

Friday, 27th July, 1923

THE  
COUNCIL OF STATE DEBATES

(Official Report)

VOL. III, PART III

*(From the 16th to the 28th July 1923)*

THIRD SESSION

OF THE

COUNCIL OF STATE, 1923.



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# COUNCIL OF STATE

Friday, 27th July, 1923.

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

## QUESTIONS AND ANSWERS.

### GRANT OF OTHER REWARDS TO THE RESCUERS OF MISS ELLIS.

77. The HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Will Government state what other rewards beyond Kaiser-i-Hind Gold Medal have been awarded to Khan Bahadur Quli Khan, Gulbaz Khan and other Indian officers, who took part in the release of Miss Ellis ? What reward was given to the son of Mullah of Karbozah ?

The HONOURABLE MAJOR G. D. OGILVIE : No reward other than the Kaiser-i-Hind Gold Medal was awarded to Khan Bahadur Kuli Khan and Khan Bahadur Moghul Baz Khan (this is the correct name, not Gulbaz Khan) in connection with the release of Miss Ellis. Other Indian officers who received rewards were Abdul Samad Khan, Assistant Political Officer, Khyber, and Attaulla Khan, Political Tahsildar, Kohat, who were both granted the title of Khan Sahib.

The information asked for in the second part is being sought from the Local Government and will be supplied to the Honourable Member in due course.

### OFFICE SUPERINTENDENTS ON NORTH-WESTERN RAILWAY, OUDH AND ROHILKHAND AND EASTERN BENGAL RAILWAYS.

78. The HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Will Government kindly state how many Office Superintendents there are in the North Western Railway, Oudh and Rohilkhand Railway and Eastern Bengal Railway offices, and how many of these Superintendents are Indians ? Are Railway administrations taking any steps to fill up future vacancies in the office Superintendentships from among senior Indians ?

The HONOURABLE MR. A. H. LEY : From the last Classified List of Railway Establishment it appears that on the North-Western Railway there are 6 Office Superintendents and none of them are Indians. On the Eastern Bengal Railway there are 5 Office Superintendents and one of them is an Indian. On the Oudh and Rohilkhand Railway there are 4 Office Superintendents, none of whom are Indians. The appointments are selection appointments but the Government have no doubt that full consideration will be given to the claims of Indians as to those of other classes.

## INDIANS AS SUPERINTENDENTS ON STATE RAILWAYS.

79. The HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Will Government kindly state how many Indians have been appointed to the post of office Superintendent in various Departments of the Indian State Railways during the last three years ?

The HONOURABLE MR. A. H. LEY : During the last three years one Indian has been appointed as Office Superintendent on the State Railways and two Indians have filled officiating appointments.

## THEFT OF RIFLES IN KOHAT DISTRICT.

80. The HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : (a) Is it a fact that some months ago a number of rifles in Kohat District of the Frontier Province were stolen by the tribesmen and taken into the tribal territory ?

(b) Is it also a fact that, on getting information about the whereabouts of the rifles, Deputy Commissioner, Kohat, sent a party into the tribal territory, that the house of one Rajab Khan in the tribal territory was surprised by a night attack and some rifles were recovered from his house ? Is it also a fact that the surprise party is alleged to have also captured two transborder men and maltreated some transborder women ?

(c) Is it also a fact that after this incident the transborder man, Rajab, threatened the Government with reprisals ? If so, will Government kindly state what action the Deputy Commissioner, Kohat, took against this threatened reprisal ?

(d) Is it also a fact that after this incident two European officers were attacked near Kohat, but escaped from being kidnapped, and after this attack another threat was received from Rajab Khan ?

(e) Will Government kindly state how long after these incidents the Kohat tragedy took place in which Miss Ellis was kidnapped ?

(f) Is it a fact that Khan Bahadur Muhammad Quli Khan, Assistant Political Officer, Kurram, volunteered to go into the tribal territory for the release of Miss Ellis ?

(g) Is it a fact that Khan Bahadur Gulbaz Khan and Mrs. Starr also went to Mullah Mahmud Akhonzada, and the son of the Mullah, of Karbozah accompanied them ?

(h) Is it a fact that rupees fifteen hundred were paid by Government to Mullah Mahmud Akhonzada, that some rifles were restored to tribesmen and that two transborder men were released ?

(i) Is it a fact that the transborder man, Rajab Khan, has now escaped into the territory of the Amir of Afghanistan ? If so, will Government kindly state what action has been taken for the arrest of this man ?

(j) Is it a fact that some months back three merchants, one Extra Assistant Commissioner, one Naib Tahsildar, and one Superintendent, Post Offices, were kidnapped by transborder tribesmen ? Will Government kindly state what officers were directly responsible in getting these people released ?

(k) Will Government kindly state whether the services of these officers, who took part in the release of these Indian officers, were appreciated ? If so, in what way ?

The HONOURABLE MAJOR G. D. OGILVIE : (a) Yes.  
 (b) Yes, except that the correct name is Ajab Khan and that the suggestion that any trans-border women were maltreated is without foundation.

(c) Ajab Khan did not communicate his threats to Government and the second part of the question therefore does not arise.

(d) The answer to the first part is Yes, and to the second part No.

(e) The rifle theft occurred on 14th February ; the counter-raid on the 4th March ; the attack on the British officers on the 21st March, and the Kohat tragedy on the 14th April.

(f) Yes.

(g) Yes ; the correct name is Moghal Baz Khan.

(h) Yes, except that the sum was Rs. 15,000 and no rifles were returned.

(i) The answer to the first part is Yes ; it would not be in the public interest to give the information asked for in the second part.

(j) Yes. Khan Bahadur Maulvi Ahmad Din and Khan Bahadur Kuli Khan.

(k) The formal commendation of Government was conveyed to the Chief Commissioner for transmission to them.

The HONOURABLE SAIYAD RAZA ALI : May I put a supplementary question, Sir ? With reference to the reply just given by the Honourable Member to question 80 clause (b), will the Government be pleased to state as to what actually happened when the search took place at the house of Ajab Khan ? And is it true that some women folk were searched in order to find out whether Ajab Khan and some of his relations had disguised themselves as women, which gave very considerable offence to these half-civilised men ?

The HONOURABLE MAJOR G. D. OGILVIE : I ask for notice.

SEPARATE UNITS OF INDIANS FOR ARTILLERY, AIR FORCE AND MECHANICAL TRANSPORT CORPS.

81. The HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Will Government kindly state whether it is under contemplation to constitute separate units of Indians for the Artillery, Air Force and Mechanical Transport Corps ?

The HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI (*on behalf of His Excellency the Commander-in-Chief*) : The reply is in the negative.

FREIGHT CHARGES ON INDIAN RAILWAYS.

82. The HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Is the Government aware that Indian business sections suffer a good deal from the fixing of freight charges on Indian Railways ?

The HONOURABLE MR. A. H. LEY : The reply is in the negative.

RAILWAY CONCESSIONS.

83. The HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Is it a fact that Railway concessions are granted at the time of races and polo ?

The HONOURABLE MR. A. H. LEY : The reply is in the affirmative.

## RETENTION OF OFFICE OF CONTROLLER OF CONTRACTS.

84. The HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Will the Government kindly state why it is considered desirable to retain separately the office of Controller of Contracts in the Military Department when an Indian Stores Department has now been constituted ?

The HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI (*on behalf of His Excellency the Commander-in-Chief*) : The Controller of Contracts purchases food supplies and certain other army stores which do not come within the scope of the Indian Stores Department as so far organised.

## WARNINGS ON RAILWAY STATIONS IN CASE OF EPIDEMICS.

85. The HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : (a) Will Government kindly state whether Station Masters of all railway stations show by some sign or poster whether a particular station is affected by epidemic disease like cholera, plague or small-pox, etc. ?

(b) If not, does the Government intend to take steps to issue instructions for such warning to be given in the interest of public health ?

The HONOURABLE MR. A. H. LEY : (a) The reply is in the negative.

(b) As Public Health is a transferred subject the matter appears to be one for the Local Governments to deal with.

The HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Railways being a central subject, I think it is the duty of the Central Government to reply.

The HONOURABLE THE PRESIDENT : That is a comment and not a question.

## POLL-TAX ON ADULT INDIANS AT FIJI.

86. The HONOURABLE KHAN BAHADUR SIR AHMEDTHAMBY MARICAIR : (a) Is it a fact that the Government of Fiji proposes to levy a poll-tax of £1 per head, per annum, including adult Indians at Fiji ?

(b) Are Government of India satisfied that this tax will not cause hardship to Indian residents at Fiji ?

(c) If not, what steps Government of India propose to take to prevent such taxation ?

The HONOURABLE SIR NARASIMHA SARMA : (a) The Government of India understand from a Reuter's telegram dated the 21st instant that the Fijiian Legislature has adopted the Residential Tax Ordinance imposing a tax not exceeding £1 as may be determined from time to time by the Legislative Council by Resolution in that behalf on every male adult in Fiji excepting Fijians and Rotumans. The Government of India have not yet received official confirmation of this fact.

(b) and (c). Representations have been made by the Government of India to His Majesty's Secretary of State for India on the subject. The reply of the Secretary of State for India has not yet been received. The Government of India are not in a position to prevent the imposition of the tax but the Honourable Member may rest assured that the matter will not be lost sight of in the negotiations with the Colonial Government regarding the reopening of emigration to Fiji.

## KENYA PROBLEMS.

The HONOURABLE THE PRESIDENT : I have received private notice of certain question from the Honourable Sir Purshotamdas Thakurdas. I understand that the Honourable Member in charge is prepared to reply to them. Will the Honourable Member read the questions ?

The HONOURABLE SIR PURSHOTAMDAS THAKURDAS : 1. With reference to statement in Reuter's telegram, dated the 25th instant that His Majesty's Government have given fullest consideration to the wishes of the Government of India in connection with the Kenya problem "at the instance of the Secretary of State for India," will Government be pleased to state whether the Secretary of State for India supported the views of the Government of India, or differed from their views, or kept neutral ?

The HONOURABLE SIR NARASIMHA SARMA : The proceedings of the Cabinet are, as the Honourable Member is aware, of a confidential character and the Government of India has no information on the subject. But I may invite the Honourable Member's attention to the statement made by Mr. Ormsby Gore on the Colonial estimates on this subject, wherein he states :

"He regretted that on certain material points it was not found possible to meet the wishes of the Government of India whose views, as a whole, Government had very fully considered at the instance of the Secretary of State for India who submitted them quite fearlessly and clearly."

The Government of India have no hesitation in saying that the Secretary of State had been extremely diligent and watchful in safeguarding and protecting Indian interests and they are grateful to him for doing so.

The HONOURABLE SIR PURSHOTAMDAS THAKURDAS : 2. (a) Will the Government be pleased to state if the decision of His Majesty's Government regarding the Kenya problem is acceptable to them ?

The HONOURABLE SIR NARASIMHA SARMA : The text of the decision of His Majesty's Government already wired to India clearly shows that His Majesty's Government have not been able to agree with the Government of India on material points. The question as to what is to be done to see that Indian interests are safeguarded in translating into practice the broad general principles enunciated by His Majesty's Government is being considered.

The HONOURABLE SIR PURSHOTAMDAS THAKURDAS : May I repeat my question ? Is the decision of His Majesty's Government acceptable to the Government of India ? That is my question.

The HONOURABLE SIR NARASIMHA SARMA : The Government of India are not in the habit of altering their views frequently. They have stated already clearly that they were not able to agree with His Majesty's Government's proposals with regard to material points, and they are still of the same opinion.

The HONOURABLE SIR PURSHOTAMDAS THAKURDAS : I take it, therefore, that His Majesty's Government's decision is not acceptable to the Government of India.

The HONOURABLE THE PRESIDENT : That again is a comment and not a question.

The HONOURABLE SIR PURSHOTAMDAS THAKURDAS : (b) If the reply to the above be in the negative, will the Government of India be pleased to state what steps they expect to take to get the decision modified ?

The HONOURABLE SIR NARASIMHA SARMA : In making an answer to (b) Government do not wish to be understood that they accept any inference which may be drawn from any reply that they may have given, but I may state that the Government of India are anxious about the proposals with regard to immigration specially and have had that subject under consideration and do intend to make further representations on the subject to His Majesty's Government. They propose to watch carefully what may be suggested in this matter either by the Colonial Office or by the Government of the Colony in question.

The HONOURABLE SIR PURSHOTAMDAS THAKURDAS : What steps do the Government expect to take regarding the heads on which I take it that the Government of India is not satisfied with the Cabinet's decision ?

The HONOURABLE SIR NARASIMHA SARMA : The matter will have to be considered further.

The HONOURABLE SIR PURSHOTAMDAS THAKURDAS : 3. Will Government be pleased to state if they intend publishing the correspondence up to date between them and the Secretary of State in connection with the Kenya problem ?

The HONOURABLE SIR NARASIMHA SARMA : I may answer Questions 3 and 4 together. The matter is being considered.

The HONOURABLE THE PRESIDENT : (To the Honourable Sir Purshotamdas Thakurdas) : I think you had better read Question No. 4.

The HONOURABLE SIR PURSHOTAMDAS THAKURDAS : 4. If the reply to the above be in the affirmative, will Government be pleased to state when they expect to publish the correspondence for the satisfaction of the Indian public ?

The HONOURABLE SIR NARASIMHA SARMA : They have already stated that the matter of publication is under consideration.

The HONOURABLE SIR PURSHOTAMDAS THAKURDAS : I wish to thank the Honourable Member for having accepted my private notice.

#### INFORMATION RE MAINTENANCE AND REPATRIATION OF RUSSIAN AND OTHER REFUGEES.

The HONOURABLE MAJOR G. D. OGILVIE (Political Secretary) : I lay on the table the information asked for in (d) of Honourable Mr. Phiroze Sethna's Question No. 1, dated the 20th March 1922, regarding the maintenance and repatriation of Russian and other refugees from continental Europe.

The total amount spent on the maintenance and repatriation of Russian and other refugees from Continental Europe since 1919 is approximately Rs. 5½ lakhs. The Government of India regret that information regarding expenditure incurred in connection with refugees during the



INFORMATION RE MAINTENANCE AND REPATRIATION OF RUSSIAN,<sup>1710</sup>  
AND OTHER REFUGEES.

period 1914 to 1919 is not readily available. The number of such refugees was insignificant, and the information could not be procured without an expenditure of time and labour that would be incommensurate with the value of the results obtained.

CANTONMENTS BILL.

SECRETARY OF THE COUNCIL : In accordance with rule 25 of the Indian Legislative Rules I lay on the table a copy of the Bill to consolidate and amend the law relating to the administration of cantonments which was passed by the Legislative Assembly at its meeting held on the 24th July, 1923.

MESSAGE FROM HIS EXCELLENCY THE VICEROY.

ATTENDANCE OF MEMBERS AT JOINT SITTING.

The HONOURABLE THE PRESIDENT : *A Message from His Excellency the Governor General has been received, which is to the following effect :—*

*“ In pursuance of sub-section (3) of section 63-A. of the Government of India Act, I, Rufus Daniel Isaacs, Earl of Reading, hereby require the attendance of the Members of the Council of State in the Legislative Assembly Chamber at 11 O’Clock a.m. on Saturday, the 28th July, 1923.*

READING,

Viceroy and Governor General.”

NOTICE OF MOTION FOR ADJOURNMENT OF HOUSE TO DISCUSS  
THE DECISION ON THE KENYA QUESTION.

The HONOURABLE THE PRESIDENT : I have received notice from the Honourable Sir Maneckji Dadabhoy of a motion for leave to move the adjournment of the House for the purpose of discussing a definite matter of urgent public importance. I have given the matter my consideration and I consider that it is a matter of public importance, and further that it is an urgent matter of public importance for the reason that the Council is to be prorogued to-morrow, and therefore will have no opportunity of discussing the matter except on such a motion. Under the rules I am required to read the notice to the Council and ask whether the Honourable Member has the leave of the Council to move the adjournment. The matter in question is “ the announcement of His Majesty’s Government regarding the Kenya question as affecting Indians.” I will ask those Honourable Members who are in favour of leave being granted to rise in their places.

The HONOURABLE SAIYAD RAZA ALI (United Provinces, East : Muhammadan) : May I just inquire whether it would be necessary for Members to rise in their places ? If there is no Member who opposes the motion, then I take it that under the rules it is not necessary for members to get up in their places.

The HONOURABLE THE PRESIDENT : I have already given a ruling on that point. We have established the precedent that the course of public business cannot be disturbed save upon the requisite number of Members giving leave for such interruption, and that has to be maintained. Those Honourable Members who are in favour of leave being granted will rise in their places. (A number of Honourable Members standing). The Honourable Member has leave.

