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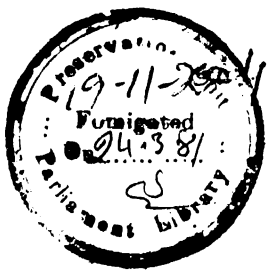
SECOND COUNCIL OF STATE, 1927



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COUNCIL OF STATE.

Wednesday, 31st August, 1927.

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

RESOLUTION *RE* ESTABLISHMENT OF A SUPREME COURT.

THE HONOURABLE SIR SANKARAN NAIR (Madras: Non-Muhammadan): I beg to move:—

"This Council recommends to the Governor General in Council to take early steps to secure that a Supreme Court is established in India with power—

(*a*) to interpret and uphold the constitution;

(*b*) to act as a court of final criminal appeal against all sentences of death;

(*c*) to act as a revising court in specified serious cases;

(*d*) to hear civil appeals now heard by His Majesty's Privy Council; and

(*g*) generally to carry out the work at present entrusted to His Majesty's Privy Council;

provided that such court shall not affect His Majesty's prerogative safeguarded in the constitutions of Canada, Australia and South Africa."

Let me say at once before proceeding further that under this Resolution it is not intended to affect any of the existing powers or privileges of the Privy Council, that is to say, that a litigant may appeal to the Privy Council if he likes, or, if this Supreme Court is established, he may appeal to the Supreme Court. But once he appeals to the Privy Council he cannot go to the Supreme Court, and if he carries his litigation to the Supreme Court he cannot appeal to the Privy Council. He can go either to the one or to the other, but he cannot go to both. That is in order to show that the existing jurisdiction of the Privy Council is in no way intended to be interfered with.

Now, Sir, I come to the Resolution itself. Perhaps Honourable Members know that according to our law it is open to a litigant to appeal to the Privy Council in a certain class of civil cases; that is to say, if the subject-matter is above Rs. 10,000 and if there is a difference of opinion between the first Court—the subordinate Court or the District Court—and the High Court and the High Court reverses the judgment of the subordinate Court or the District Court, then he is entitled to appeal to the Privy Council. The law recognises the fact that judgments where the High Court interferes with the judgment of the lower Court are judgments which may require further consideration, and it is for that further consideration that an appeal is provided for to the Privy Council. It is obvious, then, that when such an appeal is provided for to a higher court that should not be an illusory remedy. We must provide facilities for the litigant to appeal to a higher court. But what is the case now? In by far the majority of cases when a litigant is entitled to go to the Privy Council, the man who has lost his appeal in the High Court, even when he is advised to go

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to the Privy Council, very often finds he cannot go to the Privy Council, because it is at such a distance and the cost is so very heavy that he cannot go there. First of all, when he applies for leave, he finds that he has to pay security for the costs of the other side in the Privy Council which comes to thousands of rupees. Then he finds that he has to pay for the preparation of the record for the Privy Council, because their Lordships in their wisdom say that they will not look into the papers printed in the lower Court; they must have papers specially printed for them. That also means thousands of rupees. And you know the lawyers in England. They are not like us. They want a large sum of money; you have to pay them heavily. Therefore, you find that many a litigant is deterred, and we know it for a fact that in many a case in which a litigant ought to appeal to the Privy Council he finds that he cannot go there and he has to submit to the judgment in India. That is the case when he has lost the case in the High Court. The poor man cannot go to the Privy Council. But it is worse when the appellant is a rich man who appeals to the Privy Council. The respondent, his opponent, who has won in India finds he cannot appear to defend the case in the Privy Council on account of his poverty and he must leave it to the appellant to go on with the case and the case is heard, as we say in courts of law, *ex parte*, *i.e.*, with nobody to represent his side. The Privy Council have lamented over and over again that they have to hear the cases *ex parte*. The result is that he has got no advocate to present his case, and it may be that he loses it on that account. The Privy Council, therefore, is a Court which, I do not say, is intended to but is calculated to assist the rich as against the poor. Thus it assists the wealthy litigant as against the poor litigant. It keeps away the poor litigant from the final court of appeal and it assists the wealthy litigant to get the better of the poor litigant, to fight the poor litigant at a great advantage. That is one reason for the establishment of a supreme court. If we abolish the Privy Council altogether and say that in no case shall a litigant go to it, that will be something, because we shall be placing the wealthy and the poor litigant on the same footing. As things stand now, the rich litigant gets a distinct advantage over the poor litigant.

Now, Sir, I shall deal with another aspect of the case. I will now refer to a class of cases where a man is entitled to go to the Privy Council. I have told the Council already that when there is a difference of opinion between the High Court and the lower Court, then the litigant is entitled to go to the Privy Council. It is an extraordinary incident of the administration of criminal justice in India that even when a man is acquitted by the first Court after a full trial, the prosecutor, *i.e.*, the Government, is entitled to appeal to the High Court and he may be convicted by the High Court, he may be sentenced to death. But when he is sentenced to death, that judgment is final. He cannot go to the Privy Council: in a civil case he could, but in a criminal case, when he is condemned to death, when he is sentenced to be hanged, the man has no right to go to the Privy Council. Their Lordships of the Privy Council say that they do not sit there as a court of criminal appeal, and they will not go into the evidence. That obviously is very unfair. I presume it requires no lengthy argument to show that in cases like that, the man who is sentenced to death ought to be entitled to go to a higher Court. If there was a higher Court in India, then he could go there and submit his final appeal. Again, when a man is convicted by a

majority of the Judges of the High Court he is not allowed to appeal to a higher Court. Very often when two Judges differ in appeal, it is placed before a third Judge. Then the man may be sentenced to be hanged, and even though there is difference of opinion among the High Court Judges, the man cannot go to the Privy Council. It is obviously unfair. There are some friends here coming from Madras. They know that in a case three Judges, a Civilian Judge, a Barrister Judge and an Indian Judge came to the conclusion that a man was guilty and should be hanged, and he was sentenced to be hanged, and there was another Indian Judge who thought that the prisoner ought to be acquitted. The Civilian and Barrister Judges and an Indian Judge took one view and another Indian Judge took a different view, and the Privy Council.....

THE HONOURABLE SIR MANECKJI DADABHOY (Central Provinces: Nominated Non-Official): Will not the Supreme Court here be confronted with the same difficulty?

THE HONOURABLE SIR SANKARAN NAIR: No, not in a case like that. In this case the man went to the Privy Council because he could afford to do so, in fact he was able to telegraph the whole judgment to his lawyers in the Privy Council at a cost of thousands of rupees. Now, how many men of ordinary means can afford to go to the Privy Council? Poor people cannot think of going to the Privy Council. But if there is a Supreme Court sitting in Delhi, everybody, the poor as well as the rich, can appeal to that Court. The argument then is that justice is denied in the case of perhaps hundreds of men who are in a similar predicament and who have not the means of going to the Privy Council. The Privy Council do not go into evidence in all these criminal cases in appeal. I therefore submit, Sir, that there should be a Supreme Court here in India. In the late Imperial Conference, they came to the conclusion that on the question whether there should be an appeal to the Privy Council or not, the question ought to be determined by local opinion; that is to say, if the Dominions do not want it, then there should be no appeal to the Privy Council; if these countries do want it, then there should be an appeal to the Privy Council. This view has been acted upon by the Privy Council in a certain case where they say: "the constitution of the Empire is tending to develop in the direction with regard to final decision in the local administration of criminal justice." So that the tendency is for the Privy Council more and more to refuse to take cognizance of criminal cases and leave it to the local administrations to settle the matter. I submit, therefore, it is absolutely necessary that we should have a court of final appeal here so that the cases of people who are condemned to death, and cannot go to the Privy Council at such great expense, may be heard and decided here.

