd September to 23rd September 1924.)*

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## FOURTH SESSION

OF THE

## COUNCIL OF STATE, 1924.



CALCUTTA : GOVERNMENT OF INDIA  
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## COUNCIL OF STATE.

*Monday, the 8th September, 1924.*

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

### MEMBERS SWORN :

His Excellency General Sir William Riddell Birdwood, Bart., G.C.B., G.C.M.G., K.C.S.I., C.I.E., D.S.O. (Commander-in-Chief in India) and the Honourable Mr. Arthur Clement Wild (Bombay : Nominated Official).

### QUESTIONS AND ANSWERS.

#### STATISTICS RELATING TO THE INCREASE OR DECREASE OF CATTLE IN INDIA.

356. THE HONOURABLE RAJA MOTI CHAND : (a) Has the attention of the Government been drawn to a statistical account of the increase or decrease in cattle in the United Provinces during the last 20 years, published in the *Pioneer* newspaper in its issue of the 13th of August 1924 under the heading "Cattle Preservation" ?

(b) Are the Government in a position to lay on the table a similar statistical account for the whole of India during the last 20 years ?

(c) If not, do they propose to compile such a table for the information of the Council ? And if not, why not ?

THE HONOURABLE SIR NARASIMHA SARMA : (a) Yes.

(b) and (c). The attention of the Honourable Member is invited to the Agricultural Statistics of India, Volume I, which are available in the Secretariat Library.

#### IMPROVEMENT OF INDIAN CATTLE.

357. THE HONOURABLE RAJA MOTI CHAND : (a) Do the Government of India maintain any agency of their own to effect the general improvement of Indian cattle ?

(b) What measures, if any, are they taking for the purpose ?

(c) If the answer to (b) is that no measures are being taken, will the Government be pleased to state if they propose to take any measures for the purpose ? If not, why not ?

THE HONOURABLE SIR NARASIMHA SARMA : (a) Yes.

(b) The Military Dairy Farms at Bangalore, Wellington and Karnal have been taken over by the Agricultural Department and placed under the control of the Imperial Dairy Expert. At all these farms and also at the farm attached to the Agricultural Research Institute, Pusa, experiments in cattle breeding are being conducted.

(c) The question does not arise.

LEGISLATION *re* THE PROHIBITION OF THE SLAUGHTER OF USEFUL CATTLE.

358. THE HONOURABLE RAJA MOTI CHAND: Do the Government propose to frame any legislative measure applicable to the whole of India for the prohibition of the slaughter of useful cattle, such as the United Provinces Government have under contemplation? If so, how soon? And if not, why not?

THE HONOURABLE SIR NARASIMHA SARMA: No, as the matter touches a Provincial Subject in regard to which the Local Governments are competent to legislate.

## RESERVATION OF PASTURE LAND.

359. THE HONOURABLE RAJA MOTI CHAND: Do the Government propose to take any action for the reservation of pasture land, applicable to the whole of India, such as is contemplated by the United Provinces Government? If so, what, and how soon? And if not, why not?

THE HONOURABLE SIR NARASIMHA SARMA: No, as it is only the Local Governments who can deal with this question.

## EXPORT OF INDIAN CATTLE.

360. THE HONOURABLE RAJA MOTI CHAND: (a) Are the Government in a position to state the extent of cattle export from India as a whole?

(b) If not, do they propose to institute any inquiries into the matter? If so, how soon? And if not, why not?

THE HONOURABLE MR. G. L. CORBETT: (a) The number of cattle exported from British India is published each month in the Accounts relating to Sea-borne trade, which will be found in the Library.

(b) Does not arise.

## RISE IN THE PRICE OF AGRICULTURAL PRODUCTS, MILK AND MILK PRODUCTS.

361. THE HONOURABLE RAJA MOTI CHAND: (a) Has there been a continual rise in the price of agricultural products, milk and milk products and a consequent increase in the cost of living?

(b) If so, do the Government propose to take any steps to meet the situation?

THE HONOURABLE SIR NARASIMHA SARMA: (a) and (b). The Government are not aware that the price of agricultural produce has been rising continuously; but, even if that were the case, the Local Governments are the authorities empowered to cope with it in the areas under their charge. The Government of India do not, therefore, propose to take any action unless the situation requires their intervention.

## GRIEVANCES OF THE BINDERS OF THE CALCUTTA PRESS.

362. THE HONOURABLE MR. G. S. KHAPARDE: (a) Have the binders of the Government of India Printing, Calcutta, represented certain grievances, regarding classifications, to Government? If so, have Government refused to consider those grievances?

(b) Is it a fact that Government rules in the presses provide for annual classifications of the piece-workers ?

(c) If the reply to (b) is in the affirmative, will Government state the reasons for deviating from the rules in the present case ?

(d) Is it a fact that, in reply to the petitions of the above binders, Government have replied that those who are dissatisfied with the present order can submit their names to the authorities for placing them in the list of those whose services have already been dispensed with ?

THE HONOURABLE MR. A. H. LEY : (a) and (d). The Government of India have received no representation from the binders in the Calcutta Press.

(b) Yes.

(c) The object of the classification is to ensure that the earnings of piece-workers do not suffer while they are employed on time-work. It has been necessary to undertake the revision of the rules owing to the fact that the binders in the Calcutta Press have been receiving payment for time-work at rates far in excess of their piece earnings.

INQUIRY BY THE TAXATION COMMITTEE INTO LAND REVENUE POLICY.

363. THE HONOURABLE LALA SUKHBIR SINHA : Will Government be pleased to state whether, under the terms of reference to the Taxation Committee, any inquiry will be made into the land revenue policy of the Government of India in this country and, if so, to what extent ?

INQUIRY BY THE TAXATION COMMITTEE INTO LAND REVENUE POLICY.

364. THE HONOURABLE LALA SUKHBIR SINHA : Will the Taxation Committee be able—

(i) to inquire into—

- (a) the economic condition of the landlords and their tenants ;
- (b) various forms of land revenue systems— periodical, permanent and *Raiyatwari* settlements ;
- (c) various forms of tenancies ;
- (d) produce of wheat per acre of land as compared with produce per acre in other countries ; and

(ii) to recommend necessary changes in the land revenue policy of the Government of India ?