The HONOURABLE SIR MANECKJI DADABHOY (Central Provinces : General) : May I request that under rule 21 my motion may be taken up immediately after the termination of the legislative business to-day ?

The HONOURABLE THE PRESIDENT : It is under Order 22. But I can only give a direction in that sense with the consent of the Honourable Member in charge.

The HONOURABLE SIR NARASIMHA SARMA (Education, Health and Lands Member) : I may state, Sir, that a very important Bill is coming on for consideration in the Assembly and I have to be there. I can therefore give my consent only on the explicit understanding that you, Sir, and the House will be pleased so to arrange business as to enable me to be here to reply, if there is any necessity for a reply on the subject. I shall be able to communicate to the Honourable the Leader of the House and to you, Sir, as to when it will be possible for me to be here.

The HONOURABLE THE PRESIDENT : I can fix a time. Whether the Honourable Member can attend at that time is a matter for him. I cannot bring him here.

The HONOURABLE SIR NARASIMHA SARMA : I may suggest, Sir, that inasmuch as I hear some Honourable Members wish to leave Simla to-day, they may express their views and the matter may be further postponed so as to enable me to be here after lunch.

The HONOURABLE THE PRESIDENT : I think it is obvious that the Honourable Member is doing his best to meet the wishes of the House to discuss this matter at a time much convenient to many Members. It is equally obvious that unless the Member in charge of the department concerned is present, the discussion cannot usefully proceed, as there must be somebody to answer for Government. What I suggest is this, and I am endeavouring to meet the wishes of both sides of the House, which is rather difficult, that when the business of the day is finished, the Honourable Member should be allowed to move his motion and then we should ascertain, through the Leader of the House, if he will be kind enough to get us the information, what is the position of the Honourable Member in the other Chamber and whether there is any possibility of his arriving. In those circumstances, we shall meet the wishes of the House as far as possible, but in the end we must have the Honourable Member here so it may be necessary to meet at 4 o'clock. Does that meet with the general wish of the House ? Will that meet you, Sir Narasimha Sarma ?

The Honourable Sir Narasimha Sarma nodded assent.

The HONOURABLE LALA RAM SARAN DAS (Punjab : Non-Muhamadan) : Cannot we take it up now, Sir ?

The HONOURABLE THE PRESIDENT : The Honourable Member has not read the Standing Order.

#### LAND ACQUISITION (AMENDMENT) BILL.

The HONOURABLE SIR NARASIMHA SARMA (Education, Health and Lands Member) : I beg to move :

“ That the Bill further to amend the Land Acquisition Act, 1894, for certain purposes, as passed by the Legislative Assembly, be taken into consideration.”

The question of amending the Land Acquisition Act was discussed both here and in the Assembly on more than one occasion, and the Government undertook to bring before the two Houses an amending Bill comprehensive in its scope if it was possible and necessary to do so. Honourable Members are aware that the Industrial Commission recommended that power should be taken to acquire land for industrial concerns. The Government of India addressed the Local Governments and received their replies. While the subject was under consideration, Mr. Ramayya Pantulu, a Member of the Legislative Assembly, introduced a Bill proposing an amendment of the Land Acquisition Act in certain respects. He suggested that an opportunity should be given to persons whose lands were proposed to be acquired to state their objections. But the machinery that he proposed provided an appeal, a resort to a Civil Court and the Government of India could not under any circumstances accept a reference to the Civil Courts. The Bill was rejected by the Legislative Assembly, but the Government of India undertook at that time to bring in a Bill enabling persons who may feel aggrieved by proposals that their land should be acquired to state their objections. Many of the Local Governments in reply to Mr. Ramayya Pantulu's Bill agreed generally to the principle underlying the legislation which is before the House, and in practice certain Local Governments did frame rules enabling the public affected to state their objections. The Government of India therefore felt no hesitation whatsoever in holding that the right of the subject to state his objections before the Government finally decided whether to publish a notification under section 6 or not should be placed on a statutory basis. The Government of India regret that they have not been able to come to any final decision as regards legislation with regard to industrial projects. The proposals and the papers have been circulated amongst the Members of the Select Committees which have been constituted under a promise made by the Government, but these committees have not had an opportunity to meet or discuss the subject and no decision could be come to by the Government. Therefore a comprehensive Bill could not be introduced, and we felt that the granting of facilities should not be indefinitely delayed or postponed pending the further proposals to which I have alluded. That, Sir, is the genesis of this Bill. It is a non-contentious measure. It has been treated as such by the Assembly. I think the Government have gone as far as they could in providing the machinery for the purpose of enabling persons whose lands are proposed to be acquired to state their objections, personally or through their pleaders. They have provided that the whole proceedings should be submitted with a report to the Local Government concerned. The Local Government would thereupon have an opportunity of knowing all that can be stated either for the acquisition or against it and would come to a definite conclusion on the subject on sufficient materials and would then publish their notification under section 6. I think that is a distinct improvement upon the existing Act, and I have not the slightest doubt that this House will be able to give whole-hearted support to the measure. I move that the Bill be taken into consideration.

The HONOURABLE SARDAR JOGENDRA SINGH (Punjab : Sikh) :  
Sir, I should have very much liked to support the Bill introduced by my

[Sardar Jogendra Singh.]

friend, the Honourable Sir Narasimha Sarma, but there are two points which I wish to bring to the notice of this House. Indeed the Bill does not carry out the suggestions made by the Industrial Commission as well as the Sugar Committee, regarding land acquisition for industrial purposes. As the Government is about to amend the Bill, they might as well have gone fully into the matter and made the necessary provision recommended by these two Committees. Then again, Sir, as the Honourable Sir Narasimha Sarma pointed out, it was proposed to refer the Bill to the Select Committees attached to his Department. This Committee has not been consulted and changes that they might have made have not been made. Personally I should be inclined to postpone the Bill till the matter has been finally considered by the Select Committees and the necessary provisions required by the Industrial Commission made.

The HONOURABLE THE PRESIDENT : Does the Honourable Member move that the Bill be postponed for further consideration ?

The HONOURABLE SARDAR JOGENDRA SINGH : Yes, Sir.

The HONOURABLE THE PRESIDENT : Amendment moved :

“ That the further consideration of the Bill be postponed till the next session.”

That amendment is now under discussion along with the original motion.

The HONOURABLE MR. LALUBHAI SAMALDAS (Bombay : Non-Muhammadan) : I rise to support the motion that the Bill be taken into consideration and I oppose the amendment. As it is, it is a measure in advance of the present Act. Although I agree with the Honourable Sardar Jogendra Singh that it does not carry out the recommendations of the Industrial Commission, still it is something in that direction. It is a half-way house and as a half-way house we accept it. It is much better to have a half-way house than no house at all. But in this connection I request the Honourable the Leader of the House to consider whether when the new amendments are introduced in the other House he would not on behalf of Government consider the question of appointing a Joint Committee instead of a Committee of one House. As it happened in this case this House was not in session and this Bill was referred to a Committee of one House only. An important principle is being introduced into the old Act, and it would have been much better if representatives of both Houses had had an opportunity of discussing the Bill in detail. Of course in this particular case I understand the difficulties of Government. But I hope that hereafter whenever a new principle is introduced into an existing Act or important improvements are to be made in it, that Joint Committees may be appointed, as they have been in the case of various other Bills. I hope the Leader of the House will kindly take this matter into consideration. With these remarks I support the Bill.

The HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI (Law Member) : Sir, a perusal of clause 3 of the new Bill will make it clear to the House that this particular enactment is intended to provide for two

things, firstly, that the owner of land should have an opportunity of objecting to the proposed acquisition itself, in addition to the objections which under the existing Act he is authorised to lodge with regard to market value and other matters. The fact that the main object of the Bill is what I have stated does not, I submit, justify my Honourable friend Sardar Jogendra Singh in proposing a postponement of this Bill on the ground that acquisition for industrial purposes is not provided for in it. That is another matter altogether. To say.....

The HONOURABLE SARDAR JOGENDRA SINGH : May I rise for a personal explanation? The Bill was brought forward because the Industrial Commission made these recommendations, to carry out the recommendations of the Industrial Commission, not to provide for the lodging of objection against acquisition. That is a secondary consideration altogether.

The HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI : I venture to point out to the House that this assumption is not justified by facts. The very fact that this Bill itself does not provide for acquisition for industrial purposes shows that it is not the result of the recommendations alluded to by my Honourable friend. This Bill is intended to remove a complaint which has been made more than once that the law relating to the acquisition of land as it stands at present does not enable the owner to take exception to the acquisition itself, and that is the main object of the Bill. And may I point out to the House that, according to the new proposed section 5-A (1),

“ Any person interested in any land which has been notified under section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a Company may, within thirty days after the issue of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.”

From a perusal of this proposed section 5-A, the object of the proposed enactment is perfectly clear. The matter which has been referred to by my Honourable friend is an entirely separate matter and I have no doubt that the Government of India will at the proper time take action with reference to it.

With regard to the suggestion made by my Honourable friend Mr. Lalubhai Samaldas, he has himself explained the circumstances under which this present Bill was referred to a Select Committee of the Legislative Assembly. He may rest assured and the House may rest assured that the suggestion made by him will receive careful consideration.

The HONOURABLE THE PRESIDENT : The question is :

“ That the further consideration of the Bill further to amend the Land Acquisition Act, 1894, be postponed.”

The motion was negatived.

The HONOURABLE THE PRESIDENT : The question is :

“ That the Bill further to amend the Land Acquisition Act, 1894, for certain purposes, as passed by the Legislative Assembly, be taken into consideration.”

The motion was adopted.

The HONOURABLE THE PRESIDENT : The Council will now proceed with the detailed consideration of the Bill.

Chapters 1 and 2 were added to the Bill.

The HONOURABLE THE PRESIDENT : Clause 3.

The HONOURABLE MR. K. V. RANGASWAMI AYYANGAR (Madras: Non-Muhammadan) : Sir, it is stated in this clause " needed for a public purpose or for a company."

The word " company " has not been clearly defined. May I know whether it may be any company or a company only for a public purpose ?

The HONOURABLE MR. LALURHAI SAMALDAS : Sir, I would have liked the clause to have been drafted in such a way that assessors could be appointed to represent the people who take an objection. I know that the majority of the Select Committee was against that proposal, but a strong minority in the Assembly wanted assessors to be appointed. It was stated that the question would be reconsidered later on, so I am not pressing for an amendment now. But the time will soon come when we must consider the whole question of assessors being attached to the Collector. That is all that I want to say on this point.

The HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI : My Honourable friend opposite has raised the objection that the word " company " in the proposed new section 5A has not been defined. I am afraid he has not consulted the original Land Acquisition Act. Had he done so he would have found that " company " is actually defined in the Act and that therefore there is no necessity whatever for repeating that definition in the new section 5A.

Clause 3 was added to the Bill.

Clauses 4 to 10 were added to the Bill.

The Preamble was added to the Bill.

The HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI : Sir, I beg to move :

" That the Bill, as passed by the Legislative Assembly, be now passed."

The HONOURABLE THE PRESIDENT : The Question is :

" That the Bill further to amend the Land Acquisition Act, 1894, for certain purposes, as passed by the Legislative Assembly, be passed."

The motion was adopted.

#### INDIAN PORTS (AMENDMENT) BILL.

The HONOURABLE MR. A. H. LEY (Secretary, Department of Industries and Labour) : Sir, I move :

" That the Bill further to amend the Indian Ports Act, 1908, as passed by the Legislative Assembly, be taken into consideration."

This is a very simple piece of legislation the necessity for which, as will be clear from the Statement of Objects and Reasons, has arisen from the increasing number of oil burning ships visiting Indian ports. This, of course, is a comparatively recent development. The discharge of oil and oily water ballast from such ships is not only a nuisance but a positive danger to other shipping and to the port itself. Government have been advised that as the Indian Ports Act stands at present, it is *ultra vires* of section 21 to frame rules compelling the discharge of such ballast into special tank-barges, which, of course is the obvious way of

avoiding the nuisance, and that, Sir, is the only necessity for this legislation. I need only add that it is merely an enabling piece of legislation empowering Local Governments to make these rules, and that it has received the unanimous concurrence of all the Maritime Local Governments and commercial interests concerned. I move that the Bill be taken into consideration.

The HONOURABLE THE PRESIDENT : The Question is :

“ That the Bill further to amend the Indian Ports Act, 1908, as passed by the Legislative Assembly, be taken into consideration.”

The motion was adopted.

The HONOURABLE THE PRESIDENT : The Council will now proceed to the detailed consideration of the Bill.

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

The HONOURABLE MR. A. H. LEY : I now move :

“ That the Bill, as passed by the Legislative Assembly, be passed.”

The HONOURABLE THE PRESIDENT : The Question is :

“ That the Bill further to amend the Indian Ports Act, 1908, as passed by the Legislative Assembly, be passed.”

The motion was adopted.

#### • INDIAN ELECTRICITY. (AMENDMENT) BILL.

The HONOURABLE MR. A. H. LEY (Secretary : Department of Industries and Labour) : Sir, I move :

“ That the Bill further to amend the Indian Electricity Act, 1910, as passed by the Legislative Assembly, be taken into consideration.”

This again, Sir, is a very small measure, designed purely to put Railway Administrations in exactly the same position as licensees, that is to say, ordinary electric supply companies, under the Electricity Act in the matter of the removal of trees. Under section 18 of the Act as it at present stands, an Electric Supply Company has got powers to invoke the aid of a Magistrate to remove trees and jungle growing on land in such a way as to obstruct an aerial transmission line. It is obvious, I think, that exactly the same powers should be given to Railway Companies. The obvious necessity for this legislation is the increasing electrification of suburban lines, which is now beginning in India, I move that the Bill be taken into consideration.

The HONOURABLE THE PRESIDENT : The Question is :

“ That the Bill further to amend the Indian Electricity Act 1910, as passed by the Legislative Assembly, be taken into consideration.”

The motion was adopted.

The HONOURABLE THE PRESIDENT : The Bill contains only one clause and I will therefore call upon the Honourable Mr. Ley to move his second motion.

The HONOURABLE MR. A. H. LEY : I move :

“ That the Bill, as passed by the Legislative Assembly, be passed.”

The HONOURABLE THE PRESIDENT : The Question is :

“ That the Bill further to amend the Indian Electricity Act, 1910, as passed by the Legislative Assembly, be passed.”

The motion was adopted.

## INDIAN SUCCESSION BILL.

THE HONOURABLE SIR ALEXANDER MUDDIMAN: I ask the leave of the House to permit me to bring in a Bill to consolidate the law applicable to intestate and testamentary succession in British India. Honourable Members will recollect that in February 1922, this Council gave me leave to bring in a Bill to consolidate the law relating to Merchant Shipping. When I asked for leave to introduce that Bill, I explained to the Council that the Bill was the first fruits of the labours of the Statute Law Revision Committee of which I have the honour to be the Chairman. The Bill in question, I am happy to say, has now become law as the Indian Merchant Shipping Act, 1923. The Bill which I now ask for leave to introduce is a measure which originated in the same way. It is a child of the Statute Law Revision Committee being a consolidating Bill dealing with the law relating to succession in so far as that subject has been dealt with by Acts of the Legislature. As Honourable Members are no doubt aware the Indian law of succession is spread over numerous Acts, which are scattered over our Statute-book and which were enacted at different dates. If Honourable Members refer to the repealing Schedule of the Bill they will see them. I mention some of the most important—the Succession (Property Protection) Act, which was passed in 1841, the Indian Succession Act which was passed in 1865, the Parsee Intestate Succession Act, which was passed in 1865, the Hindu Wills Act which was passed in 1870, the Probate and Administration Act which was passed in 1881 and the Succession Certificate Act which was passed in 1889. There are other smaller Acts but I won't weary the Council by reading a list of them. I would merely say that there are a number of measures dealing with succession and that they are scattered over the Statute-book in a way which is neither convenient nor easy for people to find out what the law actually is. My Committee consulted the Government of India who were also of opinion that consolidation was desirable, and we took up the work. The Bill as prepared was considered by our Committee last February, and I think the Council will be interested to know who were on that Committee. Besides myself the Committee which then met consisted of the Honourable Sir Leslie Miller, the Honourable Mr. Khaparde, Sir Henry Moncrieff Smith, Dr. Gour and Mr. Samarth. After the Bill had passed our Committee, it was passed through the press and revised by Mr. Wright of the Legislative Department, and I desire to convey the thanks of the Committee to the great assistance he afforded us in that direction. The Bill will not only bring the existing law within the compass of one document, but will enable a considerable reduction to be effected in the actual volume of the law in this sense that provisions in similar terms occur in several of the Acts which are consolidated. The Bill deals with some 12 Acts and it now contains 392 clauses. The law thus reproduced was previously contained in some 600 sections. Honourable Members will thus see that some economy of space has also been effected. I do not propose to go at any length into the subject-matter of the Bill. No change of substance has been made intentionally. But in dealing with a subject like Succession, Honourable Members will easily understand that it is most desirable that we should not change the law inadvertently which may lead to a crop of litigation, for succession is one of those things which



affects everybody since it is the result of death. The position is that if the Council are good enough to give me leave to bring in this measure, I propose to adopt the rather unusual course in the case of a Consolidation Bill of asking that the Bill be circulated for opinion. I may say that that is not my own view only. We considered that point in Committee and the Committee were unanimously of the same opinion.