Then, Sir, there is another class of cases, and it is an increasing class of cases. Over and over again the Privy Council have been saying in sedition cases that they cannot go into those cases at all, because they could not say whether a writing is seditious or not, and that it is not for them to say what the effect of a certain writing would be in India amongst the class of people who will read it. It is not for me to criticise their opinion which is final. For an illustration I would refer to the case against Mrs. Besant in Madras and also to the numerous cases from the Punjab. In Mrs. Besant's case there have been writings which were charged as being seditious and Judges differed. Some Judges said that some of

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the articles which appeared in *New India* were seditious, while other High Court Judges held the opposite view ; and when the matter was taken to the Privy Council, they observed that they could not say what the effect of those writings would be on the local people here ; they could not say how the people here would be affected by such writings ; and they said that they must refuse to go into the matter. Now a Bill is pending before the other House, which punishes a man whose writing is calculated to insult or outrage the religious feelings of certain people, to create hatred between different classes. The Privy Council will not go into all those questions. That also would depend upon local circumstances, upon the environment here. For that purpose, the Privy Council is not the proper court, and we must have a Supreme Court here in India. That court could go into all these questions and see how far the writing complained of affects the people and to come to a proper conclusion. I submit, therefore, that for all these purposes it is very necessary that we should have a Supreme Court in India.

Now, Sir, I have dealt with all the classes of cases which are not in effect decided by the Privy Council. Now what about the cases which are decided by the Privy Council ? Many of these cases deal with Hindu and Muhammadan law, and when I make any observations here, I trust I shall not be construed as being disrespectful having had myself to administer the law under the Privy Council, and by anything that I say I should not be deemed to convey any reflection, so far as I am concerned, upon their capacity and upon the correctness of their decisions in matters of Hindu and Muhammadan law. For that reason I shall not say anything myself but I shall quote what others have said. Take the case of the Hindu law. I will read a quotation from John D. Mayne, one of the most eminent of English barristers, who knows Hindu law, who has practised in courts in India, who has practised in the Privy Council and whose book is a text book in India referred to with respect by Judges and practitioners. I cannot read the whole of the chapter. Those who are curious to know it may read it. The opinion refers to the administration of Hindu law by the English Judges. The words are pertinent. It is a long chapter. This is what he says about the administration of Mitakshara law.

" The consequence was a state of arrested progress, in which no voices were heard unless they came from the tomb. It was as if a German were to administer English law from the resources of a library furnished with Fleta, Glanville and Bracton and terminating with Lord Coke. "

That is Indian law administered by English Judges. That is the opinion of a practising lawyer who knows all about it. There is another man equally eminent, who is a jurist as well as a lawyer. He was a member of the Government of India.....

THE HONOURABLE SAIYID ALAY NABI (United Provinces West : Muhammadan) : May I ask the year in which it was published ?

THE HONOURABLE SIR SANKARAN NAIR : I remember studying it in 1877 and it is repeated in the latest edition of 1926. It is edited by the Chief Justice of Madras. You may take it that that opinion was repeated from 1877 to 1926. I was referring to the opinion of another jurist. He was the Law Member of the Government of India—Sir Henry Maine. It is a long chapter

and I would not like to read the whole of it. It is Lecture No. 2 on Village Communities. He goes much further than Mayne. What he says is that English lawyers have imported English notions into the administration of Hindu law. We know it well. They broke up the joint family system by importing into the administration of Hindu law the notions of individualism which characterise the whole of English law. They have broken up the social system. Then I shall refer to a judge. He was also one of the greatest of Sanskrit scholars. He belonged to the Civil Service. He was a Judge in Madras. His name is Burnell. He translated the well-known Hindu texts, the laws of Manu. This is what he says :

" As the text has been so often referred to by the Courts in India and the ultimate Court of Appeal, the Privy Council in England, it might be expected that some useful help would be got from the law reports ; but this is not the case. Most of the cases decided are evidently wrongly decided and others really need no elucidation ; the decision may be very able but (as an eminent writer has said) life is not long enough to study able demonstrations that the moon is made of green cheese.' I therefore do not refer to this branch of literature referring to Sanskrit law."

He brushes aside the whole thing. Now, Sir, the question is not whether any decision of the Privy Council is right or wrong. Do the decisions inspire confidence among the experts ? If it is worth while I can refer to cases which have shocked Indian public opinion so far as the administration of Hindu law is concerned.

There is another matter which I have put down in the Resolution. Under the reformed constitution there have been many disputes as to the respective functions of the executive Government and of the Legislature. Questions often arise. These questions are now settled by the executive Government. That is not fair. We ought to have a court here in order to settle all these questions. In the book written by Sir Frederick Whyte, the late President of the Legislative Assembly, and published by the Government of India, he points out that in all those cases where there are doubts about constitutional powers there have been courts to decide all those questions. I submit, therefore, that it is well to have a Supreme Court here in India in order to decide all these questions.

Now there is only one more point to which I desire to refer. If there is a court here and it is optional to the litigant either to go to the Privy Council or the Supreme Court, there will be no feeling of irritation, no feeling of annoyance. Everything will go on well. But if you say : " No " then there is sure to be a feeling of irritation and annoyance among the people. They will say that in the one department in which native ability is conspicuous, that is in the administration of justice we are denied the powers that have been justly given to us and there will be a feeling of soreness. For that reason also it is desirable to have a Supreme Court. For all these reasons I would ask the Council to vote in favour of my Resolution.

THE HONOURABLE MR. H. G. HAIG : (Home Secretary).—Sir, the Resolution moved by my Honourable friend takes my mind back to the weather conditions which those of us who were in Simla a month ago were unfortunate enough to experience. In the plains storms came and went, but long after they had passed away the clouds and rain incessantly surrounded the higher places. I do not wish to press the analogy too far, but I would like to remind the

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House that as long ago as February 1925 in another place—I hardly venture to say a lower place—a Resolution with this same object was moved. Streams of eloquence and legal learning descended and after the storm had passed away and the results were measured up, it was found that the Resolution was defeated by 56 votes to 15. I trust, Sir, that this Council will, when the results come to be measured up, record a similar conclusion.

I feel, Sir, a certain disadvantage in dealing with a Resolution on a subject of this kind, moved by a distinguished lawyer who has himself been a Judge of the High Court, talking from his own experience about matters on which he is competent, and I am not competent, to express an opinion. My own official connection with a High Court has never extended beyond a perusal of the remarks that they were pleased to record on any judgments of mine which came before them when I was a Magistrate. Nevertheless, Sir, it seems to me that there are certain broad grounds of principle on which I may reasonably venture to oppose my Honourable friend's suggestions. The objects of this Supreme Court appear to be three: first to replace the Privy Council in civil appeals.....

THE HONOURABLE SIR SANKARAN NAIR: No.

THE HONOURABLE MR. H. G. HAIG: At any rate to provide an alternative; secondly, to constitute a new court of criminal appeal, and thirdly, to interpret the constitution. The last point, I observe, is put in the forefront of the Resolution, but it occupied a less important part in my Honourable friend's arguments, and I venture to think, rightly so. For any question of interpreting the constitution appears to me at the moment to be both premature and subsidiary. It is premature because we do not yet know what the constitution is going to be. It is subsidiary because I trust that whatever constitution we may receive it will not be one of such a character that the interpretation of it will form the main occupation of half a dozen eminent lawyers throughout the year. Therefore, the proposal may really be taken on the main grounds of civil and criminal appeals.