THE HONOURABLE MR. A. C. McWATTERS : I propose to answer questions Nos. 363 and 364 together. As regards both, I would refer the Honourable Member to paragraphs 5 and 6 of the Government of India, Finance Department Resolution No. 1412-F., dated the 26th May 1924, published in the Gazette of India.

LOANS UTILISED BY THE GOVERNMENT OF THE UNITED PROVINCES ON PRODUCTIVE AND UNPRODUCTIVE WORKS.

365. THE HONOURABLE LALA SUKHBIR SINHA : Will Government be pleased to state how much money has been borrowed by the United Provinces Government since the introduction of the Reforms, and how much of

it has been spent on production and how much on unproductive works, giving details ?

**THE HONOURABLE MR. A. C. McWATTERS :** The Honourable Member is referred to Accounts Nos. 82-A and 82-B of the Finance and Revenue Accounts for 1921-22 and 1922-23 and to the Civil Estimates of the Provincial Government for 1923-24, copies of which will be found in the Library.

#### VACANCIES IN THE INDIAN CIVIL SERVICE.

**366. THE HONOURABLE LALA SUKHBIR SINHA :** How many vacancies are likely to be filled up this year in the Indian Civil Service, how many of them by competitive examination and how many by nomination ?

**THE HONOURABLE MR. J. CRERAR :** Seven appointments have already been made, five as a result of competitive examination in India, and two by nomination of Indian candidates. It is proposed to make at least ten more appointments after examination in London.

#### HORSE AND MULE BREEDING IN INDIA.

**367. THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN :** (a) Will the Government be pleased to state if sufficient horses and mules are being produced in India to meet the requirements of the Army and country generally ?

(b) If not, how much money leaves India annually for the purchase of the horses and mules from overseas ?

**HIS EXCELLENCY THE COMMANDER-IN-CHIEF :** (a) No.

(b) The amount is a varying one depending on the numbers of animals required, but for 1924-25, the anticipated expenditure on horses and mules to be purchased outside India is approximately Rs. 22 lakhs.

#### EXPANSION OF HORSE AND MULE BREEDING IN INDIA.

**368. THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN :** Are Government considering the question of expanding horse and mule breeding in India to the extent of meeting the requirements of the country in full ?

**HIS EXCELLENCY THE COMMANDER-IN-CHIEF :** Assuming that the Honourable Member refers to the possibility of meeting the full requirements of the Army in India, I think I cannot do better than refer him to an article published in the "Illustrated Pioneer Mail" of the 23rd December 1922, which describes the measures adopted by Government for the purpose of providing for the Army, remounts and transport animals from the country. I shall be glad to give the Honourable Member a copy of this article. The prospects of meeting the full requirements of the Army in India by means of these measures are remote.

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#### NOMINATION OF MEMBERS AS CANDIDATES FOR THE EXTERNAL CAPITAL COMMITTEE.

**THE HONOURABLE THE PRESIDENT :** I have to announce that the following seven Members have been nominated as candidates for the Committee to consider the question of the flow of capital into India :

The Right Honourable V. S. Srinivasa Sastri,  
The Honourable Dr. Dwarkanath Mitter,

The Honourable Mr. Lalubhai Samaldas.  
 The Honourable Sir Maneckji Dadabhoy,  
 The Honourable Mr. J. W. A. Bell,  
 The Honourable Sardar Jogendra Singh, and  
 The Honourable Mr. G. A. Natesan.

I propose to hold the election on Wednesday next under the usual transferable vote system.

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### THE INDIAN SOLDIERS (LITIGATION) BILL.

THE HONOURABLE MR. J. CRERAR (Home Secretary): Sir, I beg to move :

“ That the Bill to consolidate and amend the law to provide for the special protection in respect of civil and revenue litigation of Indian soldiers serving under special conditions, be taken into consideration.”

Sir, when I moved for leave to introduce this Bill, I gave a pretty complete account of the general principles of the Bill and of the special features in respect of which it either amends or extends the provisions of existing legislation. I think, therefore, it is unnecessary for me to keep the House very long at this stage by recapitulating matters of which they are already in possession. I would only desire to emphasize once more that the object of this Bill is not to confer upon the soldier any special privilege ; it is merely to rectify a special disability. The House, I think, listened with sympathy and approval to what I had to say regarding the duty of those of us who have not undertaken military service to sustain the cause of, and to see that justice and equity are granted to, those who do undertake that very exacting and responsible service. That principle having been stated, the details of the Bill almost automatically follow, and I will only touch on one or two points which, though they are details, are rather important details. The House will observe that certain permissive exclusions are made in clause 6 of the Bill. In the first place, the Court will have a discretion to refrain from exercising its powers under that clause in the case of proceedings relating to rights of pre-emption. The reason for that exception is, I think, fairly obvious, but I may as well state it in order that there may be no misapprehension. It was considered by, I think, all the Local Governments whom we consulted and by the authorities whom they in their turn consulted, that suits for pre-emption did lie in a somewhat peculiar category, and it was represented, represented I think with good reason, that if pre-emption rights were to be allowed to subsist for long or indefinite periods, there would be a great lack of security to those actually in possession. You have, for instance, the case of the possessor of land who desires to build. If there is a chance of a right of pre-emption being subsequently enforced, he is obviously in a very embarrassing, possibly a very injurious, position. One of the main objects with which this Bill has been framed, and one of the main objects which the legislation which it is intended to amend was framed, is to maintain the natural and legitimate rights of the soldier, and, at the same time, to place no serious disability upon the third parties, and it is in pursuance of that principle that this exception has been made.

[Mr. J. Crerar.]

The exception in sub-clause (b) of the same clause carries on the face of it its own justification.