Council, therefore, will have the opportunity of considering the details of the Bill on many occasions. There are 392 clauses of them. I only hope that they will exercise their curiosity and verify the clauses by a reference to the original Acts. In order to help in doing so, they will find a very excellent table at the end of this Bill which will show exactly where the sections in the old Acts appear in the Bill. I said a great deal on the general subject of consolidation when I asked leave to introduce the Merchant Shipping Bill. I do not propose to weary the Council by repeating what I have said on that occasion, and I move for leave.

The HONOURABLE SAIYAD RAZA ALI (United Provinces East: Muhammadan) : I welcome the measure which has been placed before this Council in the form of the present Consolidation Bill. We are indebted to the Statute Law Revision Committee for having gone into the whole question carefully. Those who have had to look at the bulky volume that was sent to them, I believe, only yesterday, will realise that a measure of this character requires a considerable amount of labour and care. The important point that arises in considering a Bill of this character has been clearly placed before the House by you, Sir, and it is this, that when consolidating the law to be found scattered in a number of Acts passed by the Legislature, one cannot be too careful to see that while proposing to consolidate the law one should not inadvertently or unintentionally change the substance of any provision of the law. That, indeed, is a very important point. In this connection I am glad that it is proposed that the Bill should be circulated for public information and for public criticism. I cannot, however, but express a sense of regret that the Bill will go to the public as it stands without any criticism being offered by this Council on the scope of the Bill or as to the plan adopted by the Committee, for the simple reason that though the Statute Law Revision Committee had been laboriously at work on the Bill it was not till yesterday that the Legislative Department found time to circulate the Bill to Honourable Members of this Council. I got it, Sir, at about 11 o'clock yesterday and so I believe did most of the Members, a little before or after that time. Looking at the bulk of the Bill I do not think that it is quite fair that a Bill of such proportions as the one that is before this House should be either introduced into this Council at the far end of the session or circulated among the Members only 24 hours before its introduction. If really it is desired that any valuable criticism should come from the Members, then I hope, Sir, in future the Legislative Department will take care—and I specially invite the attention of my Honourable Friend, the Law Member—the Department over which he is so ably presiding will take care—that Bills are sent at such a time that there should be time enough at the disposal of Honourable Members to go through them. As it is, most of the Honourable Members have been busy for the session is drawing to a close, and even if Honourable Members had time and had no other engagements, I

[Saiyad Raza Ali.]

submit it would not be possible to go through 392 clauses of the Bill in such a short time.

The only other suggestion that I wish to make is that if Government had really wanted the opinions of this Council on this measure, it would have been quite open to them to defer introducing this Bill till the next session, inasmuch as fortunately for this Council its life is not coming to a close. No doubt, if this measure were to be introduced in the Legislative Assembly, there might be some justification for matters being rushed through, but in the case of this Council, I am not in a position to see what justification there was. I have ventured to make these remarks in the hope that they will be of use to Government in the future.

The HONOURABLE SIR ALEXANDER MUDDIMAN : I think I had better reply to the Honourable Member at once on that point, because on this occasion the Government is not at all to blame as they have nothing to do with the introduction of this Bill. Although, as the Honourable Member knows, no one is more anxious than I am to prevent legislation being rushed through this Chamber, I am alone responsible for the Bill being brought in at the rag end of the session. I may explain to the Council why I ventured on that rather curious course. We are about to adjourn for five months or so—at least we do not know when we are going to meet again—at any rate for some months. It seemed to me that it would be a useful thing if we saved time by bringing in the Bill at once and circulating during this recess. We are not doing anything on the Bill. We are not considering its provisions in any shape or form. This Council will have ample opportunity, when the Bill comes back, to express its opinion. After opinions have been received, there must be a motion to refer the Bill to a Select Committee, and if there is any Member who wishes to discuss the principles of the Bill, he will have ample opportunities then. If he wishes to discuss the details of the Bill, he will be able to discuss them on the Report of the Select Committee when it is taken into consideration. I should like to make it clear that the Honourable Sir Mian Muhammad Shafi and his Department are perfectly blameless on this occasion.

The HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI (Law Member) : Sir, I am grateful to you for the explanation which you have been pleased to give to the House in connection with the remarks made by my Honourable friend Mr. Raza Ali. As has been rightly observed by you, Honourable Members will have ample opportunities of expressing their views upon particular provisions of this Bill and also of proposing any amendments that they may deem necessary when the Bill comes for consideration in the ordinary way. It is, after all, as pointed out by you, a Consolidation Bill, and in a Consolidation Bill, no doubt, it is necessary to pay every attention to bringing the various provisions embodied in the various enactments sought to be consolidated together in a proper form. But I venture to think that even a critic of the position and experience of my Honourable friend will find, when he comes to examine this Bill carefully, that the Statute Law Revision Committee, under your able chairmanship, has given it the most careful consideration. My sole object

in rising on this occasion is, if may venture to do so, to acknowledge on behalf of the House, the heavy debt of gratitude which the House as well as the country owe to the Statute Law Revision Committee who, under your able chairmanship and guidance have rendered a valuable service to the country. Indeed, the work already accomplished by the Statute Law Revision Committee is of the highest value, and I have no doubt that, as they go on from time to time, in dealing with the various measures which may be committed to their care, whether in the way of consolidation or in the way of revision, their work will be as valuable in the future as it has been in the past.

The HONOURABLE SIR ALEXANDER MUDDIMAN : I thank the Honourable Member for his kind remarks, which I am sure the Committee will appreciate. My only regret is that none of the members of the Statute Law Revision Committee are present.

12 NOON.

The HONOURABLE THE PRESIDENT : The question is :

“ That leave be given to introduce a Bill to consolidate the law applicable to intestate and testamentary succession in British India.”

The motion was adopted.

The HONOURABLE SIR ALEXANDER MUDDIMAN : I introduce the Bill.

The HONOURABLE SIR ALEXANDER MUDDIMAN : I beg to move :

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

I have just one or two words to say on this motion. In asking the leave of the Council to introduce this Bill I had already foreshadowed the motion that I have just made. Of course my main reason for circulation is to submit the Bill to the criticism of public opinion with the object of securing that no inadvertent change has been made in the law. On the last occasion, when dealing with the previous Consolidation Bill, I pointed out to this Chamber the danger of mixing up amendment and consolidation and I need not pursue that point further. But there is one other point, and that is that, if you bring a considerable body of law which is scattered about into one document, there is no doubt that any defects—any lacunæ—stand out more clearly than when they are scattered over various Acts. I think that a Consolidation Bill gives the legal public, that is people who are concerned either with the administration of the law or are practising lawyers, an opportunity of taking stock as it were of the branch of the law which has been dealt with. I personally am rather hopeful that,—though amendments of substance must be excluded from the scope of the present Bill—some Members of this House or the other House may be moved to bring in amending Bills, not to this Bill but Bills remedying defects in the law of succession if any comes to light. I think we have all noticed,—I certainly have often been struck by the fact,—that under our present law, save in cases where the Hindu Wills Act applies, no formalities are necessary for the execution of a will by a Hindu. Sir Whitley Stokes, whose name will always be remembered in connection with the Indian Statute-book writing in 1865, that is 58 years ago, was inclined to doubt whether this was not a very serious defect in our law. I mentioned the matter to one very distinguished Hindu-lawyer and he said that a Bill of this kind would usefully draw

[Sir Alexander Muddiman.]

attention to defects of that kind. Of course I merely mention this not as an argument in support of circulation of the Bill, but as an instance of the indirect benefits which may be derived from circulation. I now move that the Bill be circulated.

The HONOURABLE SAIYAD RAZA ALI : I am glad, Sir, that you have told us as to what were the various stages that were arrived at during the preparation of this Bill. It appears to me, Sir, that the Statute Law Revision Committee was anxious that the Bill should be placed before this House at any early date, and consequently I think some mistakes have crept into the draft. The mistakes seem to be of a nature which cannot be safely ascribed to the "printer's devil" if I may use that expression. If Honourable Members will refer to page 2 of the Notes on Clauses they will find on clauses 240 and 241 a note which runs thus : "The same remarks apply as in the case of clause 238." But if you turn to the reference there is no note on clause 238 at all. That clearly shows that the work has been done in a hurry, and therefore I welcome the more readily the proposal that the Bill should be circulated.

The HONOURABLE SIR ALEXANDER MUDDIMAN : I am glad the Bill has been carefully examined by the Honourable Saiyad Raza Ali. The actual error he has pointed out is not in the Bill but in the Notes on Clauses.

The HONOURABLE THE PRESIDENT : The question is :

"That the Bill to consolidate the law applicable to intestate and testamentary succession in British India be circulated for the purpose of eliciting opinion thereon."

The motion was adopted.

#### CHARITABLE AND RELIGIOUS TRUSTS (AMENDMENT) BILL.

The HONOURABLE MR. K. V. R. AYYANGAR (Madras; Non-Muhamadan) : Sir, I beg to move :

"That the Bill to amend the Charitable and Religious Trusts Act, 1920, as passed by the Legislative Assembly, be taken into consideration."

In the Preamble of Act XIV of 1920 it is stated :

"Whereas it is expedient to provide facilities for the obtaining of information regarding trusts created for public purposes of a charitable or religious nature and to enable the trustees of such trusts to obtain the directions of a court in certain matters and to make special provisions for the payment of the expenditure incurred in certain suits, etc., etc."

The present amendment if carried will go to improve the Act. District Courts are situated in centres while subordinate Courts are situated nearer the place of trusts, so that it may be very easy for the trustees and the public to resort to the subordinate and other Courts. Further, District Courts are crowded with sessions work and it is possible if jurisdiction is given to subordinate Courts that erring trustees can be made accountable for their actions more quickly as is the object of the Act (XIV of 1920). Sir, the subordinate Courts are manned by judges who are equally honest and capable of dispensing justice entrusted to their care, and I may say that more important cases involving very large

interests are being tried by them and there will be no objection to their disposing of these petitions relating to charitable and religious trusts.

I beg to move that this Bill be taken into consideration.

The HONOURABLE THE PRESIDENT : The question is :

“ That the Bill to amend the Charitable and Religious Trusts Act, 1920, as passed by the Legislative Assembly, be taken into consideration.”

The motion was adopted.

The HONOURABLE THE PRESIDENT : The Council will now proceed to the detailed consideration of the Bill.

Clause 1 was added to the Bill.

The HONOURABLE THE PRESIDENT : Clause 2.

The HONOURABLE DEWAN BAHADUR V. RAMABHADRA NAIDU (Madras : Non-Muhammadan) : Sir, I do object to clause 2 of this Bill. Suits must not be transferred to any other Court less than a subordinate Court. My contention is that either a District Court or a Sub-Judge's Court must try the cases.

The HONOURABLE MR. K. V. RANGASWAMI AYYANGAR : The Act empowers the Local Government to authorise any Court to try these cases, and so if they think that a Munsif's Court is competent for this purpose they may authorise that Court to try the cases. The Act confers the power on Local Governments to confer jurisdiction on Courts other than the District Court.

The HONOURABLE THE PRESIDENT : That is what the Honourable Member objects to.

The question is :

“ That clause 2 stand part of the Bill.”

The motion was adopted.

The HONOURABLE MR. K. V. RANGASWAMI AYYANGAR : Sir, I beg to move :

“ That the Bill, as passed by the Legislative Assembly, be passed.”

Sir, there was no controversy in the Assembly and I am glad to associate myself with a most uncontroversial measure like this which is a relief to me. I am sorry I could not be here on the first day when this motion was put down in my name ; I was stranded at Delhi as the boxes containing my warm clothing did not arrive for two days and that accounts for my absence.

The HONOURABLE THE PRESIDENT : The question is :

“ That the Bill to amend the Charitable and Religious Trusts Act, 1920, as passed by the Legislative Assembly, be passed.”

The motion was adopted.

### MUSSALMAN WAKF BILL.

The HONOURABLE SIR ZULFIQAR ALI KHAN (East Punjab : Muhammadan) : Sir, I beg to move :

“ That the Bill to make provision for the better management of wakf property and for ensuring the keeping and publication of proper accounts in respect of such properties, as passed by the Legislative Assembly, be taken into consideration.”

[Sir Zulfqar Ali Khan.]

In doing so, Sir, I desire to make a few observations in order that the Honourable Members may get full information of the chequered career of this Bill. Sir, I need not dilate on the importance of this Bill which meets with the general wishes and needs of the Muhammadan community in India. In all independent Muhammadan countries there is a Ministry called the Ministry of Wakfs to look after these pious endowments, and in India the same arrangement existed during the Moghul period. But after the extinction of the Moghul rule in India these endowments fell into confusion and the consequence was that the funds of these pious endowments were either wasted or misappropriated by individuals for their own private benefit. Sir, the administration of these trusts unfortunately in these days has come to vest in the hands of unscrupulous and incompetent mutwallis, who have no regard for the pious wishes of the founders of these trusts. It is a pity that the generous impulses of the donors are absolutely ignored by these inefficient people. In the Assembly debates it was clearly shown that these people were wickedly throwing away the resources which ought to accrue to the Muhammadan community for the welfare of their educational and other interests. Sir, I need not expand on the needs of the Muhammadan community, but I cannot refrain from saying that the loss to the Muhammadan community has been very great owing to the almost criminal selfishness and misappropriation of these people. After the fall of the Moghul Empire the times were such that the Muhammadans perforce had to remain silent, and unfortunately could not take measures to recover the property meant for their welfare. It is the dawning consciousness of the Muhammadan community which demands that effective measures should be adopted at an early date to ensure that the funds of these endowments are appropriated for the purpose for which they were meant. It was in response to this public demand that Moulvi Abul Kasim whose courage and convictions we cannot too highly praise, took up the motion to meet the public demand. He introduced the Bill in the Assembly on the 26th of February 1921, and on the occasion of that debate Sir William Vincent explained the attitude of Government in these words :

“ Now these are *prima facie* objections of some weight to the Bill. But at the same time it has been represented to us that the Muhammadan community were very anxious that the Bill should be introduced and the Government of India therefore will not oppose this motion for introduction. It must however be quite clearly understood that they reserve to themselves full liberty later to take any attitude towards this Bill which subsequent circumstances may necessitate. We shall consult Local Governments particularly, really the reformed portion of the Local Governments, as to what their wishes are and we will also have a full opportunity of ascertaining what the public opinion is.”

Well, Sir, it was exactly after two years that public opinion and the opinion of Local Governments was ascertained and a whole volume has been published containing these opinions. I cannot say that the opinions so collected are unanimous in respect of this Bill. In fact, the local official opinion was mostly opposed to this Bill.

The HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI : To the original Bill as introduced.

The HONOURABLE SIR ZULFIQAR ALI KHAN : Yes, to the original Bill. I am coming to the Bill as drafted later on. But, Sir, with regard to

this attitude of Government, I beg to say that the mental attitude of the official mind was entirely due to the character of the times. In those days the movements for non-co-operation and Khilafat were zealously agitated, and it was entirely due to these circumstances that the official opinion of the provinces was opposed to this Bill. Then, Sir, after the receipt of these opinions a Select Committee was formed and this Bill was entrusted to their deliberations on the 15th February 1923 and the report of the Select Committee was presented on the 15th of March 1923 and then a big debate took place in the Assembly on the 22nd March 1923. In the course of that debate Sir Malcolm Hailey explained the attitude of Government as it then was after it had been thoroughly reformed, and during his speech he said:

“ Sir, I have been asked for the opinion of Government on this question and I am quite prepared to give it. It will be remembered that when the Bill originally came before us, it involved the organisation of managing committees by Government and a very considerable amount of control to be directed by Government, and I may say at once that Government was opposed to any such proposal. That feature of the Bill has, however, now been excluded. The only new burden which the Bill now places upon Government is the receipt of accounts. For the rest it will merely be for the civil court to take action on the lines of the Act of 1920 on the motion of persons interested in these wakfs.”

