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THIRD SESSION

OF THE

COUNCIL OF STATE, 1923.



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COUNCIL OF STATE.

Monday, the 12th March, 1923.

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

QUESTIONS AND ANSWERS.

CLOSING OF RAILWAY WORKSHOPS ON SATURDAYS.

183. The HONOURABLE MR. PHIROZE SETHNA: Will Government be pleased to state—

- (a) if it is a fact that of late several Railway workshops have been closed for the whole day on Saturdays instead of half days as usual although there has been enough work to do;
- (b) if the answer to (a) is in the affirmative, the reason therefor?

The HONOURABLE MR. D. T. CHADWICK: (a) Short time has been introduced in several railway workshops.

- (b) This step has been taken for financial reasons.

PURCHASE OF NEW RAILWAY WAGONS.

184. The HONOURABLE MR. PHIROZE SETHNA: Will Government be pleased to state:—

- (a) if it is a fact that large orders for new Railway wagons (which are paid for from capital account) have recently been placed although there are some thousands of wagons in the country which can be repaired and used;
- (b) are the repairs not taken in hand because the cost of same has to be met from revenue account and there is not enough to spare for the purpose from revenue account;
- (c) do Government recognise that the importation of new wagons when existing wagons can be satisfactorily repaired and used involves a serious loss of money;
- (d) will steps be taken to provide funds for the repairs being carried out at an early date so that such repaired wagons be used and thereby a reduction be effected in the number of new wagons to be imported hereafter?

The HONOURABLE MR. D. T. CHADWICK: (a) New wagons paid for out of capital are additions to the existing stock to meet the growing requirements of the Railways to transport the traffic offering. The number of wagons out of traffic awaiting repairs is not abnormal.

- (b) No.

(c) No. The new wagons are necessary quite apart from those which are under repairs.

- (d) This is covered by the replies to (a) and (b) above.

CLOSING DOWN OF PRIVATE WHARVES AT ADEN.

185. The HONOURABLE MR. PHIROZE SETHNA: Will Government be pleased to state:—

- (a) if any representations have been sent by the Aden Chamber of Commerce to the First Assistant Resident at Aden complaining that the proposal of closing down private wharves will seriously inconvenience the commercial community;
- (b) what action Government have taken in the matter?

The HONOURABLE MR. D. T. CHADWICK: The Government have received no representation on the subject from the Aden Chamber of Commerce. But they understand that it is proposed to close down private wharves and that the proposal has excited some protests from those interested at Aden, and they propose to ask the Government of Bombay for a report on the subject.

PURCHASE OF STORES BY COMPANY-MANAGED RAILWAYS.

186. The HONOURABLE MR. PHIROZE SETHNA: Will Government be pleased to state if in the contracts made with Company-managed Railways there is any provision whereby Government can compel such companies to purchase their stores through any agency or agencies recommended by Government?

The HONOURABLE MR. D. T. CHADWICK: The answer is in the negative.

MESSAGE FROM THE LEGISLATIVE ASSEMBLY.

The SECRETARY OF THE COUNCIL: Sir, a Message has been received.

The HONOURABLE THE PRESIDENT: Let it be read.

The SECRETARY OF THE COUNCIL:

“ Sir,

In accordance with rule 36(1) of the Indian Legislative Rules, I am directed to inform you that the amendments made by the Council of State in the Bill further to amend the Code of Criminal Procedure, 1898, the European Vagrancy Act, 1874, the Indian Limitation Act, 1908, and the Central Provinces Courts Act, 1917, in order to provide for the removal of certain existing discriminations between European British subjects and Indians in criminal trials and proceedings were taken into consideration by the Legislative Assembly at their meeting to-day, the 9th March, 1923, and that the Legislative Assembly have agreed to the amendments.”

BILL LAID ON THE TABLE.

The SECRETARY OF THE COUNCIL: Sir, in accordance with Rule 25 of the Indian Legislative Rules, I lay on the table a copy of the Bill to give effect to certain Articles of the International Convention for the Suppression of the Traffic in Women and Children, which was passed by the Legislative Assembly at its meeting held on the 9th March, 1923.

RESOLUTION *RE* AMENDMENT OF ELECTORAL RULES.

The HONOURABLE SAIYID RAZA ALI (United Provinces East: Muhammadan): Sir, I beg to move the following Resolution:—

“ This Council recommends to the Governor General in Council that early steps be taken to so amend the electoral rules as to enable a Member of this Council to seek election to other Legislative bodies constituted under the Government of India Act, 1919.”