There is only one point with which I propose to deal before I conclude. When at the previous Session of this Council I moved to amend clause 11 of the Bill, I was asked by more than one Honourable Member to consider the possibility of giving retrospective effect to the provisions of that section. I promised at the time that that point should be duly taken into consideration, and the result of consideration is as follows. We inquired from Local Governments the number of cases which had been decided under that section and which therefore are governed by the ruling of the High Court of Lahore which necessitated the amendment of the section. On inquiry we found that there were only six cases and that those cases all related to alleged rights of pre-emption. Seeing therefore that we propose to make specific exclusion of cases of that kind, there can obviously be no serious injustice inflicted in refusing to give retrospective effect to the Bill which of course, as not only every lawyer but every Honourable Member will realise, would in many respects be a dangerous and inconvenient course unless it is found absolutely necessary. That is my explanation for the fact that no provision exists in the Bill for giving retrospective effect to it.

I move, Sir, that the Bill be taken into consideration.

THE HONOURABLE SIR MANECKJI DADABHOY (Central Provinces : General) : Sir, I support this Bill. This Bill is intended to substitute the Indian Soldiers (Litigation) Act of 1918 and also the Indian Soldiers Litigation (Amendment) Act of 1924 which was passed at the last Delhi Session. When the Act of 1924 came up before the Council it was widely felt that that Act did not do sufficient justice to a deserving class of our subjects. I am very pleased therefore that the Government have taken the earliest possible opportunity of bringing in a comprehensive Bill which gives necessary relief to a deserving class of people who are entitled to special privileges on account of the special nature of their services. This Bill is a measure involving tardy relief, and it is a matter of no small satisfaction that Government have seen the advisability of bringing in this measure. The measure confers special privileges on a particular class of persons, but it departs in no way from civic obligations and liabilities. It only affords, in the case of soldiers who are on active duty or circumstanced otherwise, an opportunity of coming in at a later stage of the proceedings and requiring the postponement of the case till their special service terminates and they are able or they are in a position to defend themselves. This concession after all is not such a great concession, and I have no doubt the Council will have no hesitation in according it.

There are one or two points in this Bill to which I take the liberty to refer. The principle of law is that in legislative measures there should be clearness of expression, and there should be no room for any misunderstanding. I am, therefore, unable to understand in clause 12 the words "or other special conditions." The words "serving under war conditions" would include all conditions of service, whether special or ordinary, and in my opinion these words seem to be superfluous. The Honourable Mr. Crerar will perhaps be in a



position to satisfy me that those words have a special import and are therefore necessary.

Again, Sir, in clause 14 I do not like the reservation of the power in the hands of the Governor General in Council with regard to any other class of persons. Now this expression "any other class of persons" is a very loose expression. We are now providing for special privileges in the case of soldiers. What is meant by "any other class of persons"? It is difficult to understand. The expression is so loose, so wide, that it may include camp followers, it may include commissariat agents, or it may include contractors who follow regiments on active service. I am not going to press for the deletion of the clause. I am only pointing out to Government that it complicates in a way the provisions of the Bill and leaves indefinite power in the hands of the Governor General in Council to extend the application of this Bill to other classes of persons. It is an ordinary principle of civil law, it is an ordinary principle of common law, that the Legislature must have power to give civic exemptions. The civic exemptions must form the basis of special legislation and can only be given by legislation. An indefinite power of this character is generally deprecated and I am not in favour of it. At the same time, if the Council is of opinion that these wider powers should be maintained in this Bill, I have no objection, but I think some explanation in regard to it is necessary. Sir, with these words I support the Bill.

THE HONOURABLE MR. J. CRERAR: Sir, I am very glad to find that the House displays a favourable disposition towards my motion. As regards the remarks which have fallen from my Honourable and learned friend Sir Maneckji Dadabhoj, I think it would perhaps be more convenient if the explanation which he desires to be given should be given when the House proceeds to the detailed consideration of the Bill.

THE HONOURABLE THE PRESIDENT: The question is:

"That the Bill to consolidate and amend the law to provide for the special protection in respect of civil and revenue litigation of Indian soldiers serving under special conditions, be taken into consideration."

The motion was adopted.

THE HONOURABLE THE PRESIDENT: The Council will now proceed to the detailed consideration of the Bill. We will postpone as usual to the end the Title and Preamble and clause 1 of the Bill.

The question now before the Council is that clause 2 stand part of the Bill.

THE HONOURABLE MR. YAMIN KHAN (United Provinces West : Muhammadan): Sir, I beg to move an amendment to sub-clause (d) of clause 2:

"That after the word 'application' in sub clause (d) of clause 2 of the Bill, the following words be added, namely:

'other than the application for execution of decree under section 59 of the Agra Tenancy Act, 1901'."

The object of my moving this amendment is that on account of certain experience which I gained during the late war I found that in a great number of cases where there was an occupancy tenant of a holding and he had not paid his rent there were decrees for the arrears of rent and he tried to evade the only

[Mr. Yamin Khan.]

provision under which he could be ejected : to avoid these kind of proceedings he joined the army and the execution was stopped against him. The zamindar could not get his arrears of rent and he was put to a great loss. In many cases the zamindars complained to the Government that, if they could not realise from their tenants any amount of money which was due from them, the same sum should be remitted from the Government revenues and this complicated matters, because there was no provision under which Government could remit the revenue which was due from the zamindar to the Government. At the same time it put to a great hardship the zamindars when they could not realise their dues from their tenants while they had to pay to the Government. The execution of the decree means nothing but when a decree has been passed the zamindar applies to the Court for the execution and the Court gives a certain period to the tenant to pay up the amount due under the decree ; otherwise he would be ejected. In many instances I have come to know that the tenant has left nobody at home to look after his interest. He has joined the army simply to make a certain amount of money in order to pay up his dues to the zamindar ; if he comes back alive from the war he pays it, otherwise the zamindar has to lose his dues for another year or two. Lots of soldiers who joined the army were occupancy tenants against whom there were decrees for arrears of rent. They joined the war and went to Mesopotamia and other places ; they died there, and the decrees were pending against them—the zamindars could not profit by the land and ultimately they had to pay their dues to the Government without realisation of any money. In other cases, there is, say, only the wife of a tenant who has joined as a soldier. She is the only one at home and she says, because she is not the tenant, no decree can be executed in spite of her continuing the cultivation ; the land remains in their possession and the zamindar has got no right of entering upon the land. For these reasons, Sir, I want to exclude these applications which come up for execution of a decree under section 59 of the Agra Tenancy Act from this Bill, and I think they should not be included. This never causes any hardship to the soldier. Of course, I would be the last person to send in this amendment if I found that a tenant soldier has been put to any kind of loss or it was operating against him in a certain hard way ; but I find this will do no good to the tenant because clause 10 of the Bill amply provides a remedy for any kind of injustice that might be done under the execution of a decree, because he can apply for the restoration of the proceedings after he comes back from the war. With these words, Sir, I beg to move this my amendment.