Sir, the changed attitude on the part of Government as explained by Sir Malcolm Hailey was due entirely to the recasting of this Bill. From 32 clauses it was reduced to 13 clauses only, and the provisions which the original Bill contained with regard to control and management of these wakfs by the Collector or Government officials were eliminated. The change of attitude on the part of Government was due entirely to these changes. Members of the Council of State will notice that the Government attitude as explained by Sir Malcolm Hailey is indeed not of opposition but one of sympathy and co-operation. Sir, the objects of the Bill as passed by the Assembly are quite simple. It seeks to secure the registration of all the endowments made by pious Muhammadans in favour of the Mussalman community. It also seeks to secure the rendering of proper accounts properly audited. These are the two main features of the Bill which are most essential. Under these circumstances, Sir, I do not think that either the Government or the non-official Members would hesitate to pass this Bill. It is, I may say, almost a homœopathic dose but I believe and I hope that this little quantity will impart health and vigour to the Muhammadan community which is suffering on account of want of resources for the improvement of its education. I do hope, Sir, that the Mutwallis themselves on their part will show a conciliatory attitude. I may say in their interests that if they show any bad temper in this matter, they may meet the same fate which the Udasis have met in the case of the Akalis. These Mutwallis ought to understand that they have for long years enjoyed undisputed the rich funds which by no law fell into their possession. They ought to be patriotic enough to see that the needs of the Muhammadan community require these funds and they must surrender them. But at present, Sir, they need not surrender these funds. It is only registration of wakf property and the rendering of accounts that is wanted. But I hope that these very people—Mutwallis—will later on see that it is to their interests conjointly with the Muhammadan interests to devote these funds for the welfare of the Muhammadans. Imagine, Sir, what would happen if

[Sir Zulfiqar Ali Khan.]

the funds endowed in favour of Cambridge and Oxford Universities were misappropriated. Is it possible that these Universities would exist? The same circumstances prevail here and the Muhammadan community suffers on account of misappropriation of these funds. I hope, Sir, that the serene wisdom of the Honourable Members of this Council will induce them to pass this Bill unopposed. I may impress on those Members who may wish to introduce certain changes in the Bill that the Muhammadan community is anxiously watching the passage of this Bill in this Council, and if they find that even this little measure of relief which is afforded them is disturbed by certain amendments—I do hope that they will realise that they will have to meet the bad temper of Muhammadans outside. With these few remarks, Sir, I beg to move that the Bill be taken into consideration.

The HONOURABLE SARDAR JOGENDRA SINGH (Punjab : Sikh) : Sir, I should like to support this motion, if for no other reason, than that it has been moved by my friend the Honourable Sir Zulfiqar Ali Khan. But there is a deeper reason. The problem is common to us all, Hindus, Muhammadans and Sikhs. To-day it is the mosques, to-morrow it will be the temples and the day after, it will be the gurdwaras. The dawn of self-consciousness to which my friend alluded, will, I hope, lead to the realisation that we have common problems demanding common action. Now, Sir, I support this Bill.

The HONOURABLE MR. J. CRERAR (Home Secretary) : Sir, the few observations which I have to make upon this measure will almost entirely be devoted to a brief explanation of the attitude taken by Government on the Bill at its various stages. The Honourable Mover has pointed out that the Bill, as originally devised, was a much larger Bill, and I may say, a much more drastic Bill, than that which is now before the House for consideration. It provided for a very large measure of immediate control, and a still larger measure of direction of control on the part of Government and on the part of Government officers. To that portion of the Bill Government was constrained to take great objection, but the grounds of objection were not, as was suggested by the Honourable the Mover, related to any temporary political considerations existing at the time the measure was first introduced. The objections were of a different nature. They referred to the deliberate policy adopted by the Government and acted upon for many years. I think the House is aware that prior to 1863 a large measure of control was exercised by Government officers in various parts of India over trusts of a charitable or religious character. The situation was not entirely satisfactory to either of the two parties concerned. In some cases it was not entirely satisfactory to the trustees or persons otherwise directly concerned with the trusts, and it was distinctly embarrassing to Government. It brought them in certain cases, as well as their officers, in various invidious ways into contact with communal and religious sentiments of a very delicate character, and at that time Government deliberately adopted the present policy. In pursuance of their wider policy of complete abstention from interference with the religious practices and sentiments of the various Indian communities, Government decided to refrain from this form of interference with communal affairs. It was in pursuance of that deliberate policy which has been in force for many years that Government were unable to view with favour



those parts of the original measure. In the process of consideration by the Select Committee all those parts to which I have referred and which the Government of India supported by the practically unanimous opinion of the Local Governments obtained when the original measure was referred to them for opinion, opposed—those obnoxious provisions, obnoxious from the point of view of the Government, were removed. Of the measure as it thus emerged, the Government in another place afforded the fullest facilities for discussion and for passage, and their attitude towards it is the same in this House. There is one feature of the Bill to which I should like to invite the attention of the House. I think it will be generally agreed that a measure of this kind should possess a very great degree of elasticity, and also that, in so far as this is possible, ample provision should be made for the ascertainment and consultation of the opinion of the various communities which will be affected by it. It is for that reason that the Bill provides for the grant of powers to Local Governments, in the first instance to extend the Act to the territories under their jurisdiction or to any part of them, and in the second instance, to exclude from the operation of the Bill any particular community. I think the House will agree that those are salutary provisions. The Local Governments, if and when the question of the application of the Act arises in a particular case, are obviously in a much better position to secure that direct consultation and ascertainment of the wishes or disposition of the communities affected. That, therefore, is an essential part of the Bill from the point of view of Government. I do not think I need add anything further except to say that the Government will watch the progress of this measure with sympathetic interest, and, if it receives the approbation of this House, will follow with close attention the results of its operation as an Act.

THE HONOURABLE DIWAN BAHADUR V. RAMABHADRA NAIDU (Madras : Non-Muhammadan) : Though a non-Muhammadan, I welcome this Bill. The Honourable Sir Zulfiqar Ali Khan has already stated the necessity for this Bill. Prior to 1863 the Government was administering the religious trusts. So far as I have heard, when there was interference of the Government in religious trusts, the administration of the trusts was going on well. I do not know what to say of the wisdom of the neutrality of the Government that was maintained after 1863. In my Presidency there was a necessity recently to amend the Religious Endowments Act. The heads of mutts contended that the mutt property was the private property of the religious heads. From this Bill I see that the mutwallis also are not administering their trusts. There is a complaint everywhere that proper accounts are not rendered, that proper audit is not made, so much so that the trusts are not properly cared for. In that view I welcome the Bill, whether it will affect Muhammadans or non-Muhammadans.

THE HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI (Law Member) : The attitude of Government towards this measure has been fully explained by my Honourable friend, Mr. Crepar. As a Muhammadan, however, I am directly interested in the welfare and proper maintenance of our religious and charitable endowments, and in consequence, I venture with the leave of the House to offer a few observations in connection with the Bill now before us for discussion. My Honourable friend, Sir Zulfiqar

[Sir Muhammad Shafi.]

Ali Khan, in the few observations he made when placing this motion before the House, said that when the Bill was originally circulated for opinion, Provincial Governments expressed an unwillingness to advocate legislation in this direction because of the political conditions which were at that time in existence in the country. I am afraid that that statement does not very correctly represent the opinions given by the Provincial Governments even on that occasion. If Honourable Members will look for a moment at the opinions then sent up by the Local Governments, they will find that the Madras Government, in paragraphs 3 and 4 of their letter, observed as follows :

“ The Honourable Minister in charge of religious and charitable endowments has had the advantage of discussing the main principles of the Bill with the leading Muhammadan representatives in the Legislative Council and the views expressed and the observations made in the following paragraphs had their full support. Enlightened Muhammadan opinion in this Presidency is practically unanimous that a very large number of endowments made by pious Muhammadans in the past had been wasted or converted to the private benefit of individuals contrary to the wishes of the original founder that their administration in many cases has come to waste in the hands of inefficient and unscrupulous mutwallis and that effective measures should be adopted at an early date for preventing waste of management of Muhammadan public trusts and to ensure that the endowments are appropriated to the purposes for which they were founded. The need for suitable legislation is therefore obvious.”

That was the opinion expressed by the Madras Government. The Bombay Government in paragraph 3 of their letter observed as follows. After making some preliminary observations in the preceding paragraph, they went on to say :

“ There is, however, a very considerable body of opinion in favour of some measure for compulsory registration of wakf estates and for the maintenance and publication of accounts.”

Honourable Members will notice that the Bill in the final form which it has assumed after its passage through the Legislative Assembly has provided exactly what the Bombay Government stated in this paragraph. Then, Sir, the Bengal Government in paragraph 2 of their letter observed as follows :

“ In reply I am to say that there is a general consensus of opinion that something should be done in order to prevent the mis-appropriation of charitable and religious endowments by dishonest mutwallis and to recover charitable funds which have fallen into the hands of private parties as there can be little doubt that there are many quite valuable wakf estates throughout India including Bengal which are grievously mismanaged and misapplied by their mutwallis or trustees.”

The United Provinces Government in paragraph 2 of their letter observed :

“ It will be observed that the majority of those consulted are emphatically of opinion that some machinery for improving the administration of wakfs is eminently desirable since there are undoubtedly many cases of mal-administration, though possibly the case is stated somewhat too strongly in the Preamble to the Bill.”

The Punjab Government were quite distinct as to the nature of the legislation which ought to be undertaken. In paragraph 3 of their letter this is what the Governor in Council observe “ His Excellency in Council suggests that the Bill should confine itself to the compulsory registration of wakfs and the publication of accounts and these processes shall be carried out not by the Collector but by the Inspector General of Registration.”

It will thus be seen that the Governments of all the Presidencies and the principal provinces accepted the necessity of some suitable legislation

in order to prevent maladministration of wakf property and in particular two of the Governments distinctly suggested that the Bill should be so amended as to confine itself to registration of wakfs and rendering of accounts. That is exactly what the present Bill, as it has now come up from the Assembly, seeks to enforce. It is therefore clear that Muslim public opinion as well as the opinion of the Provincial Governments was even at the very commencement in favour of legislation of the kind which is embodied in the Bill as now amended in the other House. The exception taken by the Local Governments was mainly with reference to certain provisions of the Bill under which district committees were to be appointed and Collectors associated with the work which those district committees were required to do. In so far as my humble opinion is concerned, I think that the measure is a very salutary one and I commend it to the acceptance of the House.

The HONOURABLE SAIYAD RAZA ALI (United Provinces, East : Muhammadan) : I have absolutely no desire to stand between the motion for adjournment and the Honourable Members of this House, and therefore I propose to say only a few words on this motion. One of the worst disadvantages under which a Government that is not perfectly aware of the ways, manners and customs of the people labours is that quite apart from what it may or may not do in the political field, it is extremely reluctant to take any bold step in the field of social reform. Now, if we go into the history of British rule in India, we will find that whatever British rule in the political field may or may not have achieved, it has not much to its credit in the field of social reform. Those who have been advocating a substantial measure of political reform do not lose sight of the fact that if the government of the country is largely in the hands of the people of the country, it will lead to greater happiness of the people inasmuch as those measures of social reform which Government is not prepared to undertake for obvious reasons will be handled satisfactorily by the representatives of the people. If Honourable Members will look at the history of the Central Legislature during the past two and a half years of its existence, they will find that very earnest and serious attempts have been made to pass measures of social reform, one of which is before the House this morning. Sir, I heartily support that this Bill be taken into consideration. The scope of the Bill is a very simple one. It deals in the first place with the registration of wakfs in certain cases. Then it provides for the accounts being rendered to proper authority by the mutawallis who have been up till now, there is a general feeling, acting, to put it very mildly, in a highly irresponsible manner. Then in the case of those who do not comply with the provisions of the law as laid down in this Bill, it is provided that they shall be subject to certain penalties which are none too severe. Then the Bill gives power to Local Governments to make rules on certain matters too numerous to be dealt with by the Legislature. And lastly we come to a rather startling clause which finds a very odd place at the end of the Bill. I do not propose to deal with the clause itself, but so far as the principle underlying the clause is concerned, I think that it takes away very largely from the usefulness of the measure that is before us. The Honourable Mr. Crerar as a matter of fact tried to point out to the Council that this provision added to the utility of the Bill. The clause

[Saiyad Raza Ali.]

relates to certain enabling powers that have been delegated to the Local Government. I wish that clause were not there. When we come to the clause itself Honourable Members will see that unfortunately at the eleventh hour the clause was sprung upon the other House. ....

— The HONOURABLE THE PRESIDENT : The Honourable Member will be able to oppose the clause when it comes up.

The HONOURABLE SAIYAD RAZA ALI : That is my intention. I would now simply say that so far as the principle of the Bill which delegates certain powers to Local Governments is concerned that is one which I am sure will not find acceptance at the hands of this Council. But generally, Sir, I support this Bill most heartily.

The HONOURABLE HAJI CHOUDHURI MUHAMMAD ISMAIL KHAN (West Bengal : Muhammadan) : Sir, although I am a mutwalli, I am not afraid to support the Bill. I have got direct knowledge that the mutwallis are spending the money for their own private purposes and there is great need for legislation in the matter. It is absolutely necessary to pass the Bill for the benefit of the Muhammadan community. Therefore I support the Bill.

The HONOURABLE THE PRESIDENT : The question is :

“ That the Bill to make provision for the better management of wakf property and for ensuring the keeping and publication of proper accounts in respect of such properties, as passed by the Legislative Assembly, be taken into consideration.”

The motion was adopted.

The HONOURABLE THE PRESIDENT : The Council will now proceed with the detailed consideration of the Bill.

Clauses 1 to 8 were added to the Bill.

The HONOURABLE KHAN BAHADUR SIR AHMEDTHAMBY MARICAIR (Madras : Muhammadan) : Sir, I have an amendment to clause 9 to the effect that after the words “ any person ”, the words “ professing the Musalman faith ” be inserted. I understand there is some technical difficulty about alterations, and if the measure is to be passed in this Council, I think. ....

The HONOURABLE THE PRESIDENT : Perhaps the Honourable Member will explain what the technical difficulty is.

The HONOURABLE SIR AHMEDTHAMBY MARICAIR : I heard that if any correction is made in the Bill here it will have to go back to the other House.

The HONOURABLE THE PRESIDENT : That is a technical difficulty which always arises in those circumstances.

The HONOURABLE SIR AHMEDTHAMBY MARICAIR : Well, I think to avoid any difficulty, as the Bill is an important one for the protection of Mussalman wakfs, I do not want to stand in the way of its being passed into law, and I therefore withdraw the amendment with the right of moving it in the next Session.

The HONOURABLE THE PRESIDENT : The Honourable Member has not moved his amendment and cannot therefore withdraw it nor can he reserve his right to the next Session.

The question is :

“ That clause 9 stand part of the Bill.”

The motion was adopted.

Clause 9 was added to the Bill.

The HONOURABLE THE PRESIDENT : Clause 10.

The HONOURABLE LIEUTENANT RAO BAHADUR CHAUDHRI LAL CHAND (Punjab : Nominated Non-Official) : In order to satisfy my own curiosity I want to ask a question and I hope the Honourable Mover will throw some light on it. It is not clear to me whether this fine will be a charge on the wakf property or will be realized from the mutwalli's private property, and what will happen if he has no private assets ?

The HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI (Law Member) : How can a fine inflicted on a mutwalli who has either misappropriated property or not rendered proper accounts be a charge on the wakf property ? He will have to pay it out of his own pocket.

Clause 10 was added to the Bill.

The HONOURABLE THE PRESIDENT : The question is :

“ That clauses 11, 12 and 13 stand part of the Bill.”

The HONOURABLE SAIYAD RAZA ALI : Not clause 13. There is an objection to that.

The HONOURABLE THE PRESIDENT : The question is :

“ That clauses 11 and 12 stand part of the Bill.”

The motion was adopted.

The HONOURABLE SAIYAD RAZA ALI : I find, Sir, that Sir Ahmed-thamby Maricair has put down an amendment to clause 13. Strictly speaking it is hardly an amendment, it is a motion for omission.

The HONOURABLE THE PRESIDENT : If the Honourable Member does not stand up to move his amendment when I call the clause I naturally conclude that he does not wish to move it.

The HONOURABLE SIR AHMEDTHAMBY MARICAIR : I was not called by name, Sir. As I have already said, this is an important Bill. As the Mover explained, the mutwallis have been misappropriating wakf property and clause 13 as it stands in the Bill is a dangerous one, and it is essential that this clause should be omitted in the interests of wakf property. But as I have already explained, any amendment of this nature now will interfere with the passing of this Bill in this House, and I therefore beg to withdraw my amendment with the permission of the House.