As to the position of the Privy Council in regard to civil appeals, it is often urged, though I do not think my Honourable friend put it forward as of one of his main grounds, that the system of appealing to the Privy Council involves great delay. Well, Sir, I am afraid it is the unfortunate experience that the law almost invariably involves delay; and the preliminary stages of these cases which find their way to the Privy Council involve a delay which has, I fancy, often been commented upon by that body; and it is only recently that the serious evils of delay in civil justice induced the Government to appoint an important Committee to consider how far delays could be mitigated. Delay there no doubt will be in appeals to the Privy Council, and delay, I am afraid, we shall not get rid of under any system. I think the main argument that my Honourable friend advanced was in connection with the unreasonable expense to the litigant. I speak with some diffidence on this point, but I have noticed in a previous debate that that position was challenged—not that the litigant is not put to considerable expense in taking his case to the Privy Council, but it has been suggested that he will be put to possibly

equal expense in taking it before the Supreme Court. For one thing, I understand the Privy Council charge no court-fees and to that extent the Indian litigant gets his law free. If a new Supreme Court is to be established in India, in order to recoup some of the heavy expenditure involved, it would almost certainly be necessary to impose fairly substantial court-fees which would fall on the litigant. Again, my Honourable friend suggested that the lawyers in England were more fortunate in the scale of fees they were able to secure. But I am told that the most eminent lawyers in this country demand fees which will bear comparison with those in most other countries, and I do not suppose that the litigant before the Supreme Court will get his results at any very small cost. It must be remembered that those who take full advantage of all the processes that the law allows nearly always find that this privilege is purchased at considerable expense; and it also seems to me—I do not know whether it really is so—that the rich man must in the long run have some advantage over the poor man. This proposal, Sir, will increase litigation and I think my Honourable friend put that forward as one of the advantages. It brings an appeal within the reach of a wider class of people. That no doubt is a fact, that a Supreme Court will encourage appeals, and there we have a difference in the point of view which I think will always exist between the lawyer and the layman. The lawyer in his pursuit of some ideal solution is prepared to go on for long, but the client sometimes is not; I need not remind the House of that famous, though fictitious, case of Jarndyce *v.* Jarndyce where all the resources of the law were developed, no doubt, to the great satisfaction of the lawyers but perhaps not to the equal satisfaction of the parties, and how the case came to a dramatic conclusion when it was discovered that the whole subject of the litigation had been swallowed up in legal costs. Though that is an extreme and fictitious case, it does suggest a point of view which perhaps would not appeal to my Honourable friend, but still which does appeal to a large number of people.

At present, Sir, we have a system under which cases of sufficient importance go home to the Privy Council and are heard, as I understand, before some of the most eminent legal talent in the Empire. I am not competent to traverse my Honourable friend's statement about the position which the Privy Council holds in popular estimation in this country, but I have always understood that it holds a very high place in the minds of lawyers, and that it is a Court to which very great prestige attaches.

Now, Sir, shall we get in the Indian Supreme Court a better court with greater prestige and greater efficiency in the performance of its work? I do not know whether my Honourable friend contemplates that this court of his would include any English Judges. If so, it seems clear that they could not be judges of the same eminence as those who sit at present in the Privy Council. But even if he does not contemplate that, it seems to me that there will be a certain difficulty in securing the personnel of Indian Judges required. For one thing, they will have to be paid very highly, and the expense will be very considerable.

To revert for a moment to the point of the work which the Privy Council performs. I understand that the contention of my Honourable friend is that the court which he contemplates would be particularly competent to deal with questions peculiar to India, such as Hindu and Muhammadan law

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and so on, while the Judges of the Privy Council have not got that experience which is essential to come to proper decisions on these questions. Well, Sir, that point, I think, has been very largely met by a decision taken only a few months ago whereby two Judges are to be added to the Privy Council who, as they are now to be amply remunerated, should provide the very best available Indian experience. In that respect, Sir, it seems to me that the constitution of the Privy Council will be very appreciably strengthened.

There is one other point on which my Honourable friend did not touch, and that is the effect of such a court on the existing High Courts in India. These High Courts at present occupy a very special position which is due, in my opinion, mainly to the fact that they are the final authorities in India. If you set up in India an authority superior to those High Courts, it seems to me that you must inevitably depreciate their importance and their status, and I should regard that as a very unfortunate consequence.

With regard to the suggestion that a new court should be established as a Supreme Court of Criminal Appeal, my Honourable friend seemed to assume that the addition of a further criminal court of appeal would clearly be an advantage. I venture to express my doubts about that. There is ample machinery, I venture to suggest, for appeal in criminal cases already existing. We surely do not want to imitate a procedure which allows condemned prisoners to torture themselves for years with hopes of reprieve. That is a system which shocks the normal man's sense of justice, however much it may be based on an anxious desire that justice should be done, and I trust that our procedure will not tend to devise facilities for undue prolongation of criminal appeals.

I think, Sir, I have said enough to enable me to ask the House with some confidence to reject this Resolution. When the question of a Supreme Court was circulated for opinion among the various authorities in India, it was quite plain from the opinions received that there was no kind of identity. There was no clear demand in the country for this innovation. There is no obvious advantage from the setting up of this new court, and I trust that the Council will reject this Resolution without hesitation.

THE HONOURABLE MR. P. C. DESIKA CHARI (Burma : General) : Sir, I have very great pleasure in supporting the Resolution moved by one whose opinions by reason of his long association in the field of law, and his undoubted knowledge of the judiciary, are entitled to the greatest weight, but I think in reply I have not heard any cogent reasons put forward by my friend Mr. Haig. He began by saying that in 1925 the Legislative Assembly rejected it by a large majority. I am happy, Sir, that at least on matters of this kind my learned friend, as the official mouthpiece, is prepared to lay very great weight on the opinions of the other House. Generally, I find that they are apt to disregard the views expressed in the other place, and as has been very often complained of, the Resolutions in the other place passed with a tremendous majority, are put into the waste paper basket without the least hesitation. In this matter because of the feeling that prevailed at the time this Resolution was under discussion, they could secure the support of the Swarajist Benches, the Home Secretary feels that the opinion expressed in the other House must be given the greatest weight. I am glad Sir, that, after all, the Government have

begun to think there is some useful work being done in the other place, and the work done there may be held up here as an object lesson.

But before I go deeply into the question why it was possible for the Government to defeat this Resolution in the other place, I would generally deal with the objections raised by my friend. As regards the first part of the Resolution, namely, that there should be a Supreme Court to interpret and uphold the constitution, my Honourable friend Mr. Haig said that the establishment of a Supreme Court here is somewhat premature. He says we are not quite sure what the constitution is going to be; we are in a state of flux; we have not got a full-fledged constitution; and that in this state of transition it is not necessary for us to have a court which will be in a position to set at rest doubts and disputes between the non-official and the executive sections.

Sir, I am inclined to think that the very fact that we are in a transition stage, the very fact that the Government of India Act has been in operation only for a short while, the very fact that there will be a new Government of India Act with further changes, would be the proper reason for having a court, an impartial body, to decide all questions of dispute. I am not surprised that my Honourable friend, as the mouthpiece of the executive, is not quite willing to give up the position of the Government being judge in its own cause. I think the proposition has merely to be stated to be rejected. It is one of the fundamental principles of law that a party who is vitally interested ought not to be the judge. It is for this reason that in all countries where they have a proper constitution there is a court which decides on the construction of Statutes relating to the constitution. I think the fact that we are in the initial stages of constitutional evolution is one of the reasons which ought to be taken into account for urging strongly the establishment of a court to interpret and uphold the constitution.