THE HONOURABLE MR. J. CRERAR (Home Secretary) : Sir, I have listened with great interest to the remarks of the Honourable Member, but I regret very much I cannot, on behalf of the Government, accept his amendment. I have no doubt the Honourable Member's intention is to inflict no hardship upon the soldier, but I am exceedingly doubtful whether that would really be the consequence of his amendment. It appears to me to proceed on the assumption that in the class of cases which he specially contemplates a soldier cannot possibly have a case. He can urge nothing of justice and equity on his side. That would be a very rash presumption to make in any kind of legal proceedings until the other side has been heard, and I think the House would not be at all well advised, if they accept the general principles of this Bill,

to permit of an exclusion of this nature. Moreover, I cannot quite understand why an exception of this kind should solely be made in the case of the Agra Tenancy Act. If we follow the course indicated to us by the Honourable Member it appears to me that we should have to encumber our Bill with a multiplicity of exceptions drawn from the various Tenancy Acts of the several Provinces of India, which would make it an exceedingly cumbrous and in many instances an ineffective measure. Nor do I think—at least I venture to hope—that the arguments employed by the Honourable Member will not appeal strongly even to that class whose interests I believe it is his intention to promote. The Honourable Member's amendment, if I understand it correctly, is framed solely and exclusively in the interests of the landlord. There is no class, Sir, to which Government look with more confidence to have a benevolent eye for the interests of soldiers serving overseas or under war conditions than the land-holding class. And I shall be very much disappointed if the members of that class, of whom we have so many distinguished representatives in this House, associate themselves with such a point of view.

**THE HONOURABLE THE PRESIDENT:** Amendment moved :

"That after the word 'application' in sub-clause (d) of clause 2 of the Bill, the following words be added, namely :

'other than the application for execution of decree under section 59 of the Agra Tenancy Act, 1901'."

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

The motion was negatived.

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

**THE HONOURABLE MR. YAMIN KHAN:** Sir, I beg to move :

"That after clause (b) of the proviso to clause 6 of the Bill the following words be added, namely :

'or

(c) the soldier is a non-occupancy tenant holding the land from year to year, or

(d) the soldier is a tenant of a holding under a lease, the period of which has expired,

or

(e) the soldier has joined the military service only for the purpose of avoiding or prolonging legal proceedings of which he had notice before joining the service'."

The first portion of my amendment applies to the soldier who is a non-occupancy tenant holding the land from year to year.

I want to add this, Sir, simply because, if a soldier had been a tenant from year to year, having no other interest in the land, and if he vacates the land and goes over to join the army during the year, then the zamindar has got no right to enter upon the land unless through a suit. I do not know about the other Provinces, but as far as my Province, the United Provinces of Agra and Oudh, is concerned the zamindar cannot take possession of the land except through a suit. If the tenant had been holding the land from year to year, he vacates it and somebody else takes possession of the land, but never pretends to have taken possession on behalf of the tenant, in which case he could be ejected, but simply says in reply to the zamindar, "Yes, the tenant has entrusted me with this land." If he is sued in a Court of law, he raises the objection that the real tenant is away in the field and therefore the

Mr. Yamin Khan.]

suit must remain pending until his return. If in these cases the suit remains pending, what will be the result? Obviously the result will be that nobody will be responsible for the rent of the land. When the soldier comes back and is made a party to the suit, he will say "I had vacated the land when I left to join the army and I have got no interest in the land. I do not mind who cultivated the land or whether it was cultivated or not." He is therefore not responsible for payment of the arrears of rent for the year when he was absent. This will cause a great deal of hardship to the landlord. At the same time, this will bring no benefit to the soldier, because he has got no other right in the land. There are the Government papers, we call them *Khatoni* or *Patwari* papers. He will be recorded there as a year to year tenant, and if the Court finds that the tenant who has joined the army and has gone on war service is a tenant from year to year and is liable to ejectment, then the suit may not remain pending, because the land must be utilised by somebody for the profit of the country, as well as of the zamindar. I think, Sir, that in all justification the zamindar will be entitled to ask for the remittance of Government revenue in these cases, especially if the land is through a certain legislation allowed to remain vacant or cultivated by a person who is not responsible for payment of any rent to the zamindar. Most of the Honourable Members who belong to the zamindar class and Government officials might be quite aware that it was this class of zamindars who came forward to help the Government in providing recruits from amongst their tenants in large numbers. When the Government were in need of raising a new army or a labour corps, it was the zamindar who stood up with the Government to provide all these persons from amongst their tenants.

THE HONOURABLE SIR MANECKJI DADABHOY: What about the tenants who left their fields and went on active service?

THE HONOURABLE MR. YAMIN KHAN: I will come to that, Sir. To these tenants who joined the army most of the zamindars remitted their rents. They sometimes gave certain grants and a lot of concessions to the tenants in every possible way they could, simply to induce them to leave their work in the fields and join the army. If the zamindars are to be hit in this way that, even after they send their tenants to join the army, they cannot make any use of their lands, there cannot be any greater hardship on the zamindar than this. I think the Honourable Member in charge of the Bill will see my point of view, because I do not want by this amendment to throw hardship on the tenant, but I simply want this provision to be added in order to safeguard the interests of the zamindar when the soldier himself is not profiting and the zamindar is losing. That is my motive in introducing this portion of my amendment which I number (c).