The HONOURABLE THE PRESIDENT : I have already explained to the Honourable Member that if he has not moved an amendment he can-

[The Honourable the President.]

not withdraw it. An amendment can only be withdrawn if it is moved and not otherwise. The Honourable Member has taken up the time of this Council which might otherwise have been saved. He had merely to remain in his seat peacefully and the result he desired would have been attained.

The HONOURABLE SAIYAD RAZA ALI : The clause which is the subject of consideration by this House gives power to Local Governments to exempt from the operation of this Act or of any specified portion thereof any wakf or wakfs created or administered for the benefit of any specified section of the Mussalman community. I will at once say, Sir, that this clause owes its existence to the attitude taken up by certain individuals among a certain section of Mussalmans known as the Borah community, who it appears wanted to place themselves beyond the pale of this Bill. It appears that while the measure was before the other House a certain representative of that community moved that power be given to the Local Government so that if that Government thought that the Borah community was a section of the Muhammadan people who should not, according to their wishes, be governed by this Bill, it might be in a position to exempt that community.

The HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI : May I be  
1 P.M. permitted to correct my Honourable friend ? The gentleman in question moved that the Borah community be excluded from the purview of this Act, and on that the Government proposed that instead of excluding any particular community by name from the purview of the Act, power might be given to Local Governments, should they think it necessary, to exclude any particular community.

The HONOURABLE SAIYAD RAZA ALI : I am glad at the explanation that has come from the Honourable the Law Member and I would point out that the difference between his statement and my speech is one of six on one side and half a dozen on the other. We come to the broad facts. I will accept the facts as he has put before us because he acted on behalf of Government in the other House. The position is this. In the interests of a certain community that has raised the standard of rebellion, if I may say so, against Islamic tenets, Government have seen their way to give powers to Local Governments to exempt this particular community. Now, Sir, the question is one of principle and that is exactly the reason why I am raising this question before the House.

(At this stage the Honourable the President vacated and the Honourable Sir Maneckji Dadabhoi took the Chair.)

The Muhammadan law is not based on custom. Mussalmans claim that their law is revealed law. Now, on that basis, the view taken by the highest courts in this country has been that it is not open to any class of Muhammadans unless Hindu customs have been in vogue amongst it from time immemorial, to place itself beyond the pale of that law. We find that this Bill is intended to have the force of law as regards all the people professing the Mussalman religion. Also, so far as the territorial limit is concerned, we find that there is no place that has been

exempted from the operation of the law. The territorial limits are defined in clause 1, sub-clause (2) which says that "It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas." When we come to the peoples whom this law will affect and who will be bound by this law, we find that wakf is defined in the Bill as "the permanent dedication by a person professing the Mussalman faith." If you take these two provisions together, I submit, Sir, it follows that it is not open to any Mussalman to refuse to be bound by this Bill. Yet we find that having regard to the wishes of a certain community power has been given to Local Governments to exempt any particular community. That goes against the very first principles of Muhammadan law as interpreted by British courts. The matter indeed is a very serious one, and it is in this light that I propose to raise my voice of strong opposition to this clause. If clause 13 is passed to-day, it may be that claims in various forms and various shapes will proceed from various communities asking that the Muhammadan law be modified so far as they are concerned. That is a position to which the Muhammadans have never submitted. Because this clause raises a question of principle, therefore I hold that it will be highly dangerous, it will be highly injurious to the interests of the followers of Islam to accept a contention of that character. I submit, Sir, that absolutely no case has been made out for enacting this clause. The Bill is a very sound Bill. What it seeks to do is simply registration of wakfs and the filing of accounts by mutawallis. Those are the two main provisions of the Bill. I for one entirely fail to see why the Borah community should be immune from this necessity of registering their wakfs and filing the accounts. To me it seems that if the Government are influenced by this contention, then the obvious inference is that the state of wakfs in the Borah community is hopeless, and that if there is any community which requires a law to be passed for the protection of the wakfs, it is surely the Borah community. I may in this connection note that I have received a number of representations from the Borah community in which they have expressed their very strong desire to have this clause omitted.

(At this stage the Honourable the President resumed the Chair.)

They say that if this clause is passed, the result would be that the mutawallis among the Borahs, who even now are highly irresponsible people, would claim wakf properties as absolutely their own, and in that case a very great safeguard which is provided by this Bill would have been taken away. I am aware, Sir, that it is rather dangerous to propose that any amendment be made in any Bill for the best of reasons that we have to see what will happen if the Bill goes to the other House, which is not going to meet beyond to-day. Yet, since a question of principle is involved, and that too a very vital one, I deem it my duty to ask Honourable Members of this Council to vote against clause 13 being passed.

THE HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI : Sir, I venture to assure the House that the fears entertained by my Honourable friend Saiyid Raza Ali are in reality groundless. If my Honourable friend will kindly glance at the language of the section he will find that the

[Sir Muhammad Shafi.]

section does not exempt the Borah community from the provisions of this Bill. Indeed, it seems to me that the mere fact that a large number of telegrams have been received by him from the representatives of the Borah community ought to have led him to believe that the overwhelming body of opinion among the Borah community against their exemption from the proposed law is, in itself, proof positive that the Local Government of Bombay is not likely to exempt them under this clause. For, I for one cannot conceive that any Local Government in any province will arbitrarily, unless it is convinced that the majority of the community themselves desire exemption from the terms of the Act, exempt any particular community in spite of opposition. Just as my Honourable friend has received telegrams, I as Leader of the House have also received telegrams from representative associations and bodies of the Borah community not only in the Bombay Presidency but from other parts of India as well. In those circumstances, I do not think we need entertain any fear whatever that the Local Government will arbitrarily, without finding out the wishes of the community itself, exempt that community from the provisions of this Statute.

In so far as the question of principle enunciated by my Honourable friend is concerned, I am afraid I cannot agree with him. It will be seen that this particular clause 13 does not in any way infringe the principles of Muhammadan law. It does not in any way really go against the provisions of the Muhammadan law of wakf. All it says is this, that any Local Government may, by notification in the local Official Gazette, exempt from the operation of this Act or of any specified provision thereof, any wakf or wakfs created or administered for the benefit of any specified section of the Mussalman community. All that this Act does is to require that all mutwallis will compulsorily register the endowments of which they are in charge. I personally am not aware of any provision of Muhammadan law which requires the registration of wakfs in the manner contemplated by this Bill, and I am sure my Honourable friend, learned in the Mussalman law as he is, is perfectly aware that what this Bill affects to do is outside the purview of Muhammadan law. To that extent the provisions of this Bill have nothing to do with the Muhammadan law of wakfs, and therefore there is no fear of this particular enactment driving a coach and four through the provisions of the Mussalman law of wakfs. I hope my Honourable and learned friend will understand what I mean when I say, that this particular Bill in no way affects the Mussalman law of wakfs. All that it secures is the registration of endowments by mutwallis in the Court of principal jurisdiction of the area in which the wakf property may be situated.

The HONOURABLE SIR ZULFIQAR ALI KHAN (East Punjab : Muhammadan) : It is always delightful to hear my Honourable friend, Saiyad Raza Ali, delivering his speech in Council even though he opposes the motion which I have put before the Council to-day, but, Sir, on this occasion his opposition is rather detrimental to the general interests of Muhammadans, and I am sorry that he has offered to place an obstruction in the passage of this Bill. The Honourable Member Sir Muhammad Shafi has fully explained the misapprehensions which he may entertain or any Honourable Member may entertain with regard



to this clause 13 and I need not dwell on it, not being, unfortunately, a lawyer as accomplished as the Honourable Saiyad Raza Ali himself, but knowing the opinions of the Muhammadans outside, I may say for the information of Honourable Members that the inclusion of this clause 13, although it may be regretted by some people, I think under the present circumstances is essential. (*The Honourable Saiyad Raza Ali: "An unlucky number too."*) It is for the Muhammadans to show unanimity about any measure which may be introduced in this Council, and if a section of the Muhammadan community pleads for exclusion from a general measure, Government which is neutral must show some consideration to the scruples entertained by those people. Under circumstances which indicate a difference of opinion among Muhammadans Government cannot but provide a clause of the nature which has been inserted. Sir, I hope that Honourable Members will understand the situation properly and that the explanation offered by my Honourable friend, Mian Sir Muhammad Shafi, will be found sufficient to refute the arguments advanced by the Honourable Mr. Raza Ali, and I appeal to Honourable Members that they will vote for this clause.

Clause 13 was added to the Bill.

The Preamble was added to the Bill.

THE HONOURABLE SIR ZULFIQAR ALI KHAN : I move :

"That the Bill, as passed by the Legislative Assembly, be now passed."

The motion was adopted.

THE HONOURABLE THE PRESIDENT : We will now proceed to the adjournment motion.

MOTION FOR ADJOURNMENT OF HOUSE TO DISCUSS THE  
DECISION ON THE KENYA QUESTION.

THE HONOURABLE SIR MANECKJI DADABHOY (Central Provinces : General) : Sir, I beg to move :

"That the House do adjourn for the purpose of debating the decision of the Imperial Government arrived at relating to the Kenya question."

At this late hour I do not propose to detain the Council very long. A motion for adjournment ordinarily implies a vote of censure. I assure the Council, however, . . . . .

THE HONOURABLE THE PRESIDENT : Only if the Government answer is not satisfactory.

THE HONOURABLE SIR MANECKJI DADABHOY : Subject to that reservation, Sir. I beg your pardon. However, I assure the Council that on this occasion it is not my intention or the intention of many of the Members who propose to support the motion to go to the extreme length of moving the motion. The decision of the Imperial Government has reached us when this Council is in session. It has arrived at the far end of the session and we, the Members of the Council of State, feel that we cannot return to our homes, we cannot allow the work of this session to be concluded without expressing our views on the subject, on this very important question, particularly as this Council will not meet again for several months, and an opportunity will not be afforded to this Council of expressing its opinion. The announcement which has been made has been awaited long with much anxiety.

[Sir Maneckji Dadabhoj.]

but I must say that this important announcement will not satisfy India generally. I will summarise in a few words the decision which the Imperial Government has taken. They have agreed to grant communal representation in the first instance. They have extended to Indians and to non-official Europeans admission into the Legislative Council—in the case of non-official Indians 5 seats have been allocated and in the case of Europeans 11 seats have been allocated. They have agreed to abandon the principle of segregation, but the position of the Highlands remains unaltered and is reserved for the white settlers. An area in the low lands has been experimentally reserved for the Indians, and finally, it is said that the Indian immigration shall be controlled. Sir, this decision does not meet with the public demand in the country. Though the Imperial Government has met us to a certain extent by permitting the principle of segregation to be abandoned and an area in the low lands to be experimentally reserved for the Indians, the Indian cause has been lost on almost all important points. Sir, I have therefore deemed it essential and imperative to move for an adjournment of the House in order that the Government of India may convey to the Imperial Government our deep sorrow, our profound disappointment at the receipt of this unfavourable news. Sir, the result of the decision of the Imperial Government emphasises the policy of discrimination. Lord Hardinge himself said that there could be no discrimination in a Crown Colony. Even in his despatch the Colonial Secretary states that the British Commonwealth was based on common loyalty to the Crown and in a spirit of service transcending all narrow racial ideas. He emphasised the peril of racial discrimination and said that if there was one duty which the British Empire owed to civilisation it was the task of reconciling such dangerous forces and yet, Sir, you see this racial discrimination emphasised in the reservation of the Highlands for the white settlers, and in the controlling of emigration. Sir, we expected that the Imperial Cabinet would do full justice to India and that it will affirm the great principle laid down by the Imperial Conference only in 1921, namely, that of supporting and maintaining the great principle of equality between all parts of the Empire. This great principle which was only affirmed three years ago, on the first occasion happening for the application of that principle, has been discarded, and discarded with injustice to the cause of India. I do not propose to-day to speak on the whole Kenya question. This is not the time or the occasion to repeat the arguments that have been raised in support of the Indian cause. I shall not detain the Council with a repetition of those arguments but I cannot help mentioning that the decision arrived at to control Indian emigration is one which is not far sighted and is wholly impracticable. It is true that a Board will be appointed on which an African and perhaps an Indian will sit to decide the policy of emigration.

"But this control cannot have any useful effect. This control cannot instil peace and contentment in the country. This control must in the end imperil the great reputation of the British Empire. There ought in our opinion to be free emigration to all sons of the Empire." On the question of free emigration India will not accept this as a final decision and

I express with all humility that on this occasion the Government of India will not treat this decision of the Imperial Government as a final settlement of the Kenya question. Sir, after a number of years the partition of Bengal which was considered a settled fact was re-opened. The Treaty of Sevres which was considered as final has now been set aside and a new treaty signed. I hold, Sir, the Government of India will not regard this as a final settlement of the question. I know the public feeling is very strong on the subject. Indian public opinion will not regard this as a final settlement of the subject, and will expect the Government to move in this great and important matter. Sir, we are not unmindful and unconscious of our obligations due from us to the Government of India. We are very grateful to His Excellency Lord Reading for championing our cause and having placed our case fearlessly and clearly before the Imperial Government as is pointed out in the despatch and as stated by the Honourable Sir B. N. Sarma this morning, but Sir, permit me to point out that the answer which the Honourable Member gave in reply to my friend Sir Purshotamdas Thakurdas this morning is not satisfactory and will be received in the country with some alarm. We expect the Government to carry on a crusade against the Imperial Government in this matter which we consider sacred. We acknowledge the great services rendered by the Government of the country in placing our case fearlessly, clearly and coherently before the Imperial Government, but we still expect that the Government of India will not hesitate to adopt some measure of retaliation, if necessary, which could be effectively employed if the Imperial Government still persist in adhering to this decision and not substantially revoking or revising it. We respectfully pray the Government of India to swiftly and effectively take up this matter once again and see that uncontrolled right of emigration at least has been ceded to this country. I do not propose to further detain this Council. I thank you, Sir, and the Honourable Revenue Member for giving me this opportunity of moving this Resolution at this time of the day and I beg to say that I greatly appreciate this. With these few words I move that the House do now adjourn.

The HONOURABLE SIR PURSHOTAMDAS THAKURDAS (Bombay : Nominated Non-Official) : Sir, I rise to perform my duty and second the Resolution moved by the Honourable Sir Maneckji Dadabhoj. An English poet has said :

- “Breathes there a man with soul so dead
- Who never to himself hath said
- ‘This is my own, my native land’.”

I really would like some poet here to convert it to a suitable form and ask if there breathes in India a single Indian who does not feel to-day a sense of dishonour, and a sense of his self-respect having been injured and rudely insulted. I go further and ask if there is anybody in India who does not think that India has been done an injustice in the decision which His Majesty's Government has just announced.

I particularly say that if there be any Indian in this land who does not feel that India's self-respect and dignity are insulted, India would like to see him. The feelings of Indians on this occasion could not be better explained than in the way that I have tried to put it before the

[Sir Purgshotamdas Thakurdas.]

House. It is difficult to control oneself when speaking on an occasion like this. I would like to read to the House extracts from a telegram that I received to-day from one of the Indian delegates from Kenya. He begins :

“ Kenya decision both shocking and alarming completely betraying Indian's cause showing queer sense British justice. Indian honour trampled utterly.”

He goes on :

“ Decision lays down Indians inferiority to whites who secured desired victory vindicating their prestige. These very terms Northey proposed in 1921 rejected by Kenya Indian Congress trusting righteousness their cause and Government written pledges.”

These are, Sir, in short the feelings of those who happen to be affected by the decision to discuss which this House has adjourned.

Mr. Ormsby Gore in presenting the Colonial Office estimates said that “ the less he added to the carefully considered wording of the White Paper the better.” I would like to say that the less I add to the carefully prepared address submitted last Saturday to His Excellency the Viceroy by 15 non-official Indians of this House the better. I certainly think that every word of apprehension which those 15 non-official Members of this House uttered before His Excellency the Viceroy turns out correct and had just cause to be uttered.

But I cannot help referring, Sir, to a few other points which have been brought out by the publication, or rather by the summary of the publication, of the White Paper that has been issued in England on this subject. It is now admitted that “ on certain material points it was not found possible to meet the wishes of the Government of India.” I would not like to add much to what has fallen from the Honourable Sir Maneckji in connection with those material points in which Indian wishes could not be complied with. Out of four, even the Official Benches will admit, India has lost three. I have an apprehension in the 4th also that executive action may follow to repeat the fate of the pledge or agreement arrived at in 1921 at the Premiers' Conference. You may yet find that there are some ways of quibbling out of it, or some sort of expediency may arise justifying a change from what is laid down in the White Paper.