Sir, the legislative bodies constituted under the Government of India Act, 1919, are the Council of State, the Legislative Assembly and the Provincial Councils. According to the rules made under the Act, if a person is a member of any of the preceding three bodies, he is not eligible for election to any of the remaining legislative bodies, unless he resigns his membership. Honourable Members will remember that, under the Morley-Minto scheme of reforms, not only was it open to a member of a provincial Council to seek election to the Indian Legislative Council, but there was no bar against a person being a member of a provincial Legislative Council as well as of the Indian Legislative Council. In fact, some gentlemen availed themselves of this splendid opportunity and I know at least one gentleman who adorned the benches of both Councils. The arrangement, it must be admitted, was not satisfactory. The sittings of the Provincial Councils generally and of the Indian Legislative Council being almost simultaneous, it was very difficult for a member to be present in both places. Work naturally, therefore, suffered. This system, which I think I am right in saying was somewhat odd, has now been abolished. But, Sir, the present scheme which is embodied in the rules framed under the Government of India Act, 1919, errs on the other side. The scheme which was in existence before 1919 allowed a person to be a member of two Councils, namely, the Provincial and the Imperial Councils; whereas the rules made under the present Act not only put a ban against a man belonging to two legislative bodies simultaneously but do not allow a person who is a member of any of the Councils that I have named to seek election to any of the remaining two. This, Sir, I submit, is a great hardship and the arrangement does not seem to be justified by the force of logic or the peculiar circumstances that obtain in India.

Sir, the proposition in the Government of India Act that a person shall not be a member of more than one legislative body has the support of the experience of those countries that have evolved a democratic constitution. Whether a bicameral system of Government will best suit the requirements of India and the genius of her people is more than one can say to-day. But assuming, Sir, that India in future will decide to have a second Chamber, it seems very necessary that all possible care should be taken that the second Chamber shall be a powerful, efficient and influential body. Most of the countries that have a democratic constitution have a bicameral parliamentary system, and it is clear that the utility of the second Chamber is not uniform in those countries which have introduced this system. The point raised in the Resolution that I have ventured to move before this Honourable House is that if we are to have a second Chamber we must see that it is built somewhat on the model of the American Senate, whose great influence and power are known throughout the world. On the other hand, Sir, if our second Chamber of the future is to degenerate to the level occupied by the French Senate, it is extremely doubtful whether the time and energy that will be spent in keeping up this second Chamber will be worth the trouble involved. Sir, in all those countries where a second

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Chamber is founded on the principle of heredity there is a great chance of the second Chamber being representative of the classes whose opinions in the administration of the country do or should count; whereas in the case of countries where the second Chamber is built on the elective basis, care should be taken that the constitution does not lead to stagnation. The important thing is to allow a free flow between the Council of State and other legislative bodies, namely, the Legislative Assembly and the Provincial Councils. Honourable Members will see that the question that has been raised directly in the Resolution which is before the House aims at allowing members of the Council of State to seek election to the Legislative Assembly or the Provincial Councils as the case may be; but I do not conceal from myself the importance of the principle of reciprocity. If Honourable Members of this Council are to be allowed to seek election to other legislative bodies, it would be but just and fair to extend a similar privilege to members of the Provincial Councils or the Legislative Assembly.

The HONOURABLE SIR DINSHAW WACHA (Bombay: Nominated Non-Official): Sir, may I rise to a point of order—whether this question of constitution has any reference to the particular Resolution before us?

The HONOURABLE THE PRESIDENT: I think the Honourable Member's point is this, that if you make a modification in the electoral rules of this Chamber you must accept the general principle for all legislative bodies.

The HONOURABLE SAIYID RAZA ALI: Sir, I do not propose to ask the Honourable Members of this House to give their vote on the general question. I have laid before them one phase of the general principle that is involved in the consideration of this Resolution. All the same I must point out that it would be impossible to deal with this phase of the question unless you discuss the general question without expressing your opinion in the form of a vote. Now, as I submitted, Sir, the ideal arrangement would be to allow members of any legislative body constituted under the Government of India Act to seek election to the remaining bodies. Whether the Government are prepared to accept that position or not is very difficult, I believe, to say at this stage. But I want to make a small beginning and I want the Government to bring about a change in the rules in such a manner as to allow Members of this Council to seek election to other bodies. If that, Sir, is accepted by Government it follows that the other rules will have to be changed in course of time so as to give the benefit of this proceeding to members of other councils. Now, Sir, I for one am at a loss to understand why the rules that were made under the Government of India Act should have placed a ban on a Member of this Council seeking election to other bodies. The rules that have been made are quite emphatic and explicit. In fact, rule 5 of the Rules for the election of members to the Indian Legislature clearly says, :

"A person shall not be eligible for election as a Member of the Legislative Assembly or the Council of State as the case may be if such person is already a Member of any legislative body constituted under the Act."