The next portion of my amendment which I number (d) is about tenants who hold the land under a lease for a fixed period. We allow the tenants to hold land for a period of seven years on lease, because, according to the law that prevails in my Provinces at present, the tenant who holds land on a lease of not less than seven years cannot acquire occupancy rights. This rule has been made simply to safeguard the interests of the tenant, as well as to give him sufficient time to invest his capital for fertilising the land which

he holds. If a tenant is holding land for one year, he never likes to invest his capital in the land ; but if he is holding it for seven years, he generally invests his capital, because he thinks that he might get it back in due course. If a tenant is holding land for seven years, supposing an opportunity arises just at the end of six years and six months when he wants to go and join the army—the tenant can never be ejected except from July to September—if he joins the army just before July or in October, then the zamindar has got no right to enter upon his land, and as he cannot enter upon the land except through a decree of a Court, this will mean that the land will be lying vacant and absolutely uncultivated until the return of the soldier, and when he comes back, he will have the same excuse for not paying the rent. He can say that he is not responsible to pay the rent for land which he never cultivated, and because he vacated at the expiry of his lease ; his lease did not give him any right to sublet the land after seven years, therefore, he could not sublet the land. The land could not also be taken possession of by the zamindar. This land will naturally remain absolutely uncultivated.

And if there are many instances of a similar nature, this will cause a great deal of hardship and will affect the produce of the country as well. Because this Bill contemplates mostly the emergencies which arise in a war like the last war, in which a large number of people joined the army. I think, Sir, if many soldiers holding big areas of land join the army, most of the land will remain uncultivated and will be a loss to the country. In the same case I think the zamindar will be entitled to ask for a remittance of Government revenue from the Government if, through the legislation passed by the Government, he has been put to a loss over which he had no control. To avoid these difficulties, and in a case when it is not causing any hardship, I think my second amendment will also be accepted by the Honourable Member in charge of the Bill.

The third portion of my amendment, which I have put down as (e) is :

“ or the soldier has joined the military service only for the purpose of avoiding or prolonging legal proceedings of which he had notice before joining the service.”

Sometimes it happens that there are cases when the joint family property has been divided, or cases of a similar nature, and the person who comes to know that this will cause certain hardship to him, joins the army simply to avoid it, because he knows a suit is going to be filed against him within a short period. He joins the army and the suit remains pending. His motive is not sincere. I want to give every latitude to the soldier when his motive is above-board, when he is joining the army simply to serve the country ; but when he is joining the army, not with the motive of serving the country, but in order to avoid legal proceedings, he is not acting *bona fide*, and he should not be given any protection by this Bill. If his motive is sincere, certainly he should enjoy this benefit, but he should not be given the benefit of this Bill if his motives are not sincere and not *bona fide*. I think this will not be required by this clause, and the Honourable Member, when he moved this Bill, had no intention of protecting bogus people who simply join the army under these circumstances. Clause 10 of the present Bill affords ample opportunity, if any hardship has been caused to him during his absence, to go and ask for the case to be readmitted on the file, and of course the provisions

[Mr. Yamin Khan.]

of the Indian Limitation Act will not apply in his case for two months, as other clauses of the Bill provide.

With these few words, I move my amendment.

THE HONOURABLE MR. R. P. KARANDIKAR (Bombay : Non-Muhamadan) : Sir, I rise to support the amendment which has been put forward before this House. When I do so, I do not wholly endorse whatever has fallen from the Honourable Member with reference to clause (e) of his amendment. I am not in full sympathy with the arguments given as regards the avoiding of legal proceedings by joining the army. It is quite impossible for me to agree with that position, but I will certainly join in supporting clauses (c) and (d), particularly as I draw attention to the language of clauses 7 and 8. In supporting those amendments I am in a manner trying to lighten the burden and the responsibility that must ordinarily attach to the officer whose office is being created under this Bill. The prescribed authority has something to do on receipt of a notice ; he has to certify. What has he to certify ? Under clause 8 he must certify that the soldier is not serving under special conditions or that such postponement is not necessary. Here he has a wide discretion and I should like some indication given to the prescribed authority when it is possible for him to withhold his assent to the postponement of the case. Before he does that it is much more advisable that the Court should exercise its own discretion in sending out a notice. Where therefore, as is contemplated by the amendment, the soldier is a non-occupancy tenant holding the land from year to year, I have every hope that the prescribed authority will make it a point to certify that it is not necessary to postpone the proceedings. And I am tempted to hope it will not be necessary when the soldier is a tenant of a holding under a lease the period of which has expired. With these two conditions, I think if the prescribed authority were to be sent a notice by the Court, the prescribed authority will undoubtedly have regard to the spirit of the amendment even though the amendment be rejected. I will assume for a moment that this amendment is not likely to go through, but I dare say it is quite possible that the prescribed authority will take it into consideration when he exercises his discretion, and say suspending the proceedings is not desirable and not necessary. If he does that, there is no object in questioning his discretion. If that is so, there is nothing to prevent a Court from acting on the suggestion contained in these amendments. Coming from Bombay, I hope those Members who are acquainted with the Bombay procedure know very well (especially those coming from the district from which I come) that there are numerous assistance applications to Revenue Courts to help them in the recovery of their dues under the provisions of the Bombay Land Revenue Code. In some places special officers have been appointed for the recovery of the dues, more in view of the fact that the *inamdars*, of whom there are quite a number there, have to pay what is known as a *Judi* or quitrent, sometimes one-fourth of the entire revenue, sometimes an anna added to it, and at the same time they have to depend upon the result of the suit which they have to lodge before the Revenue Courts, the *Mamlatdars*, for the recovery of their dues from the tenants. Assuming that the proceedings have to be postponed under clause 7, suppose the prescribed authority makes no reply, or sends in a reply as is contemplated by clause 7, the Court has to postpone the suit, and the clause gives the Court a

discretion, and says :—“ If no period has been prescribed, then for such period as it thinks fit.” I am afraid such a large discretion given to Revenue Courts is not quite consistent with the spirit of the applications which are expected from *inamdars* whose dues must be given to them by the tenant, and from whom the Government have been exacting a necessary one-fourth with an *anna* added to it, as I say.