But I would like very much, Sir, to tell this House from the very same White Paper the number of the people affected and the conditions in the Kenya Colony. The census of 1921 showed that in Kenya the totals of Europeans, Arabs, Indians, including officials, are as under :—

Europeans, 9,631

Indians, 22,812.

Arabs, 10,102.

The Europeans and Arabs put together are less than the Indians. The African population is estimated at over two and a half millions, but it is to be noted that the same White Paper expresses satisfaction that both Europeans and Indians in Kenya are agreed with regard to the importance of safeguarding the interests of African natives. This Kenya Colony where the total number of Indians number more than the total number of Europeans and Arabs, is the same Colony where the Indians can claim

and do claim that they were the first to start any sort of development, and in this same Colony the Indian is to be humiliated to-day. Sir Robert Hamilton in moving an amendment that the Colonial Office vote be reduced by £100, said, that since 1897, although immigration was open the number of Indians had increased only thrice, whereas in the same period the number of Europeans had increased 23 fold. And still the census of 1921 showed that Indians outnumbered the Europeans and Arabs together. And in spite of this the British Cabinet in their wisdom, in their sense of fairness and justice, have thought it right to put the Indians in a position which is universally regarded by everybody as humiliating.

A good deal will be found in the White Paper in the name of 'trusteeship' of the natives of Kenya. I have just read to you a paragraph admitting that both Europeans and Indians were agreed that so far as local natives were concerned, everything possible was to be done to safeguard their interests. All that is to be done, all the hardship, all the unfairness of which we complain has been inflicted in the name of carrying out the trusteeship of the Kenya native. May I ask the British Cabinet in the name of Indians what about the trusteeship of the Indians themselves? If India is a dependency, if India has not the free will and power to do what she likes to vindicate her honour and anything which she thinks derogatory to her, what about the trusteeship of the British public for the Indians? I do not want to be uncharitable, but it would appear, Sir, that some times ideas of trusteeship do shift with the ideas of political expediency. The decision, we are told, has been taken by the British Government, the all-powerful British Cabinet, against the decision of which the people of India certainly are helpless. But it would appear from the reply given by the Honourable Member in charge of this Department that even the Government of India are quivering at the moment. What is the result and what is the position in which this decision of the British Cabinet has put India and the Indians? It is to be noted that this decision is in absolute contravention of the principle laid down by the Premiers' Conference of 1921. But it goes further than that. If this were a decision taken in a Dominion or in an independent part of the British Empire, perhaps we may say to ourselves we ought to pause and consider what the British Cabinet may have done. But this is a decision which has been taken by the British Cabinet themselves in reference to a Crown Colony over which they have complete control, as much control indeed as they have over India and perhaps more, for we are told that in India we are on the way to Dominion Self-government, whereas indeed in the Crown Colonies that is not the case. The infection that may be created by this has not had to be watched very long. Indeed on the day following the publication of the White Paper, General Smuts, the Premier of South Africa, outlined at the Maritzburg Congress the position as regards Indians in that part of the British Empire. The Premier said "it is for us to see justice is done to all, including the white community who cannot protect themselves."

For the first time, Sir, we learn that the Indian can protect himself both in a Crown Colony and in a Dominion; it is the white man who cannot protect himself. I cannot really reconcile these with facts. But it is possible that I am reading from a telegram and there is some important

[Str Pyurshotamdas Thakurdas.]

word omitted here or there. Till now, the Indian thought—indeed a Gujarati poet said—that in the British Raj, the tiger and the goat can drink water at the same fountain—till now the Indian thought that the poor and the helpless and those who were endowed with great physical strength could command equal protection. Now it appears that it is the white who cannot protect themselves and it is the Indian who is fully capable of protecting himself. But in that same communication from which I read there is something further. Referring to the Indian demand for equality of franchise this is what the Premier said :

“ General Smuts pointed out that Indians in British Columbia had been refused the vote and he thought that they could only take the same line in South Africa.”

Here is a precedent being quoted. Another more important one would be this case of Kenya where the British Cabinet themselves had the final say, and that will be quoted against India. They will say, ‘‘ If you could not be given equal rights in a Crown Colony, why talk of equal rights in any independent dominion ? ’’ That is the danger, and that is the reason for the exasperation of the Indians.

Now, in reply to a question that I put to the Honourable Member in charge this morning, I must admit—and I must say frankly to him—that I found that the Honourable Member in charge was not willing to be either as clear or as fearless as the Right Honourable the Secretary of State has been reported to be in pressing the Indian claims before the British Cabinet. In fact, Sir, I can indeed say that the Honourable Member in charge gave an answer with which this House and the Indian public would be very very sadly disappointed. This is not the time to mince words—I asked him a very plain question, a question to which I had almost anticipated a reply which must have been a most natural one, in order to lead him on to an answer to the next question, and I found that the Honourable Member in charge gave me a reply which lacked both courage and fearlessness and clarity.

In another place, Sir, I heard the Honourable Member in charge say in reply to some point raised by an Honourable Member there that he thought that the partnership of India with the British Empire was not nominal, but was real and substantial. I would refer to that remark of his and ask him if he is going to revise that remark which he made only a few days ago, and if he is prepared to revise it, if he thinks that he must be given an opportunity for doing so, I would like to know the extent to which the Honourable Member is prepared to revise it. Sir, enough has been said of the hardship and unfairness that has been heaped on India by this measure. The question now is what shall be done by Indians.

THE HONOURABLE THE PRESIDENT : I should like to remind the Honourable Member that a good many Honourable Members intend to speak and the time-limit on a motion for adjournment is inelastic. It is 15 minutes for each Honourable Member.

The HONOURABLE SIR PURSHOTAMDAS THAKURDAS: The question is, what India and the Indians want to be done. There is no question about it that Indians unanimately want the Government of India to vindicate what Indians look upon as their birth-right and as their self-respect. Retaliation has already been indicated both in the other House and in this House in the address to His Excellency the Viceroy, and it is for the Government of India to put up such measures of retaliation as they think would meet with the approval of the Legislatures. But a question has been asked about the sound methods of retaliation, about methods which will not injure India itself. I just want to mention what was pointed out this morning by a very esteemed friend of mine. He said that "when it comes to a question of retaliation, talk of soundness, talk of moderation? Nothing of the sort. By any way show to the other party that we mean to vindicate ourselves, whenever opportunity comes, for what has been sought to be taken away from us." There is no question, Sir, that India and the Indians can ever reconcile themselves to this indignity. The question is, "what will the Government of India do?" and if it is open to an humble individual like myself to indicate....

The HONOURABLE THE PRESIDENT: The debate on a motion for adjournment is limited to two hours and the time-limit for each Honourable Member is 15 minutes. That only allows room for eight speakers, if they take their full time and therefore the Honourable Member must keep himself strictly within his time limit.

The HONOURABLE SIR PURSHOTAMDAS THAKURDAS: Have I exceeded my time, Sir?

The HONOURABLE THE PRESIDENT: Yes.

The HONOURABLE SIR PURSHOTAMDAS THAKURDAS: I think it is for the Government of India to reflect India's resentment of the decision and also to reflect the Indians' wishes for the future so far as the Indian public are concerned in a manner which is courageous, honest and fearless. With these words, Sir, although I am afraid I have kept back much that I would like to say, I have very great pleasure in supporting the motion.

The HONOURABLE SARDAR JOGENDRA SINGH (Punjab Sikh): Sir, the Kenya question is a question of very deep moment. I speak in the name of the soldiers—45,000—who went to Kenya and won it during the war. Are those who laid down their lives going to be betrayed by the Government of India and the British Empire? We have heard of self-determination; we have heard of a united Empire; we have also heard of a commonwealth of nations.

When the matter is brought to a test, within that Empire distinctions are made; within that Empire new distinctions have been created. Why? What has happened? The Indians to-day in East Africa are occupying the humiliating position which has been conferred on India by the British.

[Sarcar Jogendra Singh.]

Cabinet,—the Cabinet that is the trustee of the Empire and the trustee of the 300 million people in India. Are we in this helpless position that whenever Indian rights are to be determined, Indian rights are to be ignored by the British Empire? I may say, Sir, that it is not only a matter which is important on the physical plane. To me it is a matter of spiritual importance. When I look below the surface trying to find what binds this Empire, I cannot see that it is merely physical force. Physical force cannot bind hearts. That it has never done. To imagine that the British Empire can be held by physical force is to ignore the primary conditions on which the laws of God are administered. Are we in this modern world going to forget that it is not the laws of our making, the laws made in Councils and Parliaments, but Divine laws that govern the universe, and nations make and unmake themselves? No country, no nation, can with impunity trespass the law. To-day we are informed that a white paper has been issued completely ignoring the rights which in justice and in fairness it was the duty of our trustees, the British Cabinet, to safeguard. The protests of the Government of India have carried little weight. Why is it so? I remember not many years ago Lord Hardinge stood in the name of India, and to-day we expect our Government to follow the lead which he gave. In these circumstances what is the Government of India going to do with three Indian Executive Members in that Government? Are they going to accept this decision? The Honourable Sir Narasimha Sarma in his reply to a question asked by the Honourable Sir Purshotamdas Thakurdas said that there were certain material differences between the Government of India and His Majesty's Government's decision. These material differences are to my mind of paramount importance. It is for the Government of India to vindicate the honour of India and to show that the Government of India is not going to accept any decisions made against the wishes of India, lying down. It is for them to show that they mean to vindicate the honour of India in all the countries of the world. Then, Sir, looking at the question with a deeper eye, I invite the Europeans, and also the British Cabinet, to consider whether this is the way to build the Empire, or whether they are not by these actions setting free forces which would eventually disintegrate the Empire? What made the Indian soldiers go to the far-flung battlefields of the Empire but the faith in British Government, implicit faith in the trusteeship administered by the British Government? And that faith is being slowly and surely destroyed. What will His Excellency the Viceroy, when he prorogues the two Chambers to-morrow, say to them? To go and tell their electorates that the Government of India have failed to vindicate the honour of India on a most momentous occasion, which has ever presented itself to the Legislatures or to his Government? Then, again, Sir, there is the question of larger interest, the future of the British Empire. The British Empire, some of us imagined and hoped, was going to unite not only the Indians and the British, but to create a commonwealth, a centre, a meeting ground of nations where all nations would get justice, would get fair treatment, would get equality of opportunity, where the human heart would rejoice that the long expected freedom, the long expected equality, has at last arrived. What do we see



to-day. Racial distinctions within the Empire itself. I am greatly alarmed, and I think most people are, at the tendencies which ignore completely the invisible forces which bind nations and Governments. The white settlers at the present moment think only of the immediate profit, but I am quite sure that in the long run they will realise that equality of relationship with India will bring them profits of a permanent nature. The immediate benefit they think they can secure by sequestering certain lands to themselves will not last. It is the tendency which in an individual trying to appropriate everything to himself is condemned. It is an unsocial tendency and which in the long run never pays. An Indian poet has said :—

*Matae koshishe be mudda ki kiya khabar tuj ko  
Teri hadde nazar ai bulhawas sudo ziyā tak hai.*

Our Statesmen have to recognise that there are certain things which have to be worked for unselfishly, looking not to the immediate gain but the future that lies further ahead and to gather wealth that cannot be robbed. When a crisis arose, as the one that overtook the British Empire not many years ago, it was this treasure which the British Government had gathered that stood in its hour of need, and now I would warn the Government that it is not right in dispersing this great treasure in the way in which it is being dispersed—dispersing the faith of three hundred millions of people in the equity, in the justice, and fairness of British Government. We have often wondered why the colonial empire of Germany failed and the British Empire succeeded. The reason was simply this, that the British Empire followed high ideals, the ideals of humanity, the ideals of equality, while the other countries were always centered on gain—the same thing which is now permeating the Englishman and spoiling the chances of his future greatness. A friend was telling me the other day, “How can you place an Indian labourer on an equality with the superior cultured European settler in East Africa?” The answer I gave him was:—“Has the superior European settler no duty to his weaker brother? He is superior only if he recognises this moral obligation, and he is in no way superior if he fails to admit this moral obligation which he owes to his weaker brother.” I am not sure if the white settlers are not piling up agony which the generations that follow may have to draw upon because in this world there is a God who keeps the balance. I hope therefore that Imperial policy would inspire a spirit of trust and mutual good-will, which will make our commonwealth a gathering of a happy people, liberating the world from the tyranny of castes, creeds and colour, instead of creating differences which are eternally doomed.

The HONOURABLE SAIYAD RAZA ALI : I cannot but deplore the decision of the Imperial Government that has been announced on the Kenya question. Sir, out of the four main points, as many as three which were, after all, the most important points involved, have gone against us. It is only on the question of segregation that the decision is for the time being in favour of Indians, but nobody can say when that question will be brought up again by the white settlers at an opportune moment. Sir, the news has caused considerable excitement in the country. But the very fact that there is considerable excitement at the present moment

[Saiyad Raza Ali.]

over this question makes it obligatory on us that we should go into the entire question very calmly and dispassionately and formulate our decision as to what will be the action that we are going to take. I am afraid that I do not see eye to eye with my Honourable friend Sir Purshotamdas Thakurdas, and I for one would advocate that on a serious question of this character when we find that there is absolutely no difference of opinion between the people and the Government of India, it is our duty to take the Government with us. Instead of producing the slightest cause for friction we should strengthen the hands of the Government of India and ask them not to budge an inch from the course that they have been following for so many years on this question. Sir, I entirely agree that on this question India's honour is involved, and if India acts in a half-hearted manner, if India does not formulate a settled policy for future action, then we should take it that not only has our cause been lost in Kenya, but it will be followed by similar disastrous results in all other colonies. Sir, is it a mere

2 P.M.

matter of chance that this anti-Indian movement has been launched simultaneously in so many Crown colonies and dominions? We find that not only have we got to ask for equality of rights in Kenya, but we have got to engage in warfare with that distinguished general, General Smuts, whose latest pronouncement is highly militant. Again, we find that poll-tax has been imposed on Indians in the Fiji Islands. Then again stricter action is proposed to be taken against Indians in Natal. The same might be said of almost every other Government in South Africa. Sir, how is it that all of a sudden the idea has occurred to every Crown colony and every dominion without exception that the rules against Indians must be stricter to such an extent that they should be excluded from the country. And now, Sir, I propose to ask the Government of India, what is the action they propose to take? This is a question in which not only the people but the Government which has been representing the people so ably, so strongly and so accurately have an equally deep concern. I may say, Sir, for the information of Government that opinion in the country is quite strong enough to endorse any retaliatory action that may be proposed to be taken. Now, we can embark on a policy of retaliation in several ways, but let there be no mistake about it that if we once retaliate, we must be prepared to put up with its consequences. In a matter like this, Sir, no half way house is possible. If once you hit back, you must do it conscious of the consequences that may be brought in its train. It is for this House to see how far the country will be a gainer by resorting to retaliation or how far it will be to the advantage of the country to take action in that line. Sir, to begin with, we can retaliate by stopping emigration altogether. When these Crown colonies have been treating us like this, there is no reason why we should be the suppliers of labour to these countries which were once in dire necessity for labour and which after having reaped the fullest benefit from our countrymen try to kick us out at the earliest opportunity that they feel our services are not wanted by them. That necessarily involves the question of repatriation of those countrymen of ours who are working in the colonies

concerned. We should also take into consideration the important fact that any measures of retaliation might be followed by greater persecution of our people in those countries. I for one am not prepared to say that in no case should we be prepared to put up with this persecution, but whatever we do let us do it in the full consciousness of what may be the consequences of the action that we take. Another direction in which we can move against these offending countries is that we can tax their imports. Here again we shall have to go very carefully into the question as to what is the amount of the imports, and whether by levying any taxes on their imports, we shall be hitting them sufficiently hardly. That again is a question which requires very serious consideration. Then a third way of retaliation has been suggested in the form of our refusing to participate in the British Empire Exhibition and the Imperial Conference. It would appear at first sight that that would be more a retaliation against England than a retaliation against the Dominions and Crown colonies. Yet, there is an important point which should be taken into consideration by His Majesty's Government in this connection. And it is this. In the British Empire Exhibition it is the countries comprised in the British Empire that are going to be represented. In the same manner the Imperial Conference is going to be a representative gathering of the British Commonwealth. If Indians are not going to be treated as equals not only in the self-governing dominions but even in Crown colonies, the question naturally arises whether Indians are not justified in refusing to participate in those gatherings which after all are the gatherings of equals and where inferiors, I take it, are not wanted. If England, on the other hand, is under the impression that inferiors are welcome when it suits the interests of England, I say, England is very sadly mistaken. Either she must take India and Indians as they are and must agree to give them a place of equality, or if any distinction is going to be made, then India will also see to it that she does not appear at a place where it suits England to see India represented.