My Honourable friend, Mr. Haig, has been very solicitous of the litigants and wants to spare the expenses of the litigants, and he thinks that if a Supreme Court is established we are bound to charge court-fees—he takes it for granted. In India we have got a system where justice is practically being sold. I tried my best on another occasion to bring to the notice of this Council the grave injustice that is being done by the extravagant court-fees that are being charged in dispensing justice to persons who are paying taxes for protection of their persons and property. There are various considerations involved in it, and I do not know if, in an institution like the Supreme Court, it is necessary to follow the subordinate courts and the High Courts in charging court-fees. We may as well make a beginning in establishing a Supreme Court in not charging any court-fees at all. That will be a proper thing to do, and whatever may be the reasons which have induced the Government to levy court-fees and to have it embodied in a Statute, it does not apply equally in the case of the Supreme Court, because the question of costs for the upkeep of a Supreme Court will be a very minor consideration and it will not be a very heavy one; at best the cost will not come to more than 10 lakhs of rupees per annum by the institution of the Supreme Court, and I do not think it will be necessary to charge any court-fees at all for appeals going up before that Court, and the Supreme Court may very well follow in the footsteps of the Privy Council in not charging any court-fees.

[Mr. P. C. Desika Chari.]

My Honourable friend has been waxing eloquent over the difference in the point of view of the lawyer and of the laymen. I know the lawyer is not regarded with sympathy in very many quarters and I am not surprised at the attitude taken by the Honourable the Home Secretary. I hope he and the privileged class to which he belongs would be very well pleased if there were no lawyers at all. They regard this class of people unfortunately as a scourge.

THE HONOURABLE MR. H. G. HAIG: No.

THE HONOURABLE MR. P. C. DESIKA CHARI: I know personally that they have no sympathy with this class of people and they are merely tolerating them because they have got to; they have no option in the matter. I know the feeling in the matter. Though I came into the profession only about 1910, even then I found the civilian gentlemen, especially in the mofussil, dispensing justice in their own bungalows, who were inclined to treat this class of people as a pest and would not have taken kindly to them but for the fact that the Government would not allow them to have their own way and to act at their own sweet will and pleasure. They were obliged to tolerate these people, and gradually I may say there has been a change, I think a compelling change, on the part of the civilian officers to regard with less and less of intolerance this class of people who have to exist. They exist all over the world and they will continue to exist in spite of Mr. Haig and the class that he represents.

THE HONOURABLE MR. H. G. HAIG: I was talking of the relation between lawyers and clients and not between lawyers and officials.

THE HONOURABLE MR. P. C. DESIKA CHARI: That is quite enough for me. I can very well understand the attitude of mind which gives expression to these views and I really content myself with merely expressing....

THE HONOURABLE THE PRESIDENT: I would remind the Honourable Member that he has hardly come to the Resolution as yet. He has only four minutes left.

THE HONOURABLE MR. P. C. DESIKA CHARI: I am only dealing with the view points which have been put forward. I am only meeting the arguments, and if they were irrelevant arguments I cannot help it, and I am only showing that those arguments were irrelevant. As regards the popular estimation in which the Privy Council is held, there is absolutely no doubt that the people regard with very great satisfaction the work done by the Privy Council, and it is not necessary for me to question the ability of the Judges who generally compose the Privy Council or their estimates of the facts and law as they happen in every day life. But I may say this that in matters of Hindu and Muhammadan law, and in matters where a knowledge of local customs is necessary, where a deep understanding of the Indian conditions of life is quite essential, a court in India, whether consisting of Indian Judges or of English Judges, would be in a better position to appreciate the view points put forward before the Court than a court sitting 6,000 miles away, mainly for this reason, whether the Judges know intimately the local conditions or customs or not, whether they have an intimate knowledge of Hindu and Muhammadan law or not, here in India the litigant will have an opportunity of engaging legal luminaries who would be in a position to put before the Judges the points of view in the

proper perspective and the very same Judges who do work in England would be better able to discharge their duties more satisfactorily in India because they will have better assistance here. It is for this reason, if not for anything else, that we urge that the establishment of a Supreme Court will be a great boon to the people of India. In going through the debates in another place in 1925 I found a good deal of stress has been laid on this aspect that litigation is an evil, and any attempt made to check the growth of litigation and prevent people from seeking redress in courts of law is a thing very much to be desired.

I take very strong exception to this view. If it is admitted that Judges are liable to err, the litigant should ordinarily have recourse to the higher courts of appeal, unless there are very strong public grounds to prevent him from having access to the court of appeal. That is why the rights of appeal have been hedged round by various restrictions and there is no harm in circumscribing the limit within which the right of appeal may be allowed to the Supreme Court, but I think the reason given by this set of people that litigation is an evil and ought to be checked is the reason which is very much in support of the view for the establishment of a Supreme Court. If a person ought not to be deprived of his just rights by being denied the right of appeal, then the very fact that there would be a larger number of cases before the Supreme Court is a thing which ought to be taken into consideration because you would otherwise be prejudicing the interests of a number of people who are anxious to have recourse to the highest court of appeal by placing the court of appeal 6,000 miles away and placing it beyond their reach. The expenses, inconvenience and other attendant discomforts in connection with an appeal to the Privy Council can be best realised by the litigant himself, and I as a person who have had some little knowledge and experience of these matters can assure the Council that by the institution of the Supreme Court the litigant in India would feel happier, would feel that he had been given a right of which he had been unjustly deprived. My friend referred to the difficulty of securing English lawyers. The expense involved would be considerable. Personally, I am not against the English personnel, but if we cannot get them I do not think it would be any calamity at all. It is admitted in the legal world that there are legal luminaries in India who can compare favourably with their compeers in England. There is no gainsaying that fact. In India you can get persons with the requisite qualifications. If we are compelled to have a purely Indian personnel because Englishmen would not come out, I would not consider it as a thing to be regretted. I am not against an English personnel, but if you cannot have that, you can have the indigenous element which is equally good. It will be an improvement in the situation.

12 NOON.

THE HONOURABLE THE PRESIDENT: The Honourable Member has exceeded his time-limit.

THE HONOURABLE MR. P. C. DESIKA CHARI: I will finish in a few minutes.

THE HONOURABLE THE PRESIDENT: I am quite aware that it is within the discretion of the Chair, as a matter of practice, to allow Honourable Members to exceed the time-limit, but I interrupted the Honourable Member once in the course of his speech and I think I may explain to the Council why I do not

[The President.]

propose in this case to exercise my discretion in favour of the Honourable Member who has just resumed his seat. The Honourable Member addressed himself at great length to the development of an argument about the unpopularity of lawyers. That is an interesting and possibly amusing subject for discussion in this Council, but it has only touched the fringe of the Resolution, and when the Honourable Member occupied half his time in addressing himself to that subject I came to the conclusion that it would be impossible to allow him to exceed the time-limit.