This matter has been started in consequence of the inclusion of Revenue Courts within the definition of the word “ Court ” that we have got. If it had been limited to the Civil Court only, the complication would have been less ; but since we have now proposed to extend the provisions of this Bill to the Revenue Courts as well, we have to consider all the aspects of the question such as may lessen the work of those Revenue Courts. I would, therefore, without wasting your time, heartily support the recommendations made in the first two clauses of the amendment, though I am afraid I cannot support the third proposal made by the Honourable the Mover of the amendment.

THE HONOURABLE SIR MANECKJI DADABHOY : Sir, I oppose this amendment. This amendment is a case of special pleading for the cause of zamindars. Anyone who has knowledge of the previous history of the land tenures which became the subject of discussion in the late Imperial Council will testify to the acrimonious disputes that always took place then in support partly of zamindars' privileges and partly of the rights of tenants and peasants. It is not a new thing in this Council to hear people getting up in support of the zamindars' privileges and claiming protection for them at the sacrifice of the weaker class of tenants and peasants. This amendment, I will show, refers to that class. Anyone who knows about the history of the tenures in the various Provinces is aware that a large class both of revenue and civil litigation refers to occupancy land. Many of you know that large numbers of suits are filed for the ejection of tenants, sometimes on grounds which are almost frivolous and which cannot for a moment be sustained. As you are all aware, tenants as a class are a body of illiterate people. It is a matter of common knowledge, and I have known during my own professional work, and I am sure it is within the knowledge of my Honourable friend the Mover of this amendment too, that in many cases annual leases in regard to occupancy lands and leases for fixed periods have been fabricated. Quite easily the plough or some other mark identifying the tenant has been put on a stamped paper, which needs no registration when the lease is only for one year ; and two or three ready and willing witnesses can always be easily obtained to subscribe to and to testify to the genuineness of the document. (*The Honourable Mr. Yamin Khan* : “ A lease for over one year is always registered”). I am now talking of one year leases. What protection will this class of tenants have if this amendment is accepted ? It is a matter of common knowledge, and those who are intimately acquainted with the litigation specially in the Central Provinces and the United Provinces and proceedings under the Bengal Tenancy Act, will support me in this connection. Of course in Bombay the *rayatwari* system does make a little difference and probably there is not the same amount of trouble in Bombay as in other parts of the country. But, Sir, the two other amendments proposed by my friend (and my remarks refer generally to both these amendments), if adopted, will frustrate altogether the very object of this Bill. It will altogether emasculate the provisions of this Bill. The

[Sir Maneckji Dadabhoy.]

Bill will be wholly ineffective. You might as well have no legislation on the subject at all. You might drop the Bill altogether if there is any force and cogency in the amendments proposed by my Honourable friend. Take for instance amendment (e) which says :

“ the soldier has joined the military service only for the purpose of avoiding or prolonging legal proceedings of which he had notice before joining the service.”

What will happen if a man gets notice on the eve of his departure to join military service ? If my Honourable friend insists on the amendment, the proviso to clause 6 would read thus :—

“ Provided that the Court may refrain from suspending the proceeding and issuing the notice if—

the soldier has joined the military service only for the purpose of avoiding or prolonging legal proceedings of which he had notice before joining the service.”

The soldier has left the place, and who is to discharge this onus ? Has the Court the means to find out whether the man has gone on active service and left his field with the express object of evading the suit ? Then, we also know something about these notices. Perhaps the Council is not unaware of the fraudulent service of notices. I know of many cases where the notice has been served on the wrong party and a mark taken in acceptance of the Summons from a wrong party. Will that afford any protection ? I submit, Sir, that if these amendments are effected they will cause a lot of complication in the smooth working of the machinery of this Bill.

My Honourable friend Mr. Karandikar has referred to clause 8 as giving some protection in this matter. I do not think that the provisions of clause 8 of the Bill will afford the necessary protection in the cases which I have mentioned. I am perfectly aware of and I do not propose to disguise the fact that the operation of this Bill will cause a certain amount of inconvenience. It will certainly cause a certain amount of inconvenience to the landlords. But after all we have to look to the larger interests involved in this connection. What is the inconvenience after all ! My Honourable friend says that the land will lie fallow, the rent will remain unpaid and it will cause loss to the landlord. Well, the land may lie fallow and the rent may remain unpaid, but there is nothing to prevent the holder of the land from recovering the rent which has fallen into arrears on the return of the man from active service. There will be no such serious inconvenience as is contemplated. For these reasons I propose to oppose this amendment.

THE HONOURABLE SARDAR JOGENDRA SINGH : (Punjab : Sikh) : Sir, the Honourable Sir Maneckji Dadabhoy has brought in the question of the relations between landlords and tenants. He seems to have a tender feeling for the tenants ; he thinks he has a tenderer feeling than the landlords themselves have. I can assure him that we landlords depend upon the tenants, and their interests are safer with us than with anybody else. If we were to raise the question of capital and labour in this Council and take up these partisan lines, I am sure he would not like it. He has brought in the question of the ejectment notices. Certainly we do put in ejectment notices but we do eject only useless tenants. (*The Honourable Sir Maneckji Dadabhoy* : “ You may be an ideal lawyer.”) I am not an ideal lawyer, but I am a landlord. The landlord is a captain of industry who promotes agriculture. It is in his interest to



safeguard the interests of the tenants. If he turns out his tenants every day, he cannot promote agriculture. This idea that the landlord and the tenants are of no importance and trade interests are of greater importance I do not think will hold in this Council. Well, in the days to come in this Council the landlord interest is going to predominate. It predominates to-day and it will continue to predominate.

Regarding these amendments, I would ask my friend the Mover to take a generous view. The soldiers we send out to the battle-field go there to fight for us. We are giving them certain privileges and when we are giving them with one hand it is not right for us to take from them with the other. There might be certain inconveniences. We may have to wait for a year or two for payments. There may occasionally be an ejection that cannot be effected, but what does it matter? A soldier goes out to fight for us and it is for us to give him all the consideration that we can give. I would ask him in the spirit of the poet of his own town who said:—

“ He gave away the whole world.

She thought he was glad in giving.

He was only ashamed to refuse anything.”