The clear meaning of this, Sir, is that not only you do not allow a Member of this Council to go to a provincial Council, but you also stand in the way of his trying to go over to the Legislative Assembly. As to what was in the mind of the framers of the Rules is more than I can say, but it seems to me, Sir, that section 68E (2) of the Government of India Act,

1919, did not, at that time at least, contemplate that the rules would be made in the spirit in which they ultimately came to be made. Section 68E (2) says:

"If an elected Member of either Chamber of the Indian Legislature becomes a Member of the other Chamber, his seat in such first-mentioned Chamber shall thereupon become vacant."

This, Sir, clearly means that at the time when this Act was passed, viz., towards the end of 1919, the British Parliament and the Government clearly intended that there should be a free flow between this Council and the Legislative Assembly and they made a clear provision to that effect in this sub-section. But it seems that the rules that were made have in fact gone not only much further than the present sub-section, but they contravene not only the spirit but, I would venture to say, also the letter of the law as embodied in section 68E. Sir, I am most anxious that this House should be respected and should deserve to be respected, if it is to continue to form an integral part of our constitution. A second Chamber that ceases to exercise or is unwilling to exercise its revisional functions is a misnomer. Rather than countenance a second Chamber of this character I would not hesitate to propose its discontinuance. If we are to have a second Chamber, it should perform its legitimate and proper functions; otherwise instead of being a help to the steady growth of our constitution it will retard its growth and be a positive danger. The only way to strengthen this Chamber from time to time is to admit fresh and vigorous element to it. On the other hand, it will be a great advantage if Honourable Members of this Council who have considerable experience of the serene dignity and dispassionate consideration of the measures that come up before it from time to time are allowed to impart, though in a small measure, their own serene dignity and dispassionate judgment to the members of less fortunate Houses. I have not the slightest doubt, Sir, that it is of the utmost importance, in order to enable this House to perform its duties efficiently, that fresh recruits to this House and also from this House to other Houses should be admitted from time to time. If this arrangement is not encouraged I am greatly apprehensive, Sir, that this will lead to our vision becoming in course of time cramped and narrow and that touch of sympathy which must always exist between this Chamber and the more democratic bodies would be weakened and ultimately lost. It is in this spirit, Sir, that I move my Resolution.

One word more, Sir, and I have done. It might be contended on behalf of Government that there is no country which allows a man to be a member of the Upper as also of the Lower House. That, Sir, in the beginning of my speech I have already conceded. But that is not the point. There are several countries in which a member is not required to vacate his seat before he offers himself for election for other bodies. Several such cases in fact occur in Australia. The list is a long one and I do not think it would serve any useful purpose to go into the whole list in detail. I will support my point by citing the cases of the Legislative Councils of South Australia and Tasmania under whose constitutions the members of the Legislative Councils are allowed to seek election to the Commonwealth Parliament. It is true that as soon as they are declared elected their seats in the Legislative Councils are considered as having been vacated. My plea is a similar one. What I submit is this. Let the Government allow Members of this House to seek election without resigning their seats here to the other Legislative bodies. If they are elected, then their

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seats in this Council would be automatically vacated. In the same manner, —this is the general principle and not a specific portion of my Resolution, —let not the Government put any obstacles in the way of the Members of the Legislative Assembly and of the Provincial Councils seeking election to this Council. This becomes very necessary, Sir, when it is remembered that it will not be till the year 1935 that simultaneous elections will take place for this Council, the Legislative Assembly and the Provincial Councils. The law as it stands allows a man at the time of the general election to seek election to all the Councils for which he is qualified, so that in the year 1935 it will be open to any qualified candidate to seek election to the Council of State, the Legislative Assembly and the Provincial Councils. But, Sir, the year 1935 is a long way off. As a matter of fact, we find that that contingency will not arise till after the visit of the Statutory Commission to India. I think, therefore, Sir, it is very necessary that Government should so amend the rules as to allow a free flow of Members between the various Legislative bodies, especially as the elections are to be held towards the end of this year. It may be that some Honourable Members would like to go elsewhere. It may be again that when the elections for this Council are held in 1925, some Members of the Legislative Assembly or of the Provincial Councils would like to come over here. I commend this Resolution, Sir, to the Honourable Members of this House.