The question of Kenya, though by itself important enough, becomes a thousand-fold more important when you consider its effect on the other countries. Sir, having regard to the promises that were made to Indians during the course of the war, I mean from 1915 to 1918, having regard to the manner in which Indian valour and Indian sacrifices were praised and appreciated by responsible Statesmen from the Prime Minister down to the newly recruited Under Secretary, having regard to those promises and pledges and comparing them with the change that has come over the British policy since 1921, I say, Sir, that England should take note that India's faith in British promises and in British pledges has been seriously shaken, if not entirely lost. Sir, we remember that during the Great War it was pointed out that England's misfortune is India's opportunity. We know in what manner these words were interpreted. They were interpreted to mean that if England was in misfortune it was the duty of India to help her and to prove that India did not want to serve her own interests by taking advantage of England's embarrassments. But, Sir, if this policy of England continues, then England must take the responsibility for

[Saiyad Raza Ali.]

future consequences because the Crown Colonies are hers. And if this policy is persisted in, let me in all seriousness sound a note of warning, that at the next opportunity, at the next conflagration—I mean—when there is another world-war, India will see to it that England's misfortune should truly be India's opportunity, in the sense that India should take advantage of England's misfortune and strive to get out of England all that she can at that juncture. I have no doubt, Sir, that that is not an idea that will appeal to any noble soul. But, Sir, if noble ideas on this side are not met with noble ideas on the other, then nobody need be surprised if our people come to believe that the best way to consult their own interest is to try to bring pressure to bear on England in such a manner that it will no longer be open to England to deny equality of rights to Indians.

The HONOURABLE SIR NARASIMHA SARMA (Education, Health and Lands Member) : Sir, the Government are not surprised at the warmth of feeling exhibited both here and elsewhere over the announcement of His Majesty's Government's decision with regard to Kenya. They have already expressed their regret and they repeat it again; it is a pity that His Majesty's Government have not been able to see eye to eye with the Government of India on some of the points on which the Government of India expressed themselves in clear and emphatic terms. But I think, much as I am likely to be misunderstood and much as the attack against me personally might be accentuated, it is my bounden duty to analyse critically and dispassionately the position as it emerges from His Majesty's Government's decision, and to see whether we are not exaggerating our fears, and whether His Majesty's Government's decision is open to exception in the broad enunciation of the general principle of government on which all righteous government ought to be based. I shall try and analyse the proposals to see whether after all the European settlers, who had and who continue to have considerable differences with Indian settlers, have emerged from the conflict as victorious as seems to be imagined by many, and to see whether really there is ground for that broad statement that India has been bitterly humiliated and disgraced by this decision. I can understand that when we take part in a conflict, when feelings run high, when the result is in many respects unfavourable to our expectations, we for the moment omit from our consideration the wider issues which must be taken into consideration by those who are charged with responsibility. And hence those patriotic Indian gentlemen who have gone, both from India and from Kenya, to fight the cause of the Kenya Indians in particular and of Indians generally, have reason to be bitterly disappointed and have cabled their views which have to a certain extent accentuated the feeling already prevalent in India. The Government of India also have reason to regret, as I have said, that a decision of a different character on some of the important points has not been reached, a decision which might have averted a sense of dissatisfaction in India, which cannot be helpful in strengthening the ties between the several sections of the British Commonwealth, a consummation which we all sincerely desire. (*The Honourable Sardar Jogendra Singh* : "Do not commit suicide.") Sir, what are the principles which His Majesty's Government have laid down? How far have the European settlers in Kenya won and how far have the Indians lost, are the questions

which I shall deal with immediately. Honourable Members will remember that Lord Milner in 1920 in trying to arrive at a solution of this problem stated clearly and emphatically that as far as he could see there was no possibility of any change in the Crown Colony form of government that obtained in Kenya. Strong efforts had been made by the European settlers, who had been reinforced by many who migrated into Kenya from the south—vigorous efforts had been made to change that form of government as rapidly as possible, so that the whole power might pass into the hands of the European settlers. The European settlers said that the interests of the natives of Africa and of the Indians would be perfectly safe in their hands and they resented, very keenly indeed, the postponement of the elections which were to have taken place in the early part of this year owing to the differences between the India Office and the Colonial Office. What has been the result of this fight in which they tried—and I would say tried unjustly—to put down the Indians? The eyes of His Majesty's Government have been opened to the real situation and they have re-affirmed in the most emphatic terms that as far as they can see there is absolutely no possibility of any change of government, that the paramount interests which have to be safeguarded are the interests of the two and a half millions of Africans and their children and grand-children... (*A Voice*—"Trusteeship")... and that whether it be Europeans, Indians or others who may settle there, they must subordinate their interests to those of the natives of the soil. (*A Voice*: "Truth.") Can we find fault with that announcement of principle? Have not the European settlers suffered an ignominious defeat in that His Majesty's Government have declared that the interests of the Africans are not safe in their hands, and is not that a rebuff? (*A Voice*: "Highlands to be white.")

Let us pass to another announcement of principle. On the question of segregation again, we have won, a point on which much stress was laid by the European settlers, and by the Commission which was attacked so vehemently by Indians. And, so, rightly and justly, on this important subject also they have lost, and I think this decision comes to our aid at a particularly opportune moment when we are threatened with a measure of segregation in South Africa, and we ought to be deeply grateful to His Majesty's Government for it.

And we must be grateful to His Majesty's Government for this decision, although it may be said that one need not be grateful at all, in one sense, to another for doing bare justice. Then, Sir, with regard to the question of the Highlands, on which the Government of India has not been successful, and the people feel keenly, what is the ground upon which His Majesty's Government's decision is come to?

The HONOURABLE MR. S. VEDAMURTI (Burma: General): Are you trying to whitewash?

The HONOURABLE THE PRESIDENT: These disorderly interruptions must cease.

The HONOURABLE SIR NARASIMHA SARMA: His Majesty's Government emphatically repudiate any suggestion that this distinction is based upon racial superiority, upon any racial inequality or any racial arrogance. They say that rightly or wrongly a course of practice has been followed for 15 years and the Europeans had been attracted to a particular

[Sir Narasimha Sarma.]

part of the country for settlement on certain terms. There is no legislation which debars the acquisition or transfer of land from persons of one nationality to persons of another nationality. There is a practice. They repudiate, as I have said, the assumption or the statement that it is based upon any racial inequality. What is the position? The total area is 245,060 sq. miles. The area allotted to Europeans and available for alienation—this statement was made a few years ago—was 11,859 sq. miles. 53,124 sq. miles are native reserves. The coastal belt consists of 4,420 sq. miles and the unassigned area is 172,532 sq. miles. I am reading these figures—it is possible that some of the best land is included in this 11,859 sq. miles—I am only quoting these figures for the purpose of showing that, as Lord Milner put it, having regard to the sparseness of the population, there is enough and more land for Indians, Africans and Europeans to deal with if only the necessary enterprise, the necessary capital and the necessary labour be forthcoming. Part of the land has been reserved for native interests. Part of the land has been reserved for Europeans because it is said it is only that part they can live in. The rest is unassigned area. But His Majesty's Government propose that the land probably lying between the Vel river and the Yata plains should be reserved for the Indians if the Indians wish such a reservation to be made. I cannot help thinking that if you analyse the situation, the European settlers are putting themselves, speaking from the point of view of a higher civilisation and high ethical principles, in a somewhat low and humble position, because they are asking for protection. They are asking for protection just as some of the military classes in Upper India are asking for protection against the traders who are wealthy and into whose hands the land may pass. They are asking for protection much in the same manner as the aboriginal tribes, if I may say so, who I find have been given protection in some parts of India by a benign Government in order that their land may not pass into the hands of the richer and more enterprising classes. I cannot see how this reservation can, broadly speaking, be considered as an assertion of superiority. If I were a European settler there, I should be ashamed of asking for that protection, but unfortunately, things being as they are, and they having asked for protection and an implied or express pledge being considered to have been given to them, His Majesty's Government have decided that it was desirable that the practice should be continued. But we are certain that this practice cannot be very long continued. I am not justifying that this practice is a correct one. The Government of India do not agree with His Majesty's Government's decision. I am only putting forward the reasons for saying that there is another side of the picture to be presented, that it is not that there is nothing to be said for the other side and that we can come to one conclusion only that we are in the right and that they are absolutely in the wrong. I therefore hope that this temporary solution that His Majesty's Government has come to—I hope that this solution would be only a very temporary solution and that the white settlers themselves, as some of them I believe are doing, would repudiate this sort of protection which must really be humiliating to their sense of self-respect.

The HONOURABLE SIR PURSHOTAMDAS THAKURDAS: What authority has the Honourable Member got for saying that this is a temporary

settlement? He is a responsible Member of Government, and what is his authority for saying that this is a temporary settlement?

The HONOURABLE SIR NARASIMHA SARMA : I never said it was stated to be a temporary settlement. We hope that it would prove to be only a temporary settlement and that the practice will be continued only for a short time.

Then, Sir, on the question of communal representation, I need not say much, because the Government of India, perceiving the evils thereof, had set their face against it. The reasons for the decision of His Majesty's Government are clearly and emphatically stated in the papers. They say that the question is not of very great importance in a Crown Colony. They say that having regard to the wider franchise that can be given to Indians and to what would be appropriate in the present condition of the African population, they have arrived at this solution. They express the view that the self-government which may be possible in some distant future may be left to take lines which the passing of time and growth of experience may indicate to be best suited to the conditions of the country and that they need not anticipate the future at the present moment. The Government of India were and are still of opinion that, although for the time being the differences between the Europeans and the Indians are very great and acute, still, it is only a passing phase and that a communal electorate with reservation of seats, if necessary, would make the people work together for a common future and would solidify and consolidate them, and that that is the only right solution. But having regard to what is occurring in this country, the desire expressed in some other Colonies and the statement that there is absolutely no ground whatsoever or justification for any assumption that the decision is based upon a race distinction, why should we import it although it is true that much colour is lent to it by the fact that the European settlers have refused a common electorate on the ground of race. I am not minimising that aspect of the question; the Government of India had it before them; but His Majesty's Government repudiate the suggestion that their decision is based upon any such distinction whatsoever, and state that it is wholly and completely based upon the peculiar conditions of the colony with which they were dealing. Well, Sir, having regard to the emphatic declaration of His Majesty's Government that there is no question of race how can we say that the European settlers, although in substance their wishes have been gratified, have really gained on the question of principle. (An Honourable Member : "What is the Honourable Member's point about the distinction between 'in substance' and 'on principle'"). On the question of immigration, Sir, His Majesty's Government have laid down the broad principle to which no exception could be taken, that His Majesty's Government cannot countenance the introduction of legislation. ....

The HONOURABLE MR. LALUBHAI SAMALDAS : On a point of order, Sir. Rule 42 of the Manual says, 'no speech shall exceed 15 minutes in duration.'

The HONOURABLE THE PRESIDENT : That is perfectly true. But one Honourable Member on the non-official side spoke for 20 minutes. The Mover took his full time, and there have been four speeches on the same side. I think when we consider that the Honourable Member has come

[The Honourable the President.]

here to meet the convenience of Honourable Members, foregoing the ordinary interval for refreshment this is a somewhat ungenerous objection which the House will not countenance.

The Honourable Sir Narasimha Sarma.

THE HONOURABLE SIR NARASIMHA SARMA : Yes, I shall try not to transgress the rule. I have mentioned this only to show that there is no ground for alarm from the stand-point of principle, and that the Government of India cannot find fault with the broad principles, the general principles, laid down by His Majesty's Government. I have already in my answer to a question that was put to me to-day stated that in the actual application of any immigration restrictions that may be imposed, there is danger that the policy which has been followed with such regrettable consequences in other dominions may be followed here also ; and the Government of India will require the assistance of the two Chambers of Legislature to watch, to jealously safeguard, the interests both of the Indian settlers abroad as well as of the Indian public here ; to see that the restrictions are really distinctions not based on the ground of race ; it has been stated in the white paper that they are not based on the ground of race—for instance, any Indian found to be unfitted for entry into the colony would be excluded on the same grounds as any European or any other person would be— ; and it is our bounden duty to see that these restrictions really are worked in the spirit and in the manner in which the principle lays down that they should be worked. There is reason for alarm in that these restrictions may be worked otherwise, and I have therefore sounded a note of warning, but I do not see, Sir, what justification there is for the charge that has been levelled against us. I shall not go into the personal aspect, I do not mind any accusation against me, but I represent the Government of India,—that we have not been frank or outspoken or fearless ; we have been fearless and we mean to be fearless in advocating the Indian case whether success attends our efforts or not, and within the constitutional limits that are laid down for us, we will shape our course according as the demands of justice may dictate. We are fighting for a just cause, we believe we are fighting for a just cause, and nothing will deter us from taking exception to any measures that we may have reason to think are based on unjust principles, but I do not think the enunciation of principles by His Majesty's Government can be quarrelled with. As regards the actual application of the principles, I have already sounded a note of warning, and we will see that it is our business to safeguard India's interests. I hope therefore that the charge that has been directly levelled against the Government, whose representative and mouth-piece I am, will be found on examination to be not justified at all. I can only repeat the statement that we realise the depth of feeling of this House. That is the reason why we welcomed a discussion in this House to-day in order to explain the position of His Majesty's Government and of the Government of India ; we know that the settlement cannot be satisfactory to the Indian community to which I have the proud privilege to belong, but, Sir, let us be patient, let us be dispassionate, let us take up the question and discuss it calmly, and not be carried away by our feelings. We must be patriotic, the Government of India is patriotic, and within the limits of its powers it tries to do



its best. Whether it has more power or less depends as I stated elsewhere upon the solidarity of the people of India, upon their sinking their differences, upon their combining and acting together in all respects as one man, and upon the growth of literacy ; and then the partnership which is intended by all parties to be real will become more and more real in intention as well as in practice. I think, Sir, therefore there is no ground for undue pessimism for the feeling of despair that has been expressed, and I hope this explanation will satisfy Honourable Members when I say once again that the Government of India will try their level best to urge on His Majesty's Government to so shape these measures in actual practice as not to injure in the slightest degree the true interests of the Indian community and their legitimate aspirations.

The HONOURABLE MR. LALUBHAI SAMALDAS (Bombay : Non-Muhammadan Urban) : Sir, I did not want to take part in this discussion because the matter has been put very strongly and very clearly by my Honourable friends, the Mover of the Resolution, and the Honourable Sir Purshotamdas Thakurdas ; but certain remarks that have fallen from the Honourable Sir Narasimha Sarma have led me to get up and reply to them. He said, Sir, that we should not lose our patience, that we should be dispassionate, and act as calmly as we possibly can. Sir, there are occasions when we cannot do it ; we refuse to do it. Human beings as we are, we cannot stand humiliation and disgrace in the way in which we are being treated in the Empire. We are partners of the same Empire, the Honourable Member says we are, and he says that we can really exact that partnership if there is solidarity between the Government of India and the people of India. The people of India are at the back of the Government of India, but are the Government of India really with the people of India ? They could have easily taken us into their confidence ; why cannot the Government of India publish the despatches which my Honourable friend, Sir Purshotamdas Thakurdas asked for to be published ? There have been precedents. Lord Hardinge had the courage of his convictions ; he himself made a speech for which he was violently attacked in England. Why cannot Lord Reading's Government, composed as it is of at least three Indian Members, have the same courage which Lord Hardinge himself had ? Then there is another precedent. In the time of Lord Chelmsford when I believe Sir George Barnes was Commerce Member, the Government of India's despatch to the Secretary of State was published for public information, and that despatch won the confidence of the public. Why cannot the present Government of India also do so the same ? . . .

The HONOURABLE SIR NARASIMHA SARMA : May I make a personal statement ? Government have not refused to publish the correspondence. The substance of the white paper came in only yesterday, and surely if the rules of public correspondence have to be observed and these are negotiations that have taken place between us and His Majesty's Government in a confidential manner, we shall have to pursue the usual methods and get the necessary permission and see how far we can publish them. There has never been any unwillingness on the part of the Government of India to publish the correspondence. They would welcome such publication, but they must have time to go through the usual channel that they may be able to publish the correspondence. . . .