Therefore, Sir, I oppose the amendment and I would ask my friend to withdraw it in the larger interests of the soldiers who go out to fight the battles of the Empire and defend our hearths and homes.

THE HONOURABLE PANDIT SHYAM BIHARI MISRA (United Provinces : Nominated Official) : Sir, I had a good deal of sympathy with the first amendment moved by my Honourable friend Mr. Yamin Khan, but I did not consider myself called upon to support him since no non-official thought it necessary to do so. There was something to be said in favour of that amendment. But in respect of the present three amendments, I do not think that I can have any sympathy with any of them. The thing is that all these three points involve complicated questions of fact which would require lots of evidence to be produced on either side. If a tenant who has joined the army and has left his village is sued in his absence and the suit is not to be postponed, then he is bound to suffer. The zamindar will come forward—well I may say at once that I also am a zamindar and I am not hostile to the interests of the zamindars, but when a zamindar sues a tenant for ejection I do not think he has plenty of affection for that particular tenant; he wants to get rid of him. Well, if the fellow has gone away, he is not in a position to defend himself. He is not in a position to produce any evidence in the Court, and if we proceed with the suit it would naturally be tried *ex parte* and the poor tenant who has joined the army is bound to suffer. The zamindar will be able to produce one or two witnesses and the suit is bound to be decreed, however good a case the other party might have; if he has no opportunity to let himself be heard and to produce his evidence, he is bound to suffer. I have been a presiding officer of Revenue Courts in the United Provinces from which my friend Mr. Yamin Khan comes, and I can vouch from my own personal experience that it would be a serious injustice to the tenant if such suits are permitted to be proceeded with in his absence. The first amendment deals with the soldier who is a non-occupancy tenant holding the land from year to year. It may look very simple but, when trying ejection suits, Sir, I have found that I had at times to waste not only hours but days and weeks together over such ejection cases

[Pandit Shyam Bihari Misra.]

to ascertain whether the man is merely an ordinary tenant from year to year, or whether he has actually completed twelve years and has acquired occupancy rights. A zamindar always, when he sues a man for ejectment, calls the tenant a non-occupancy tenant, he always calls him a tenant from year to year ; but in hundreds of cases, Sir, within my own experience, I have found that such tenants have put in 20 and 30 years of cultivation. One or two recorded breaks often come after eight or ten years ; the *patwari* just puts down the man as a sub-tenant and the zamindar comes in as *khul-kasht* holder of the land, and after a year or so the tenant comes in again as tenant-in-chief. These entries are almost always fictitious, but if the tenant is not present to defend himself, he would be taken to be really a tenant from year to year, perhaps cultivating for eight or ten years only, when possibly he has been cultivating the land for 20 or 30 years. So it would be very unsafe indeed if this amendment, I mean amendment (c), is accepted.

As to the contention of my friend, Mr. Yamin Khan, that the tenant when he comes back would not be liable to pay rent, I do not think it is so. There is an express provision, at any rate in the Agra Tenancy Act, that unless the tenant relinquishes his land through the *tahsil*, the relinquishment will not hold good and he will continue to be liable to pay rent. So, where does the zamindar suffer ? I do not see. The tenant will continue to be liable to pay rent, unless he has served the zamindar with a notice through the *tahsil* that he has actually relinquished the land. So I do not think the zamindar is likely to suffer at all. Certainly I oppose this amendment.

As to the second amendment, when a soldier holds the land under a lease the period of which has expired, there used to be seven years' leases and, as Mr. Yamin Khan has just mentioned, these leases were expected to be registered, but the very enactment which says that such leases should be registered also provides that instead of being registered in an ordinary registration office this registration could be done by attestation by a *kanungo*. Well, what a registration by a *kanungo* might mean, I suppose most of my Honourable friends are aware. At any rate you cannot be so certain of a *kanungo's* registration as in the case of a regular registration. But this point of a seven years' lease almost loses all its weight, in view of the recent amendment of the Oudh Rent Act which has already taken place. Seven years' leases there are gone, and a tenant once given some land holds it for his life and till five years after his death ; so that the seven years' lease will never be seen in Oudh now, and so far as the Agra Province is concerned, the Tenancy Act is already under consideration and a Committee has been appointed and they have published their report. In that report it is proposed so far as I remember—I am not quite certain but I think it is proposed—to give tenants a life interest in the Agra Province also. Once the tenants are given a life interest in Agra, this seven years' lease question will disappear from there also. Even if it does not, Sir, my point is that we should not compel a man to have a case against him decided *ex parte* when he has joined the army, and I think it is quite unsafe to admit this proposed amendment and I certainly oppose it.

As to the third amendment, of course, it is, I fear, very strange.

To my mind, Sir, you would hardly find a single individual who would go and join the army and risk his life merely for the sake of a few fields. He

certainly does not go merely for the sake of evading a law suit. He certainly joins the army for the sake of joining it, perhaps for money also and not for the love of his country alone, but surely not merely for evading a suit in respect of a few fields. I really cannot appreciate the three amendments at all and I most emphatically oppose them. The result is, Sir, that I oppose all these three amendments and I think their acceptance would be very improper and very unfair. My Honourable friend Sir Maneckji Dadabhoy is quite right when he says that these amendments strike at the very root of the proposed law, and I do not think they should be accepted.

THE HONOURABLE THE PRESIDENT: Does the Honourable Member wish to proceed with his amendment?

THE HONOURABLE MR. YAMIN KHAN: I would like to reply.

THE HONOURABLE THE PRESIDENT: There is no right of reply. Does the Honourable Member desire to proceed with his amendment?

THE HONOURABLE MR. YAMIN KHAN: I see that the United Provinces Members are not supporting it; so there is no use in pressing my amendment, although of course a lot of irrelevant matter has been spoken about this amendment, and the motives and ideas have been absolutely misrepresented.

THE HONOURABLE THE PRESIDENT: The Honourable Member must not make a reply. Does he wish to withdraw his amendment?

THE HONOURABLE MR. YAMIN KHAN: Yes, Sir.

The amendment\* was, by leave of the Council, withdrawn.

Clause 6 was added to the Bill.