The HONOURABLE SIR MANECKJI DADABHOY (Central Provinces: General): Sir, I am glad that the Honourable Member has brought forward this Resolution for discussion. My Honourable friend in proposing this Resolution has, however, unfortunately travelled beyond the scope of his Resolution in some ways. I do not propose to go into that question at all. I propose to lay my point of view before this Council in a nutshell. My Honourable friend has rightly drawn the attention of this House to the existing rule which prevents a Member of the Council of State from standing for a seat in the Legislative Assembly without first vacating his office. That rule likewise applies also in the case of a Member of the Legislative Assembly standing for the Council of State. This rule has been in existence ever since the Government of India Act came into force. To my mind, this rule, which was framed by the Joint Committee, has no legal force or legal validity. The rule is *ultra vires* in virtue of the express provisions contained in the Government of India Act. Unfortunately no election up to date has taken place of this kind, that is to say, no Member of the Council of State has stood, during the operation of this Act, for a seat in the Legislative Assembly, and, therefore, this rule has not been legally tested. I would draw the attention of the Council to section 22 of the Government of India Act, clause 2. That section makes the position perfectly clear. The first part of this section runs as follows:

“An official shall not be qualified for election as a Member of either Chamber of the Indian Legislature.”

The HONOURABLE THE PRESIDENT: What does the Honourable Member cite from?

The HONOURABLE SIR MANECKJI DADABHOY: I am citing from the Government of India (Amending) Act, 1919.

The HONOURABLE THE PRESIDENT: It will be more convenient if the Honourable Member cites the Act.

The HONOURABLE SIR MANECKJI DADABHOY: I am quoting the clause, Sir:

"If an elected Member of either Chamber of the Indian Legislature becomes a Member of the other Chamber, his seat in such first-mentioned Chamber shall thereupon become vacant."

As the section stands, to my mind, there is no question; it is not necessary to vacate the seat. As the Government of India Act stands at present, a Member of the Assembly can stand for election to the Council of State without vacating his seat and *vice versa*. The section by implication clearly denotes that it is only on an election taking place his seat in the first mentioned Chamber shall become vacant. The very wording that "his seat in the first mentioned Chamber shall thereupon become vacant" means on the result of the election happening.

The RIGHT HONOURABLE V. S. SRINIVASA SASTRI (Madras: Non-Muhammadian): Suppose he is only nominated by Government to the other Chamber?

The HONOURABLE SIR MANECKJI DADABHOY: I am now referring to the Resolution. It is perfectly clear, to my mind, that the law as it exists at present, does not debar a Member, at least of the Council of State or of the Legislative Assembly, standing for either place without vacating his seat. Unfortunately, the rule framed by the Joint Committee makes a departure from this, and the framers of the rule apparently overlooked this provision. I submit with great respect that the rule framed by the Joint Committee is *ultra vires*, and if an election is contested in a Court of law it is perfectly clear that it would be held that the rule is *ultra vires*. So far as this point is concerned, there is at present no statutory disability in the matter of contesting elections. There is a legal provision under which a Member of this Council can stand for the Assembly without vacating his office, but this right is only limited to the two Houses of the Indian Legislature and not to the Provincial Councils. Therefore, what we require at present is, we want to bring to the attention of His Majesty's Government the anomalous nature of the rule framed under the Act, because as long as this rule stands, it is a bar, and the earlier the invalidity of this rule is brought to the attention of Parliament the better, and I submit it is quite necessary under the circumstances to amend this rule as soon as possible. The rule as it stands is not in consonance with the law which is enacted, and you cannot frame, under the general power to frame rules, any rules contrary to the spirit and letter of the law. Therefore, this rule is partly *ultra vires*. There is no statutory provision debaring a Member of either Chamber from standing for election to the other Chamber without vacating his office. But, as I have pointed out, this does not apply to the Provincial Councils.