THE HONOURABLE SIR MANECKJI DADABHOY: I have heard the speech of the Honourable Mover of this Resolution with great attention and the respect which his services on the Bench and his position in public life demand, but I have come to the conclusion that I cannot possibly support his views, anxious as I was to see if there were any material points in his speech which would have induced me to alter the opinion which I had already formed on the subject. The essence of the proposition which the Honourable Mover has laid before this House is that there should be a duplication of machinery for the purpose of disposing of Indian appeals. As I have understood him, he does not want to do away with the existence of the Privy Council but he wants side by side with the functions exercised by the Privy Council to establish another court in India enjoying concurrent and somewhat more extensive powers. A brief reflection of the position will prove that to do such a thing will be highly incongruous and will absolutely undermine the prestige, the position and the authority of the highest court of appeal. I am sorry that in the course of a very interesting speech my Honourable friend remarked that his objection to the Privy Council was of a three-fold character, and mainly that it assisted the rich litigants against the poor litigants. Sir, I must enter an emphatic protest against this reflection on the Privy Council. As a lawyer who has worked for 30 years I have come to the conclusion that even if justice has failed in this country it has been meted out with absolute impartiality in the Privy Council, and this fact is acknowledged not only by lawyers....

THE HONOURABLE SIR SANKARAN NAIR: That is a travesty of my arguments. I never said that.

THE HONOURABLE SIR MANECKJI DADABHOY: I have exactly taken down your words and I will read that to you.

THE HONOURABLE THE PRESIDENT: Will the Honourable Member kindly read it?

THE HONOURABLE SIR MANECKJI DADABHOY: He said "The Privy Council assists the wealthy litigant against the poor litigant" and I shall be corroborated by the official reporter on this point. Sir, the traditions of the Privy Council are well known and have been well maintained. I know as a lawyer some of the most brilliant Judges have sat on the Privy Council, who are entitled not only to our great respect on account of the profound erudition of these men, but they have in the past occupied seats on the Judicial Committee with great credit and have given complete satisfaction all over the country. Now, Sir, as regards the constitution of the Supreme Court, one fundamental and vital gap in the speech of my Honourable friend has been his failure to refer to the constitution of the Supreme Court. He has not enlightened us

as to how the Judges are to be appointed, from what cadre the Judges are to be taken, whether they are to be barrister Judges or whether they are to be wholly Indian Judges, or whether they are to be selected from mixed ranks. I think my Honourable friend has purposely abstained from making any reference to it because this fundamentally takes the bottom out of the case he has put forward as to the justification for the establishment of the Supreme Court.

Now, Sir, a case is sought to be made out on the ground of a want of a final court of criminal appeal. It has been stated that in criminal cases where death sentences have been passed there has been no right of appeal and the poor condemned men have no funds to go to the Privy Council even if the latter court desired to interfere, and therefore they have to submit to the arbitrary judgments of the local High Courts. Now, I think my Honourable friend who was a Judge of the High Court and who for many years practised at the Bar knows more than any one else that in the majority of criminal cases coming up before the High Courts in the various provinces in this country, they are not even defended. The cases are not even argued by counsel because the majority of the litigants are too poor even to engage the services of lawyers in the High Court; but the cases do go to the High Courts under a provision of the Criminal Procedure Code which makes it necessary that there should be confirmation of such death sentences by the High Courts; and the statistics will prove that seven out of ten cases are absolutely unrepresented. Do you expect these litigants to carry their appeals to the Privy Council? Moreover, what are the majority of the cases? We all know—everybody knows—that most of these cases are cases of murder, arson and kindred offences committed by poor, absolutely destitute, classes of people in many cases who have not a farthing to provide for the purpose of their defence. Therefore the various texts that my Honourable friend has quoted do not in any way support his case.

My Honourable friend next referred to two classes of cases specially, cases relating to the constitution and particularly those cases where the interpretation of the constitutional questions between the executive and the people is involved; my Honourable friend fears that in those cases no adequate justice would be meted out to the public owing to local prejudice. Now, a little reflection will show that as regards these very cases of the interpretation of the constitution, where the executive and the public differ, would not the aggrieved party get better justice, more unbiassed and impartial justice in the Privy Council than from a Supreme Court constituted in India with local Judges imbibing local ideas and prejudices, local bias, local influences and otherwise? I say the whole bottom is knocked out of the argument of my learned friend merely by asserting that the aggrieved party would get better justice in the uncontaminated and unbiassed and free atmosphere of the courts sitting in England. I say that for all these reasons my learned friend's argument on this point is absolutely unsustainable.

Further, my Honourable friend ought to know that the constitution of a Supreme Court will absolutely undermine the authority and the prestige of our various High Courts, quite apart from the question of inconvenience which it will cause to the litigant. We know in India how much reverence is attached

[Sir Maneckji Dadabhoy.]

to the opinions of the various High Courts. If you establish in the same country in some isolated place another court having concurrent jurisdiction or having also jurisdiction to supervise, superintend and revise the authority and the judgments of these courts, you can understand what respect it would carry in the minds of the general public and how it will affect the dignity of the several High Courts.

My Honourable friend, Mr. Chari, repudiates the allegation of Mr. Haig that no additional cost will be involved in the establishment of a Supreme Court in India. I am surprised to hear such a statement. If a Supreme Court is constituted, there will be at least twelve Judges; their salaries will certainly be a little bit higher than the salaries of High Court Judges.....

THE HONOURABLE MR. P. C. DESIKA CHARI: I said it would come up to Rs. 10 lakhs per annum.

THE HONOURABLE SIR MANECKJI DADABHOY: It will cost more. They will also require a big establishment of Registrars and other assistants which is necessary for the maintenance of the Supreme Court, with the result that if you do not require the litigants to pay for the upkeep and the Court-fees, it will certainly involve the State in a heavy annual expenditure, which I am certainly not prepared to accept. What is the advantage of incurring this expenditure? The reforms have already made the administration of this country top-heavy. In Provinces where the work used to be done by one Governor and two Executive Councillors, we have now three or four Executive Council Members and three or four Ministers; and on the top of this the country is now asked to bear the burden of an unnecessary expenditure just for the pleasure of having a Supreme Court which is not likely to attract any considerable weight of public opinion or respect. If my Honourable friend and those who have supported him think that something should be done in the matter of extending the power of appeal in criminal cases, that could be done easily by revising and extending the power of appeal to the Privy Council in criminal cases; some method could be devised; but as I have pointed out before our present experience has shown that there is absolutely no case for any such departure. Moreover, it is well known that in criminal cases the Privy Council does exercise the power of interference and control where there has been a gross miscarriage of justice or perversity or deviation from the natural course of justice. The Privy Council does maintain power in its hands to interfere but in rare cases only. As the records of the last 20 years of the various High Courts will prove, the Privy Council has interfered several times in criminal cases where such interference has been justified on grave grounds. If necessary, that power might possibly be usefully extended. But the exercise of that jurisdiction by the Privy Council on rare occasions does not, in my opinion, justify the establishment of a Supreme Court in this country.

I have carefully considered the proposal of the Honourable the Mover of the Resolution. There is much to be said against it, but the time at my disposal does not permit me to enter into more elaborate discussion of the subject. I would, therefore, ask the Council that they should not be carried

away by mere sentiment on this occasion. If Honourable Members will reflect on the position, they will admit that no unanswerable case has been made out for the establishment of a Supreme Court in this country. However, Sir, the statutory period of 10 years for further inquiry in the matter of reforms will expire before long. We do not know what will be the next instalment of reforms which would be granted by His Majesty's Government to India. There will be time enough when the Royal Commission comes out to consider that question, and if any necessity then arises for the establishment of a Supreme Court there will be ample time and opportunity to consider this matter.