Clauses 7, 8 and 9 were added to the Bill.

THE HONOURABLE DR. DWARKANATH MITTER (West Bengal: Non-Muhammadan): Sir, I beg to move the amendment to clause 10 which stands in my name and which runs as follows:

"That after sub-clause (3) of clause 10 of the Bill, the following sub-clause be added, namely:

(4) If the Court sets aside the decree or order under sub-sections (1) and (3) of this section, it shall appoint a day for proceeding with the suit, appeal or application, as the case may be."

Clause 10 does recognise the general principle that if the suit, appeal or application is heard in the absence of the soldier, he must be given a further opportunity of being heard. But clause 10 stops short. It does not say what will happen after the decree or order had been set aside under certain conditions. I think the intention of the Mover of the Bill is that he should have a further opportunity of being heard after the proceedings have been set aside. The

\*"That after clause (b) of the proviso to clause 6 of the Bill, the following words be added, namely:

'or

(c) the soldier is a non-occupancy tenant holding the land from year to year, or

(d) the soldier is a tenant of a holding under a lease, the period of which has expired, or

(e) the soldier has joined the military service only for the purpose of avoiding or prolonging legal proceedings of which he had notice before joining the service'."

[Dr. Dwarkanath Mitter.]

provision is analogous to the provisions of the Civil Procedure Code with regard to the setting aside of *ex parte* decrees which are contained in Order IX, Rule 13, of the Code of 1908. It might be said that the provisions of section 141 of the Code are sufficient to cover the case suggested by the amendment. But that would not be so, because Honourable Members will find that the definition of the word "Court" in clause 2 of this Bill includes not only a Civil Court but also a Revenue Court, and by no stretch of language can you apply the provisions of section 141 of the Code to proceedings in a Revenue Court. It has therefore become necessary that there should be some provision stating what is to happen after the decree or order has been set aside. If it was merely a matter which related to a suit or a proceeding in a Civil Court, then of course section 141 of the Code might govern it and this provision would be unnecessary. But it has been held in numerous decisions by the different High Courts, as well as by the Judicial Committee of the Privy Council, that section 141 can only apply to civil proceedings of the nature of suits, or proceedings in the nature of probate or proceedings in relation to guardianship, to which the procedure of the Civil Procedure Code is made applicable. In order to make the matter clear and avoid the difficulties which have been created by the enlarging of the definition of the word "Court", it seems to me that this amendment is obvious and necessary. I therefore ask the House to support this amendment.

**THE HONOURABLE MR. J. CRERAR :** Sir, I have considerable doubts as to whether the amendment proposed by the Honourable Member is necessary. Clause 10 of the Bill does not, by enabling the decree or order to be set aside, thereby determine the suit. The suit is still alive, and it is of course within the discretion of the Court to take further proceedings in the matter. I think that what my Honourable and learned friend said about Revenue Courts is fully covered by section 5 of the Civil Procedure Code relating to Revenue Courts. However, though I do not think that my Honourable and learned friend's amendment is necessary, at the same time I must admit that I do not think that it is seriously damaging to the provisions of the Bill and, if it is the wish of the House that that amendment should be accepted, Government have no objection to do so.

**THE HONOURABLE MR. R. P. KARANDIKAR :** I do support this amendment. I am told that the Courts have discretion to proceed with the matter or not. Then it becomes extremely necessary that the Revenue Courts should be told what to do in case the decree or order is set aside. In these cases I do really think that the amendment is necessary.

**THE HONOURABLE THE PRESIDENT :** To clause 10 of the Bill, an amendment has been moved :

"That after sub-clause (3) of clause 10 of the Bill the following sub-clause be added, namely :

"(4) If the Court sets aside the decree or order under sub-sections (1) and (3) of this section, it shall appoint a day for proceeding with the suit, appeal or application, as the case may be."

The amendment was adopted.

Clause 10, as amended, was added to the Bill.

Clauses 11, 12, 13, 14 and 15 were added to the Bill.

Clause 1, the Title and the Preamble were added to the Bill.

THE HONOURABLE MR. J. CRERAR: Sir, I move that the Bill, as amended, be passed.

THE HONOURABLE THE PRESIDENT: The question is:

“That the Bill to consolidate and amend the law to provide for the special protection in respect of civil and revenue litigation of Indian soldiers serving under special conditions, as amended, be passed.”

The motion was adopted.

#### INDIAN MOTOR VEHICLES (AMENDMENT) BILL.

THE HONOURABLE MR. J. CRERAR (Home Secretary): I beg to move:

“That the Bill further to amend the Indian Motor Vehicles Act, 1914, for certain purposes, be taken into consideration.”

I do not need to detain the House by any elaborate explanation of so simple a measure, indeed it would be difficult for me, the measure being so simple, to elaborate any explanation. Substantially, the object of the measure is to provide for a defect in the original Act which was brought to notice by a judgment of the High Court of Bombay to the effect that a rule framed by the Government of Bombay for the annual re-registration of motor vehicles was *ultra vires*. We accordingly intend to rectify that defect in the Act. It is a practical reason; it is not simply an academic point. Honourable Members will recognise, more particularly with regard to the large Cities of India, such as Bombay and Calcutta, that the necessity for a more strict control of motor traffic has become from year to year more apparent. The mere fact that changes of ownership are in practice frequently not notified and the fact that, in the absence of such notification, it is exceedingly difficult to detect any such transfer of ownership, has resulted in a state of affairs in which the registers maintained by the motor departments in these large Cities have become largely valueless. If an accident occurs, the constable or any other person witnessing the event may note down the registered number of the car, and on subsequent investigation it may be found that the original owner of that car has for years ceased to own it, and the tracing of the actual present owner becomes a matter of very serious difficulty. It is therefore in the interests of the public that this amendment is proposed. It will enable the police to maintain a more careful, a more accurate and a more expeditious control over breaches of the law relating to motor traffic.

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1, the Title and Preamble were added to the Bill.

THE HONOURABLE MR. J. CRERAR: I move that the Bill be passed.

The motion was adopted.

The Council then adjourned till Eleven of the Clock on Tuesday, the 9th September, 1924.