Now, Sir, while sympathising to a certain extent with the proposal of my Honourable friend the Mover, and having pointed out the anomalous nature of the rule as it stands at present, I am of opinion that there is another aspect of the question which this Council should not ignore. It is all right in the case of a candidate who holds a seat in the Assembly to stand and contest a seat for the Council of State when it becomes vacant without vacating his office. If he is defeated he can without any loss of prestige or dignity go and resume his seat in the Assembly, but unfortunately it would not be a graceful position in the case of a Member of this House. If a Member of the Council of State contests for a seat in the Assembly maintaining his own seat on this Council till the actual election takes place, or

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until the result of the election is known, and if he is defeated in the Assembly, I say, to come back and take his seat in the Council of State would not be quite compatible with the sense of dignity of this Chamber. Personally, I am of opinion that those who are anxious to join the Assembly should have all the facilities of doing so. As a matter of fact, during the last two years I have sometimes thought of resigning my seat here and contesting a seat in the Assembly because I have often felt that I could be of a little more use in the Assembly. I have now and then thought of doing this myself; but I have always felt that it would be compatible both with the dignity and prestige of this House and with the traditions of the Mother of Parliaments from which we receive both guidance and inspiration that it would be more graceful to resign our seats in the Council of State before contesting elections for the Legislative Assembly. It is not advisable to keep a sort of prescriptive right on your existing seat and at the same time contest an election for the Legislative Assembly. It is this aspect of the question which, to my mind, takes away from the traditional dignity and prestige of the Upper Chamber and it is for this reason that I feel myself unable to subscribe to the proposition which has been put forward with such lucidity by my Honourable friend.

As regards the Provincial Legislative Councils, the problem gets more complicated when you come to consider it. Assume, for instance, the case of a Member of the Council of State standing for the Assembly as well as for the Provincial Council in his own province. Apart from the political position that he may take up in connection with the elections, I think it will cause a great deal of confusion in the sense that the voters will not know in what Chamber a particular candidate's presence would be more useful, and I think, therefore, the Provincial Councils should be left as they are. I quite concede that there is some force in the argument of my Honourable friend Saiyid Raza Ali, but on the whole, if the Provincial Councils are left studiously alone and if we ask for a repeal of the rule framed so as to bring it into consonance with the present Act, it will meet the requirements of my Honourable friend as well as the general desire, if there be any such desire, for Members of either Chamber of the Indian Legislature to contest seats in the other House without vacating their seats.

For these reasons, I submit that the rule, which is *ultra vires* at present, ought to be abrogated or modified as early as possible, and that no further action is necessary.

The HONOURABLE MR. J. CRERAR (Home Secretary): Sir, a very brief statement from me will, I think, suffice to make clear the attitude of Government as regards the various propositions which are implied in the Honourable Member's Resolution. It will be within the recollection of the House that in September last year Government appointed a Committee consisting of Members of both Chambers of the Indian Legislature to consider generally the question of the electoral rules. The report of that Committee has for some time past been engaging the attention of Government and, although the report of the Committee does not touch upon the questions raised in the present Resolution, incidentally occasion has been taken to consider certain other amendments which appear desirable or necessary. One of those arises out of the circumstances which has already been adverted to by my Honourable friend the Mover and by my Honourable friend Sir Maneckji Dadabhoy, that is to say, that rule 5 of the Electoral Rules is to a certain extent inconsistent with the

statutory provisions of section 63-E (2) of the Government of India Act. It is not quite correct to say, as I think one of the speakers, who preceded me did say, that the rule was *ultra vires in toto*; it is only in one respect that it is inconsistent with the statutory provisions, and, therefore, presumably is so far *ultra vires*. It is also not quite true to say that no case has actually arisen in which this question has been involved. As a matter of fact, a case did arise in regard to a recent election to this Council and that matter has already been referred to by my Honourable friend on my left in another place, and it is on that ground alone that some revision of the rule is desirable and indeed necessary.

My Honourable friend's Resolution seems substantially to raise three cases of importance, the case of the candidature of a Member of either Chamber of the Indian Legislature for the other Chamber, the case of the candidature of a member of a local Council for either Chamber of this Legislature, and the third case, the case of the candidature of a Member of either Chamber of the Indian Legislature for a local Legislative Council.

With regard to the first of these cases, Government, as at present advised, are disposed favourably to consider an amendment of the rule which will have the effect of curing the invalidity of the existing rule and of specifically permitting the candidature of a Member of this Council for the Legislative Assembly and also the candidature of a Member of a local Legislative Council for either Chamber of the Indian Legislature.