THE HONOURABLE SAIYID ALAY NABI: Sir, after the able and lucid speech of the Honourable Mr. Haig and the lengthy arguments of my Honourable friend Sir Maneckji Dadabhoy, I feel, as this matter concerns deeply the interest of the people and the legal profession incidentally, I should say a few words. The Resolution as it stands asks, in the first place, that a Supreme Court should be established in India to interpret and uphold the constitution. Now, the Honourable the Mover, I am quite sure, is fully aware of the fact that in self-governing Colonies like Canada and Australia, Supreme Courts had been established only after self-government had been established there, and I think it would be rather premature to establish a Supreme Court here before we have self-government in this country. A Supreme Court will have to depend to a large extent upon the constitution of the country, and I think, so far as this portion of the Resolution for the establishment of a Supreme Court is concerned, it is rather premature.

Then the second part of the Resolution says that the Supreme Court should have power to act as a court of final criminal appeal against all sentences of death. Now, a great deal has been said about this part of the Resolution, and a great deal of emphasis has been laid on this part of the Resolution by the Honourable the Mover. Now we must be very clear as to what the law is at present. It is this. When a man is found to have committed a murder, he is sent up by the police to a first class Magistrate. This first class Magistrate has generally some years' experience to his credit. He goes into the evidence which is tendered on behalf of the Crown. He takes down the statements of the accused person, and evidence for the defence, if tendered, by the accused. If he finds that the accused is guilty, he sends up the case to the Sessions Court, with his finding which deals with the evidence on which his judgment is based. There is one judgment there. When the case goes to the Sessions Court, there it is tried with the help of the assessors and jurors, as the case may be, and they are generally four or five in number. They sit down and hear all the evidence again and all that the accused has got to say and also all the evidence that is tendered on behalf of the Crown, and when they find that the accused is guilty, then they make a recommendation to the High Court that the accused be hanged by the neck until he is dead. Then the case goes before the Honourable High Court. There the Judges sit down and go through all the evidence, and if they come to the conclusion that the two concurrent judgments of the lower courts are correct, they confirm the death sentence. In this way there are altogether three concurrent judgments before a man is condemned to death and is hanged. What more do you want now? Do you want four or five judgments? Do you like to have the same procedure, the same system of jurisprudence, of which we have been hearing so much lately under which a man has

[Saiyid Alay Nabi]

to await his fate for 7 long years before a final verdict is given and the man executed? I think so far as the law at present is concerned, it requires three concurrent judgments. Is that not enough? If there is any doubt you can amend the law on that point, but there is no reason why you should have a separate Supreme Court of Appeal.

Now, the third object of the Resolution is that the Supreme Court is to act as a revising court in specified serious cases. Now, it cannot be said, and it has not been said, that the Privy Council has not interfered in cases where grave and glaring injustice has been done where a certain important point of law is involved.

The fourth object of the proposed Court is to hear civil appeals now heard by His Majesty's Privy Council. This, Sir, is substitution pure and simple for the Privy Council in England, when read with clause (*e*) of the Resolution, with which I shall deal presently.

It has been said very clearly by the Honourable the Mover of the Resolution that the object of the Resolution is not to do away with the powers and prerogatives of the Judicial Committee, but to leave the option to a litigant either to go to the Supreme Court, if it is established, or to the Privy Council. That will mean nothing but a multiplication of courts, and I can say, having had some experience in the profession, a litigant, if he is given the option, would undoubtedly go to the Privy Council rather than to the Supreme Court. Why should he go to the Supreme Court? He has gone already to the High Court, and he has already had a decision either in his favour or against him. I cannot possibly by any stretch of imagination find that, if a Supreme Court is established here, the Judges appointed to it would be of greater calibre, of higher standing and greater status than the Judges of the High Courts. So far as I can see, they will be of the same standing and of the same status as the High Court Judges, unless the Honourable the Mover will get some angels from the Indian heavens. But if a litigant is not satisfied with the judgment of the Supreme Court, he will go to the Privy Council, as in any case the prerogative of the Sovereign to hear grievances is there.

Then, Sir, a great deal has been said about the Hindu law and Muhammadan law. It has been said by the Honourable the Mover that the decisions of their Lordships of the Privy Council have been very unsatisfactory as regards Hindu and Muhammadan law. Well, Sir, whatever might have been the case hitherto, my friend must know that the Privy Council has been reinforced now, and we have two eminent Indian Judges, Lord Sinha and Mr. Justice Amir Ali, sitting there. I think we can very well trust to these eminent Indian Judges to decide satisfactorily points arising out of Hindu and Muhammadan law. According to the constitution of the Privy Council, we have now two Indian Judges and two eminent English Judges who mete out justice, and I think that is quite satisfactory.

Then, Sir, as regards the confidence of the people. I may point out to my friend Mr. Chari particularly, that the Indian National Congress from the time of its inception in 1885 has been repeatedly asking that the Governors in the provinces in India should be from among the public men of England. They

have been asking that year after year. Now, what is the reason for it? Because Indians think that those public men of England will bring with them those particular virtues in the nature of training that they have got in the free atmosphere of England and in her free institutions, and that they would come unhampered by any feelings of provincial or local prejudices or prepossessions and uninfluenced by any considerations except that of doing justice to the people and that they would be fully alive to the rights and liberties of the people. This is, I think if I am correct, the idea underlying the suggestion of the Indian National Congress. Well, Sir, if it is so far as the executive is concerned, why should not the same consideration prevail in the case of the legal tribunal?

These considerations should apply, I think, in a much greater degree in the case of legal tribunals because my Honourable friend would agree with me that after all, looking at it from the public point of view, legal tribunals where law and justice is administered are the bedrock of administration and the Government and they are responsible for the welfare and happiness of the people at large. Considering these points, so far as the legal profession in this country are concerned, they on the whole came to the conclusion that a Supreme Court is not required at present in this country. For these reasons I feel that I should oppose the Resolution.

THE HONOURABLE MR. V. RAMADAS PANTULU (Madras : Non-Muhammadan) : Sir, I feel that I am merely in a position to accord a general support to the Resolution moved by the Honourable Sir Sankaran Nair. I am unable to advocate the establishment of a Supreme Court for all the specific purposes mentioned by him or for all the reasons urged by him. As for the comparative efficiency of the Privy Council and the Supreme Court which may ultimately be established in India, I have not much to say. I think the Privy Council has functioned well so far, and there is no reason to suppose that it will not continue to do so. It is said that the Privy Council suffers from a certain amount of disadvantage on account of the absence of facilities to administer cases relating to Hindu and Muhammadan jurisprudence. To some extent it is true, but a great volume of litigation in this country directly bears not only upon personal law and the Hindu and Muhammadan jurisprudence, but even more largely upon questions arsing out of relations between parties based on the law of contracts, trusts, conveyancing and so on which are mainly imported from foreign jurisprudence. On these matters I must say that the Privy Council Judges who are brought and bred up in the atmosphere of English jurisprudence have decidedly an advantage over Indian Judges. Therefore, while there is a disadvantage there is also an advantage, and the Supreme Court of India may suffer from some disadvantages from which the Privy Council may not at present suffer. My Honourable friend Sir Sankaran Nair has illustrated his point about the unsatisfactory quality of the work of the Privy Council by references to some cases. During my practice in the Madras High Court, I have known of at least two instances which may be usefully brought to the notice of this House, as illustrating the excellent quality of the work of the Privy Council with reference to the judgments of my learned friend himself. In one case he decided a very substantial question relating to rights in the waters of streams and *nullahs* running through zemindars' and inamdars' estates. The decision was dissented from by 12 other Judges in the High

[Mr. V. Ramadas Pantulu.]