**THE HONOURABLE MR. LALUBHAI SAMALDAS :** I am very thankful to the Honourable Member for the explanation that he has given. But I thought that the Government of India had the power ; if they have not the power of publishing it, I hope they will take as early an opportunity as possible to get the Secretary of State's sanction to publish it. But the idea of loyalty to the Secretary of State can be carried too far, Sir. The only remedy that seems to us on this Bench is that if the Secretary of State is going to interfere in every direction with the decision of the Government of India, and is not going to support wholeheartedly the Government of India, the Government of India ought to be made responsible to the people of India. Swaraj or full responsible self-government is the only remedy by which we can assist our countrymen in other parts of the world. Unless we get it I do not know how we can improve matters. His Excellency the Viceroy, assisted by the three Indian Members, should find out the best way of helping our countrymen not only in East Africa but in other colonies as well. In this connection may I ask why the report of the Committee that went to Fiji has not yet been published. Why should Government keep back that report ? Really we are losing confidence in the Government and are led to believe that there is something behind the report which the Government are not willing that the public should see. If the Government of India really want to fight the battles of the people they must take the people into their confidence.....

**THE HONOURABLE SIR NARASIMHA SARMA :** May I make a statement ? The Government of India have refused, have set their face against allowing any emigrants to go from India to Fiji, under existing conditions, but inasmuch as there was an understanding on which the Commission went to Fiji and that understanding had to be respected and there were certain statements made in the report which required examination with reference to that understanding which was come to between the two Governments, there has been some delay and we hope to publish the report at an early date. The Government of India have not taken, and do not propose to take, any action on that report until they publish it and allow everybody to read it.

**THE HONOURABLE MR. LALUBHAI SAMALDAS :** The people of India paid the expenses of the Commission and they want to know its results and the fact remains that the report is not yet published. Sir, I do not know what attitude the Government of India will take. The Honourable Sir Narasimha Sarma has said this morning that they are carefully considering this question, but if the attitude of the Government is, as shown by the speech of the Honourable Member in charge, that they think that the principles laid down by the Imperial Government and their decision are correct principles, I think we can never expect anything from the Government of India....

**THE HONOURABLE SIR NARASIMHA SARMA :** A number of general principles—I did not say all.

**THE HONOURABLE MR. LALUBHAI SAMALDAS :** We on this side see that on every point we have lost and that is why the feeling in the country is really very bitter. Take any question. I am quoting from a

memorandum which was handed to the Secretary of State by the Indians in the Kenya Deputation. They say :

“ That the same rights of franchise be granted to Indians as are now enjoyed by the Europeans.

That the Government's power to veto transfers of land from members of one race to those of another may be abolished.”

If I understood my Honourable friend he said that there is no law prohibiting the sale of land from one race to another. I understood that there is a law under which no transfers of lands in the Highlands from Europeans to Indians are allowed.

**The HONOURABLE SIR NARASIMHA SARMA :** With the consent of the Governor. The Governor has got full power to grant consent.

**The HONOURABLE MR. LALUBHAI SAMALDAS :** As regards segregation, it is more or less a camouflage. Here they say in one part there shall be no segregation, and yet they keep apart Highlands for the Europeans, and the Lowlands, if Indians require, are kept experimentally for certain classes of people. But I want to refer to one point. The Honourable Sir Narasimha Sarma said that there are 2½ millions of African population and that the Crown Colony system of government was working well and that it would do the same hereafter. May I draw the attention of the Honourable Member to the fact that the native population in Africa in 1911 was 3 millions. Within ten years, during the continuation of that Crown Colony system, it has gone down to 2½ millions. Is that the best way of governing a Crown Colony, and is that the manner in which the majority of white settlers are now to be allowed to rule that country in the interests not only of Indians but of Africans ? Then, Sir, there is another figure. I would like to quote the present total native taxation. It is £720,000 out of which only £29,000 are used for education and native medical relief. Is that a correct proportion ? Then, as regards the lands, my Honourable friend, Sir Narasimha Sarma, said that 11,000 square miles were given to European settlers. Was there not practically actual confiscation, sequestration, and was it not given as a present to the white settlers ? Is that a correct way of managing a Crown Colony ?

**The HONOURABLE SIR NARASIMHA SARMA :** We are not now sitting in judgment over the Crown Colony form of government.

**The HONOURABLE MR. LALUBHAI SAMALDAS :** The Honourable Sir Narasimha Sarma said that the Crown Colony system of government had looked after the interests of the native population, and I wanted to show that that was not so, and now when the Government will be controlled mainly by the white settlers, the Government will be much worse than what it was before. Not only in the interests of Indians, but in the interests of those in whose name the white settler has claimed these privileges, whether it would be better to continue to protest or to send an ultimatum is for the Government of India to decide. But the last one would be the best course that I would suggest. Sir, in the end I cannot do better than quote from what Mr. Andrews said in his pamphlet :

“ Might may trample over right for the moment ; but the triumph is sure to be short-lived and it is certain to let loose all those destructive forces in Asia and Europe, which have been watching for years past for opportunities to challenge the claims of Britain to swallow the weaker nations of the world.”

[Mr. Lalubhai Samaldas.]

I hope that British statesmanship will rise to the occasion. The Government of India should take their stand in the same way that Lord Hardinge and Lord Chelmsford's Government did. With these words I support the motion.

The HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab : Non-Muhammadan) : I rise to endorse the views which have been so forcibly expressed by my esteemed friend Sir Purshotamdas Thakurdas and the Honourable Mover. It is a matter of great regret for us to find that Government is violating the pledges and promises which it has made from time to time. This deplorable announcement which the British Cabinet has made is, as the Honourable Sir Narasimha Sarma said, mostly against the representations and the views which have been put forward by the Government of India from time to time. Sir, as far as I know, Indians were the first people who settled in Africa, and as such they have the prior claim to any other race as far as the question of settling in Africa is concerned. The Honourable Sir Narasimha Sarma's plausible explanation does not improve the case. He has said that the whites are racially superior and so they must have a better right in elections there. What do we find in India? Is it not a fact that in India the policy is that voting should be on a population basis? On the other hand, Sir, what do we find that those races or those communities who are intellectually superior are not given superior rights. Equality of status has been promised by the Government and even in the League of Nations it has been held that India should be given equality of status without distinction of race or colour. Where is that promise now? We see that might is right, and not that right is might for which our great Government fought the Great War. India has been and is a great keeper of self-respect and whenever that self-respect is injured, India cannot but show her strongest resentment. I do not want to take up the time of the Council, but I must say that there was a time when the services of Indians were needed, and at that time all sorts of promises were made and hopes held out. But now when the war is over and Indian services are no longer required, India being the recruiting centre, and the seat of man power, those promises are now forgotten. In my humble opinion in case the Government of India is sincere and in case they really mean to protest and show proper resentment against this deplorable decision of the British Government they should, as I said, some time back, I mean His Excellency the Viceroy and the Government of India, should resign in a body. The Honourable Sir B. N. Sarma said that they were fearless and if they are sincere and fearless, this is the right course I suggest.

The HONOURABLE DIWAN BAHADUR V. RAMABHADRA NAIDU (Madras : Non-Muhammadan) : As nobody has risen from my province to speak, I wish to say a few words. The wise words addressed to the Council by the Honourable Sardar Jogendra Singh appeal to me. Government would do well to take seriously his advice in this matter. It is always advisable that in a matter of this kind that the wise counsel given by some prominent member should be heard by the Government and the words of Sardar Jogendra Singh appeal to me and I request Government to give effect to them.

• The HONOURABLE SIR MANECKJI DADABHOY : I wish to.....

• The HONOURABLE THE PRESIDENT : The Honourable Member has no right of reply.

• The HONOURABLE SIR MANECKJI DADABHOY : I do not wish to reply, but I want to make a motion. The motion that I desire to make is that I do not desire to press this motion now, as all the Members have taken part in this debate and the matter has been ventilated. I do not think it advisable to press this motion.

• The HONOURABLE THE PRESIDENT : The Honourable Member apparently desires to ask the leave of the Council to withdraw.

• The HONOURABLE SIR MANECKJI DADABHOY : I am coming to that. I do not think it necessary to press the motion for adjournment. I feel in doing so.....

• The HONOURABLE THE PRESIDENT : The Honourable Member can only ask the leave of the Council to withdraw his motion. He cannot make a speech in doing so.

• The HONOURABLE SAIYAD RAZA ALI : May I suggest whether it would not be better to talk the motion out instead of asking leave to withdraw.

• The HONOURABLE THE PRESIDENT : That is entirely a matter for the discretion of the House. I am trying to ascertain from the Honourable Member if he wishes to ask leave to withdraw. At present I do not know what he wants.

• The HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI : Sir, the decision arrived at by.....

• The HONOURABLE THE PRESIDENT : Does the Honourable Member intend to speak on the motion raised by Sir Maneckji Dadabhoy ?

• The HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI : No.

• The HONOURABLE THE PRESIDENT : What does the Honourable Member (Sir Maneckji Dadabhoy) desire to do ?

• The HONOURABLE SIR MANECKJI DADABHOY : If it is the desire to talk the motion out, then I do not withdraw. I thought all the Honourable Members had exhausted themselves. • • •

• The HONOURABLE THE PRESIDENT : I understood him to ask the leave of the Council to withdraw. Does he desire to make that request now.

• The HONOURABLE SIR MANECKJI DADABHOY : I will not withdraw my motion if it is the desire of the House to talk it out.

• The HONOURABLE DR. MIAN SIR MUHAMMAD SHAFI (Law Member) : Sir, Honourable Members are aware that the controversy relating to the rights of Indians in Kenya is not a new controversy. Correspondence has been going on between His Majesty's Government and the Government of India for a very long time and the Government of India have ever since the commencement of this controversy put the claim

[Sir M̄hammad Shafi.]

of Indians with regard to the various questions at issue as strongly as is possible. The Government of India, realising the justice of the legitimate demands put forward by the Indian settlers in Kenya, supported as those claims are by Indian sentiment and Indian feelings of self respect, have never failed in the past to advocate and support the legitimate claims of the Indian settlers in Kenya. It is perfectly true as was mentioned by the Honourable Rai Bahadur Ram Saran Das in his speech that it was the Indians who first settled in Kenya and developed that colony to a very large extent before the European settlers thought of coming to that colony and the justice of the Indian claims in so far as they are legitimate and in so far as they are reasonable is undeniable. That being so, the Government of India have in the past supported the claim of Indians fearlessly and strongly as is admitted by His Majesty's Government even in the statement which they have issued. Unfortunately India has lost on some of the points in issue. That is absolutely undeniable and this House may rest assured that the matter will not stop here. The Government of India will, in so far as the legitimate and reasonable claims of Indian settlers in Kenya are concerned, continue to press the Indian view on His Majesty's Government. It seems to me, Sir, that the decision which has been come to by His Majesty's Government on this question should not be taken as final. Indeed in these political controversies there is hardly a decision which can ever be considered to be absolutely final. Times change. Constitutional developments take place. New factors come into play and with the coming into force of new factors, decisions once taken are often subsequently modified. Indeed if this were not so, there would be no such thing as constitutional development. After all, it must be remembered that change is the law of nature, and therefore we need not be despondent. We need not be pessimistic. The House may rest assured that the Government of India will make further representations in connection with the questions upon which the Government of India know that the country feels and feels strongly.

The HONOURABLE LIEUTENANT RAI BAHADUR CHAUDHRI LAL CHAND

3 P.M.

(Punjab : Nominated Non-Official) : Sir, if ever there was perfect unanimity between men of different schools of thought and between men professing different religions, I think it is to-day. If ever there was perfect unanimity between capitalists and labourers on the one hand and between the military and the trading classes on the other, I think it is to-day and on this question. Member after Member of this House has reiterated the real feelings of the country and has expressed in emphatic terms that India's heart to-day is one. I do not wish to go over the same grounds again. I take a different view. The poet has said—"Sweet are the uses of adversity." At the present moment India is divided. There are in some provinces Hindu and Muhammadan questions ; there are political differences in the Congress camp ; there are communal differences also in some municipalities and district boards. I think this is a God-sent opportunity and it will give us all an opportunity to unite. I think I will only be doing my duty by the people and by the Govern-

ment if I submitted to the Government that, although they have been doing all that was possible in their power to put the real feelings of the people of India before His Majesty's Government, they would be failing in their duty if they were not to do all that was possible to retaliate. The question may be asked what is all this difference between the Government of India and His Majesty's Government due to? It is one of the inevitable evils of governing a country from a distance of 6,000 miles. The Government of India was here on the spot and they came to know the real feelings of the country and of different sections of the Indian communities, and they put those feelings before His Majesty's Government in very strong terms. I hope that the Government of India will do their duty in the future also. With these few words I support the motion.

The HONOURABLE SIR ZULFIQAR ALI KHAN (East Punjab : Muhammadan) : Sir, after hearing the speeches of the Honourable Members and after reading what the press is saying, I can safely say that the announcement of the decision with regard to Kenya has sent a wave of painful feeling from one end of the country to the other. India who trusted in the wise decision of the British Cabinet, at Home has been disappointed. It is a matter for great regret, Sir, that in matters in which their national honour is concerned Indians when they look to Great Britain for the protection of that honour do not get justice from the Home Government. This question of Kenya appertains to a Crown Colony; it is between the Indians and the white settlers there; and we all expected that in a place like Kenya which is a Crown Colony the British Government would give us impartial justice. Of course we have had experience of the treatment of Indians in the Self-Governing Dominions and we know what General Smuts and others have said. In their case when the British Cabinet said that they could not go and fight the Self-Governing Dominion we could see the justice of the remark. But in a place like Kenya where the British Government can assert itself and vindicate the rights of Indians, it is puzzling to us to find that the decision is unfavourable to us. Sir, when Indians go and settle down in the Colonies and meet with trouble or unfavourable circumstances, they naturally look to India to support their cause and to right the wrongs with which they are afflicted. And Indians, not possessing any authority, naturally appeal to the British Government for the redress of their fellow countrymen. And Honourable Members can imagine what must be the sorrowful feelings of those lonely Indians in the Colonies when neither we nor our appeals can help them. It is a regrettable matter and one which affects the good-will of Indians not only towards those settlers but also towards those Self-Governing Dominions and the Government at Home which does not show scrupulous impartiality towards all classes. I, Sir, having belonged to the first Council during the days of Lord Minto, remember vividly how the late Mr. Gokhale used to fight the cause of Indians in the matter of their treatment in the Colonies. I heard those debates and I can say with firm conviction that the late Mr. Gokhale who felt very keenly on this subject, if he had been alive now to advocate the cause of the Indians in this Council with the same fervour as he did then, I do not think that even his strong advocacy would have altered the matter. Is it not therefore disappointing to us that we in spite of our great services and

[Sir, Zulfqar Ali Khan.]

devoted services to the British Crown cannot induce the British Government at Home to show that justice which humanity demands. Sir, with these few remarks I have expressed my views on the subject.

The HONOURABLE MR. S. VEDAMURTI (Burma : General) : Sir, I have always heard an expression that this is an age of white-washing. I was sceptical about that expression, but to-day after hearing the Honourable Sir Narasimha Sarma, I feel that that expression is entirely true. The Member in charge has tried his best to white-wash the Imperial Government, and he has tried his best to put his own interpretation on the several provisions that have been arrived at by the Home Government in regard to this Kenya question. While his speech, cold as it was, was a great surprise not only to me but all the non-official Benches, the speech of the Leader of the House was couched in a different strain. Sir, whatever the official apologists may say ; whatever white-washing they may have to do with regard to these provisions, I can assure the House that the Indian community feels then very strongly, and the House will not be surprised, and the Treasury Benches will not be surprised, if there arises in this country an agitation which will be unparalleled and unprecedented in the history of this country. For my part, I can assure this House again that whatever steps may be taken, be it of retaliation or of any other kind, we Indians are not going to take them lying down. We are going to stake our all to protect the interests of Indians in Kenya. Well, Sir, the Honourable Sir Narasimha Sarma has been telling us . . . .

The HONOURABLE THE PRESIDENT : Order, order. The debate having now proceeded for two hours automatically terminates.

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#### ADJOURNMENT OF COUNCIL *SINE DIE*.

The HONOURABLE THE PRESIDENT : As the Council will be prorogued to-morrow, it only remains for me to adjourn the Council *sine die* and to express the hope that Honourable Members after to-day's prolonged sitting will have a pleasant journey and find recuperation in their homes.

The Council then adjourned *sine die*.



## CORRIGENDUM.

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Council of State Debates, Volume III, No. 43, dated the 16th July 1923.

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On page 1488, in the 2nd line of the third paragraph of the reply to Question No. 40, for the figures 66, 63, 700 read 663, 700.

## ERRATUM.

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On page 1719 of Vol. III, No. 49 of the Council of State Debates, for the Sub-heading "Attendance of Members at Joint Sitting." read "Attendance of Council of State."

and

On the contents page the same Sub-heading should be substituted.