The third case, however, raises other and, I think, very important considerations, considerations which very closely concern this House. I think it can be said without the slightest disparagement to the vital and the fundamental functions which are exercised by the local Legislative Councils and to the dignity and importance of those Councils that the constitution has assigned wider and more comprehensive functions to both Chambers of the Indian Legislature and that it would not be unreasonable to infer from that that the status of the two Chambers of the Indian Legislature must be regarded as in a certain sense superior to that of Provincial Councils. I think I may say that, Sir, without the slightest disparagement to the local Councils. It is merely a constitutional fact which we are bound to recognise. Nor, Sir, do I deny that Honourable Members either of this Council or of the Legislative Assembly might have very legitimate, very proper and very laudable reasons for seeking election to a local Council. It might conduce more to the Honourable Member's own convenience; he might consider that his qualifications and capacities could be applied with greater advantage to the public good in a local Legislative Council. These are matters into which we need not go but we must look at it from another point of view, from the point of view of this Council. My Honourable friend said that, if we are to have a bicameral system, and if we are to have an Upper Chamber in a bicameral system, it is absolutely essential that that second Chamber should be powerful, efficient and influential, that it should do nothing so far as in it lies to derogate from its own status and dignity. What I venture to put to the House is this. Supposing an Honourable Member of this Council for very proper and very laudable reasons considered that it would be more conducive to the public good that he should seek election for a local Legislative Council; he would consider that not only from the point of view of the individual Member, but from the point of view of the House. Presumably the Honourable Member would not seek election to the local Legislative Council unless it was his definite purpose or desire to sit in that Council; and *ex hypothesi* to sever his connection with this Council, because the Honourable Mover did not for

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moment suggest that the rule which forbids dual membership should be abrogated. Well, Sir, the Honourable Member, who still retains his seat in this Council, seeks the suffrages of a constituency of the local Legislative Council. If he meets with success, and if he has definitely made up his mind to seek election to a local Legislative Council, he is under no disability if he is asked to terminate his membership of this Council before he does so. But if he seeks those suffrages and he fails, what will the consequence be? The fact, it appears to me, that the Honourable Member who has sought the suffrages of a Provincial Council constituency does not succeed in gaining their confidence would cause very considerable embarrassment to himself and very serious embarrassment to this Council if he were to continue to retain his seat here. It is for that reason, though, as I have explained, the Government are prepared to go a great way in the direction indicated by my Honourable friend, we are not prepared to accept that third proposition. I venture to think this House also ought not to accept it. It is no doubt proper for this House to take into consideration, so far as it is reasonable, the private convenience of its Members; but when it comes to a question in which the dignity and status of the House as a whole is affected, I venture to think that any consideration of the private convenience of Honourable Members ought not to be given preference to the general consideration of the status and dignity of the House as a whole. Such cases, as are contemplated by that third proposition, would hardly arise save in very exceptional circumstances, and I do not think the House should commit itself to a proposition which could only arise in very exceptional circumstances, but which would nevertheless have the consequence of effecting a very great measure of derogation in the status and dignity of the House. Therefore, I hope, Sir, in view of the explanation I have made, that my Honourable friend will be prepared to withdraw his Resolution. If he is not prepared to withdraw it, I must, in respect of the third proposition, oppose it, and I trust the House will support me in that opposition.

THE HONOURABLE SAIYID RAZA ALI: Sir, it was not in any dogmatic spirit that I brought forward this Resolution before this House to-day. I did it, Sir, in the spirit of a seeker after truth, and I just desired to draw the serious attention of Government to some of the extraordinary aspects of the rules made under the Government of India Act. I do not think, Sir, it will be useful to dwell on the question as to how far section 68E, sub-section (2), which was quoted under another name by my friend the Honourable Sir Maneckji Dadabhoy, is in conflict with Rule 5 of the Electoral Rules. In view of the statement made by the Honourable Mr. Crerar, I think we might leave matters at that. I am glad that the Government of India have discovered after all, after the expiry of about 22 months, that the rule is not in harmony with the letter of section 68E. While congratulating the Government, not grudgingly, Sir, on that discovery, I propose to deal briefly with the speech of the Honourable the Home Secretary.

He has clearly stated before the House that the general principle that really underlies my Resolution can be divided into three categories. He has stated those three categories, and he has dealt with each one of them. I think, Sir, we may be permitted to congratulate my Honourable friend and the Government of India that after all they are prepared to allow members of Provincial Councils to stand as candidates for election to either Chamber of the Indian Legislature. I do not think, Sir, that that

pronouncement would be in conformity with the notions of dignity of this House entertained by my Honourable friend Sir Maneckji Dadabhoy. All the same, Sir, I must acknowledge that it is a considerable advance that the Government propose to make, and as such the announcement made by the Honourable Mr. Crerar, though by no means full in measure, will receive general approval in this country.