Court at one time or another and it is only the Privy Council that set right matters by overruling the decisions of the 12 Judges and upholding the classic judgment of my Honourable friend, Sir Sankaran Nair, which has ever since been followed. The landholding class in India is deeply indebted to Sir Sankaran Nair and more so to the Privy Council, for Sir Sankaran Nair's judgment would have been a dead letter with the dissenting judgments of 12 Judges. With regard to the other case mentioned by me, it was the famous Pundi murder case, where a rich landholder was arraigned for murder. Justices Bakewell and Sadasiva Aiyar differed in the reference. Justice Bakewell was for convicting the man and Justice Sadasiva Aiyar was for acquitting him. Under the law it had to be sent to a third Judge and Sir Sankaran Nair happened to be the third Judge. He wrote a long judgment convicting the accused. The Privy Council said that the learned Judge's judgment resulted in gross injustice as he " did not observe the processes of law and violated the rules of natural justice". These were the very words of the Privy Council, which were merely a formal renunciation of the principle laid down in the famous case of In *re* Dillet. With these observations they set aside the judgment of my learned friend, and saved the zamindar from the gallows. There may be much to be said on both sides, regarding the quality of the work of the Privy Council. At the same time, even accepting for argument's sake all that has been said in praise of the Privy Council, I am not willing to accede to the position that the Privy Council should continue to administer law and justice in preference to a Supreme Court in India. Otherwise, it may be equally urged in favour of control that the Secretary of State in Council for India will exercise better supervision over the civil administration of this country, or that the Army Council will exercise a more efficient supervision over the military affairs of this country, and that any authority in India is not likely to function so efficiently as any of those foreign authorities. Even then, I should say I would prefer to have a less efficient supervison and less informed control in India in preference to more efficient foreign control. It will be absolutely inconsistent, incongruous, with the aspirations of India for autonomy and self-government to say that we shall purchase better justice from England because we cannot get the same quality of justice in India. On that ground I shall support the Resolution.

But with regard to the scope of the functions of the Supreme Court, I personally feel that the Supreme Court or the Privy Council, whichever it may be, ought to have very, very restricted powers of appeal both in criminal and civil cases. I am for making the High Courts practically the final authorities both in ordinary criminal and civil litigation. I quite agree that there ought to be a Supreme Court to discharge certain functions which involve the exercise of an exceptional jurisdiction. Beyond that, I do not think that we ought to use this Court for the purpose of exercising ordinary appellate jurisdiction. Therefore, I am for making the High Courts in India supreme in all matters of ordinary civil and criminal litigation, and vesting in the Supreme Court exceptional jurisdiction. So I cannot agree to all the details of the scheme of the Supreme Court as laid down in the Resolution.

It may then be asked for what purpose I want a Supreme Court in India? First of all, with regard to the interpretation and upholding of the constitution I feel that there is an absolute necessity for a Supreme Court in India. My

Honourable friend Mr. Haig said that its establishment will be premature because we do not know what the constitution will be. But take the constitution as it is. The Government of India Act contains several sections which involve the interpretation of very difficult questions. I know as a matter of fact that in 1927 many items in the Budget are made non-votable which were votable in 1921 by the process of interpretation of the constitution. When the executive finds some inconvenience in bringing an item before the Assembly they raise the point that it is non-votable, and in his capacity as the head of the executive, His Excellency the Governor General will decide that it is not votable. Therefore, the executive by itself raising the point and by itself deciding it in its own favour, has taken out of the purview of the Assembly many items which were votable in 1921 and have made them non-votable in the year of grace 1927. There is a section of the Government of India Act which to my mind is very clear as to the right of any vakil to be appointed to the office of Chief Justice of a High Court. But the Government's law officers have never been bold enough to accept that interpretation of the law and allow an Indian vakil to occupy the exalted position of the Chief Justice of a High Court in any of the Provinces. I can cite many more instances. But I have also in view a larger purpose for the Supreme Court, in connection with maintaining the constitution. I have read a volume of opinion on the question of including the Indian States in any scheme of quasi-federal Government in India. If that event comes about, there ought to be a Supreme Court which will decide matters arising between the Indian States and the Provinces.

In fact one of the proposals put forward by some of the States themselves has favoured the establishment of a supreme judicial tribunal in India. There is also an argument, with which I agree, in the Honourable Sir Sankaran Nair's speech, namely, about the cost and the delay. Many a just cause has been abandoned owing to the enormous expense involved in appealing to the Privy Council ; the cost is so prohibitive as to make it practically impossible for litigants of limited means to carry the litigation to the Privy Council. If the zamindar of Pundi was acquitted, his innocence was vindicated by reason of his long purse. The advantages of a Court of final jurisdiction, however limited the jurisdiction may be, ought to be made available at less cost and much less inconvenience. There is yet another reason why I am in favour of a Supreme Court for India, and that is the present tendency of every self-governing Colony is to have a Supreme Court for itself. The Dominions of South Africa, Australia, Canada and the Irish Free State have established Supreme Courts of their own and they have by convention and practice prohibited matters going to the Privy Council, and the Privy Council has itself expressed its reluctance to deal with matters which a domestic Supreme Court is competent to deal with. It is a legitimate aspiration for Indians also to have a final court of their own. Finally, I wish to mention another consideration by which I am influenced. In 1921, when my friend Dr. Gour moved a Resolution in the Assembly, it was circulated for opinions by the then Law Member, Dr. Sapru, to the various Local Governments, High Courts and other legal bodies. I looked through the opinions and curiously enough found that the Madras Government, the Madras High Court, the Madras Vakils' Association and the Madras Advocate General, all subscribed to the view that a Supreme Court for India was a very desirable thing. Therefore opinion in Madras is entirely

[Mr. V. Ramadas Pantulu.]

in favour of a Supreme Court. I am parochial enough not to go against such authoritative opinions received from Madras. On that ground also I support the motion for the Supreme Court.

One more word and I have done. The Honourable Mr. Haig pointed out that the establishment of a Supreme Court in India would detract from the prestige of the High Courts. I do not see why it should, while the High Courts are not considered to be inferior courts because there is an appeal to the Privy Council. Whether the final Court is the Supreme Court in India or the Privy Council in England does not make the least difference. I do not look upon my High Court as any the less dignified because there is an appeal to some other court. I can confidently say that it would not suffer in its prestige in any way by the establishment of a Supreme Court. I am really unable to see why the Honourable Mr. Haig should think so. There is just one other small matter I want to mention, and that is, the argument that the Assembly turned down the proposal in 1925 by 56 to 15 votes. I am very sorry that it should have done so. I cannot say why and how it happened. It had nothing to do with the Congress policy. I can assure you it was not treated as a party question by the Congress Party. I cannot say what were the reasons which influenced the Assembly then, but I am sure that the Honourable Members in this House will not be prejudiced in any way by that vote. With these words I accord my general support to the principle of the Resolution moved by Sir Sankaran Nair.