Then we come to the second question, *viz.*, the election of a Member of one Chamber of the Indian Legislature to the other. On this question I thought the law itself was clear. I am glad the Government propose to bring about the necessary change in the wording of Rule 5 and to make it consistent with section 63E of the Government of India Act. Then, Sir, we come to the last question which, after all, is the question that has been raised directly in the terms of the Resolution, namely, how far it is right to allow Members of this Council or Members of the Legislative Assembly to stand as candidates for election to the Provincial Councils. Now this being a very vital point, I listened very carefully and attentively to the lucid exposition of the question given by my Honourable friend on behalf of Government. Sir, it is very difficult, in fact, to put a weak case strongly before a critical audience unless the man who undertakes that task is a skilful advocate, and I must acknowledge that my friend

12 Noon. the Honourable Mr. Crerar is a skilful advocate. The position taken up by Government is far from strong as Honourable Members of this Council will realise for themselves. Yet he has tried to introduce a certain amount, if he will excuse my saying so, of plausibility on behalf of Government into it. The main contention that he has raised, shorn of all extraneous matter, is this. If you allow a Member of the Council of State or a Member of the Legislative Assembly to seek election to a Provincial Legislative Council and if he is elected it will be open to him to take his seat in the Provincial Council. But my Honourable friend says, let us look at the other side of the picture. What will happen if the unfortunate candidate is not elected and meets with failure in his electioneering campaign? My Honourable friend went on to say that that would show that a particular candidate failed to get elected to the Provincial Council and it would be most embarrassing—I believe he used that word—to allow him to retain his seat in either Chamber of the Indian Legislature. Now, Sir, my Honourable friend forgets that the qualifications of the electors, in other words, the franchise, which is fixed in the case of the Provincial Councils is as different from the franchise fixed for this Council as the North Pole is from the South Pole almost. My Honourable friend is perhaps aware that the voters in Provincial Councils, even in a very small constituency, are numbered by thousands, in some cases by tens of thousands; whereas the franchise in the case of this august Council is so high that, generally, the number of electors runs into a few hundreds and never more than a couple of thousands, and when I say a couple of thousands I am putting the figure almost at its maximum. Sir, the way in which I would reply to my Honourable friend, Mr. Crerar, would be this. If you change your rule and allow a Member of the Indian Legislature to try his luck, if I may say so, for the Provincial Council, if he gets elected, it shows that the man is acceptable not only to the aristocratic class but also to the masses that make up the people; he is acceptable to the classes as also to the masses, and therefore there should be no objection taken on behalf of the Government. On the other hand, if the unfortunate man is defeated that shows that he is not acceptable to the masses and therefore, Sir, I think he would be very much acceptable to

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the classes. (The Honourable Mr. Lalubhai Samaldas: "Not necessarily.") I am very glad, Sir, to hear that from the Honourable Mr. Lalubhai Samaldas; I hope he not only says that, but also means it. (Honourable Mr. Lalubhai Samaldas: "Entirely.") The qualifications being essentially different in the cases of these two Councils, the defeat of a man where thousands of electors are involved does not by any means show that he forfeits the confidence of those highly-placed men, one of whom just interrupted me, who are the voters for election to the Council of State, and therefore the position should not in any way be embarrassing to anybody. The position would have been quite different if the franchise had been the same in both cases; that no doubt would have brought about an anomalous position; that would have gone to show that whereas a man was acceptable two or three years back to the same class of people, he was no more acceptable to them at a later period, namely, when he sought election to the Provincial Legislative Council. That, Sir, as I have pointed out by no means follows. The two matters are as different and distinct as any two matters can be, and therefore I do not think that my Honourable friend can claim that he has tried to support his proposition by any strong argument. I hope, Sir, I am not doing injustice to my Honourable friend, when I say that that was the only argument he adduced quite apart from the question of dignity and status. I do not propose to deal with that question now. After all I do not think that many Honourable Members of this Council will agree that if an Honourable Member of this Council is allowed to stand as a candidate to a Provincial Legislative Council he thereby casts, intentionally or unintentionally, any reflection on the great position, dignity and status of this House. The choice is a question of taste and let a man do according to his taste and I assure the House that no question of dignity is involved.

That being the position, Sir, I for one am highly thankful to Government for their readiness to amend the rules in an important matter like this. I am sorry that the necessary corollary of the principle that has found acceptance at the hands of Government does not appeal to them. Sir, I thought that if you allowed Members of Provincial Councils to come up to these two Chambers, there was absolutely no point in denying reciprocity to us. As a matter of fact, my Honourable friend's proposition subjects Members of this Council and of the Assembly to considerable disadvantage, namely, it gives a concession to the Provincial Councils and at the same time it denies that very concession to Members of the two Chambers of the Indian Legislature. As I submitted, I entirely fail to see any element of reciprocity in that; and if it were to be judged as a legal proposition I would have no hesitation in saying that as a proposition of law my Honourable friend's contention was a thoroughly bad one. But, Sir, we are not dealing only with questions of law; we cannot afford to shut our eyes to questions of expediency. If Government are prepared to go to a certain length and no further, I for one am prepared to meet Government even at the point up to which they are prepared to advance. Therefore, Sir, while absolutely convinced that the Government's position is illogical and that it should have gone much further, I would not be prepared to press my Resolution to vote. As I have said, perhaps on another occasion

THE HONOURABLE THE PRESIDENT: If the Honourable Member does not propose to press his Resolution to a vote, I think he might conclude his speech as he has largely exceeded his time limit.

The HONOURABLE SAIYID RAZA ALI: Therefore, Sir, in view of the pronouncement made by the Honourable Mr. Crerar which is satisfactory so far as it goes though it does not go far enough, I would crave leave of this Council to withdraw my Resolution.

The HONOURABLE MR. J. CRERAR: Sir, in view of the fact that my Honourable friend desires to withdraw his Resolution, assuming that that receives the assent of the House, I have no further remarks to offer.

The HONOURABLE THE PRESIDENT: Before I put the question that leave be given to withdraw this Resolution, I should just like to draw the attention of Government, since they are dealing with this matter, to rule 20 (c). I do not propose to make any remarks; I merely draw their attention to it.

The Resolution was, by leave of the Council, withdrawn.

THE MALKHARODA AND GAONTIA VILLAGES LAWS BILL

The HONOURABLE MR. J. CRERAR (Home Secretary): Sir, I move for leave to introduce:

"A Bill to declare the law in force in certain territories of the district of Sambalpur and to provide that the past administration of those territories shall not be called in question on the ground that they were not included in the territories administered by the Government of the Central Provinces."

Sir, the necessity for this legislation illustrates the inconvenience of faulty draftsmanship, and I shall briefly explain how it has arisen. In the year 1905, as the House is aware, certain important territorial adjustments were made commonly known as the Partition of Bengal. In connection with those territorial adjustments, the district of Sambalpur was attached to the re-constituted Province of Bengal. Later in the years 1911 and 1912, further territorial adjustments including the creation of the province of Bihar and Orissa were made and the district of Sambalpur, which had been transferred to the province of Bengal, was now incorporated in the new province of Bihar and Orissa. A notification was issued in 1905 by which certain exclusions were made from the transfer to Bengal of the district of Sambalpur, on the ground of administrative convenience. From that district were excepted the territories specified as the Chandarpur-Padampur Zemindari and the Phuljhar Zemindari. Now it happened that, at that time, the estate known as the Malkharoda Jaghir was held by the Zemindar of Phuljhar and it was wrongly assumed that the Malkharoda Jaghir formed part of the Zemindari. It did not. Another assumption was made. In the territories of Chandarpur-Padampur Zemindari there were a certain number of what are known as Gaontia villages, a term which corresponds roughly to Khalsa or Rayati. Though these villages were included geographically within the boundary of the Zemindari, they did not legally constitute a part of it. The consequence has been that, although these territories have since 1905 been *de facto* administered by the authorities of the Central Provinces, their legal status has been something more than doubtful, and recently the status of some of these territories has as a matter of fact been called in question in a Court of Law, and it is therefore desirable to set these doubts at rest and to pass the necessary validating legislation. I will not say anything further at this stage, Mr. President, because the Bill, though

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a small measure, is somewhat complicated, and probably it will be more convenient if I make any further explanation that may be necessary after Honourable Members have had an opportunity of reading through the Bill at their leisure. I will therefore at this stage simply move for leave to introduce the Bill.

The motion was adopted.

The HONOURABLE SAIYID RAZA ALI: May I know, Sir, whether this Bill is likely to be taken up for consideration in the current Session?

The HONOURABLE MR. J. CRERAR: Yes, Sir.

The HONOURABLE MR. J. CRERAR: Sir, I introduce the Bill.

The HONOURABLE THE PRESIDENT: Before I adjourn the Council, I would ask non-official Members, if convenient to them, to meet me in five minutes' time in the large Committee Room here.

The Council then adjourned till Eleven of the Clock on Tuesday, the 13th March, 1923.