THE HONOURABLE MR. S. R. DAS (Law Member): Sir, my Honourable friend Mr. Ramadas Pantulu, it seems to me, is not in favour of this Resolution as a practical lawyer, but as a politician he feels bound to support it. Now, I propose to look at this Resolution merely from the point of view of the practical lawyer. In my view it will be a sorry day for India if the administration of justice is influenced by any political consideration; the two things ought to be absolutely separate, particularly in the case of the administration of justice. Now, let us take the arguments which the Honourable Mover has advanced in support of the Resolution. He first suggests an alternative court, that is to say, leaving the option to the litigant either to go to the Supreme Court or to the Privy Council. I should like to know who is to have that option? If the appellant is to have that option and if he chooses to go to the Privy Council, how does he get rid of the objection which he has raised with regard to the Privy Council, namely, that it enables the rich litigant to go to the Privy Council? If the option is given to him and he happens to be rich and he desires to harass his poor opponent, he will go to the Privy Council. That does not save the poor man and enable him to have justice done in this country without any expense, and why is the option to go to the Privy Council to be given to a man who has lost here, so that the man who won here is to be dragged to a court to which he cannot afford to go? How does he get rid of the objection that he has raised, an objection I will deal with later on, that the appeal to the Privy Council really assists the rich litigant and not the poor? The position will not be altered by giving the option to the appellant. It is also equally clear that we cannot give the option to the respondent, the man who has won here. I notice that my Honourable friend in his Resolution safeguards the privileges and the prerogative of the

Crown to hear appeals in all cases. Now, supposing there is a Supreme Court here, the alternative court which he suggests, is there anything by which you can prevent a litigant from applying to the Privy Council for special leave to appeal? My friend says that the man who appeals to the Supreme Court would have no power to go to the Privy Council and that he must choose the one or the other. Suppose he has elected to go to the Supreme Court and he has lost there. Can you by any means prevent the Crown from hearing another appeal from that court? Even now, although appeals are restricted to cases where the value is Rs. 10,000 and upwards, special leave is given by the Privy Council. You cannot prevent it and what would be the result of the institution of this Supreme Court? You will be practically placing another step in the numerous steps which a litigant can take in the matter of appeal. Therefore, I submit that it is not a feasible proposition to have an alternative Supreme Court in this country.

Now take the other practical difficulties. I think I am right in saying that the Honourable Mover suggested that the court should be at Delhi. As a matter of fact if there is to be a Supreme Court, there is no other place for it. You cannot have it in Calcutta because Madras and Bombay will never agree. You cannot have it in Madras because Bombay and Calcutta will not agree, and you cannot have it in Bombay because Madras and Calcutta will never agree. If you were to have a Supreme Court it will have to be in Delhi. If you have it in Delhi, where is your Bar at Delhi which will be able to deal with cases that will come before the Supreme Court? You will have to import all your lawyers from Calcutta, Madras or Bombay; and if you have to do that I find it difficult to believe that the hearing of a case in the Supreme Court at Delhi will be any less expensive than the hearing of a case in the Privy Council. I can say of Calcutta and I believe it is equally true of Bombay—I am not sure of Madras—that you will not be able to get a lawyer who will be able to do justice to a case in the Supreme Court for less than Rs. 2,000 a day, from the day he leaves Calcutta till the day he returns to Calcutta—that is the usual practice in Calcutta. What does that mean? If an ordinary case in the Supreme Court takes a day for hearing, it will cost in barrister's fees alone from Rs. 5,000 to Rs. 6,000. Now, you can get a Privy Council case heard—I am only taking the hearing costs, because the preliminary costs will be practically the same in both cases—for Rs. 4,000 or Rs. 5,000, provided of course you are not anxious to retain fashionable counsel; of course if you have Sir John Simon or counsel like him it will cost you Rs. 10,000 or Rs. 15,000 or even Rs. 20,000. But if you have an ordinary junior practising in the Privy Council in an ordinary case lasting a day, it would not cost you more than Rs. 4,000 or Rs. 5,000. You could not do a case like that, lasting a day, in India for less than Rs. 6,000 or Rs. 7,000, because nobody will be satisfied when appealing to the Supreme Court to have his case pleaded by a man who does not hold an eminent position at the Bar of the Court from which he has appealed. In my view, therefore, a Supreme Court at Delhi will not lead to any less expense.

Now, another argument has been advanced by the Honourable Mover as well as by all the speakers who have supported the Resolution, and that is the question of delay. I appeal to them as practical lawyers to say if the delay is not really due to the fact that the litigant does not want the case to be

heard too early, for the simple reason that he has not got the money; he delays because he wants time to send the money. The Privy Council has over and over again commented on the delay in presenting cases before the Privy Council. I do not know about other High Courts, but the Calcutta rules prescribe that if you appeal to the Privy Council you have to give security to the extent of Rs. 4,000 before the appeal is admitted, as security for costs. That is the first reason for the delay. I have known cases where application after application has been made for time to pay in this Rs. 4,000. That means delay. Then the matter goes to the Privy Council, and there again the litigant has to find money; he delays sending money; he sends it by driblets to his solicitor, and naturally the case has to be kept back until the full amount is received.

THE HONOURABLE SIR MANECKJI DADABHOY: And do not forget the interest he pays to the sowcar on this Rs. 4,000.

THE HONOURABLE MR. S. R. DAS: Whatever it is, if a litigant desires to have the case heard soon, he could have it heard within a year after the appeal has been filed. In a matter in which I myself was interested, I have known a case disposed of within six months from the time leave to appeal was given, simply because in that case my client was very anxious to have the matter decided as expeditiously as possible; he paid in the money immediately, he made an application for expedition; the record was sent up at once; he made an application to the Privy Council that it should be heard soon. Grounds were given why it should be heard expeditiously and the matter was disposed of within six months of the date when leave to appeal was given. The delay is generally due to the fact—and I do not blame the litigants, because after all litigation is costly and every body has not got ready money always—that they want time to get the money and send it to England; and if you send up an appeal to the Supreme Court, the same difficulty will arise in providing the money. When we are talking of this question of delay, take the ordinary instance of an appeal from the subordinate court to the High Court itself. Will any practising lawyer here be surprised to hear that it sometimes takes two years before an appeal from a subordinate court is heard? Is not there delay in the preparation of the paper book—considerable delay—because the litigant is waiting to get money and considerable time elapses before the paper book can be printed? I have known cases in the Calcutta High Court and I have heard of other cases in other High Courts where there has been considerable delay between the time the appeal is filed and the time the appeal is heard. You will not get rid of this question of delay by getting a Supreme Court here.

Now, Sir, what is going to be the constitution of this court? Is it going to be a glorified High Court or a court consisting of judges far superior to the High Court Judges whom we have now? I should like to make it clear that I am casting no reflection on the High Courts here. We have at present in the High Courts the best possible talent available, and the High Courts do their work exceedingly well. But if you are going to have a Supreme Court, it is no use having the same calibre of Judges as you have in the High Courts. There is no satisfaction to the litigant to go in appeal from one judge to another judge of the same calibre; you want men of greater eminence. Where are you

going to get them ? I do not suggest you have not got men in India who would be suitable for the Supreme Court, but what happens now ? Do you get in your High Courts as Judges men who are at the top of the profession ? Do they accept High Court Judgeships ? Do we not know cases of men who have got very good practice, who are great lawyers, who refuse to be appointed High Court Judges ? These are the men you have to get if you want men of higher calibre ; and if you get these men you will not get them for Rs. 4,000 or Rs. 5,000 ; you will have to pay them very handsomely if you want to attract them to the Supreme Court ; and even then I doubt if you will be able to induce many of them to give up there very lucrative practice for the purpose of sitting on the Supreme Court.

Then there are other difficulties. If you have a Supreme Court, communal questions will arise. Are you going to appoint so many Hindus, so many Muhammadans, etc., or are you going to appoint Judges simply from the point of view of the merits of the persons concerned ? Will you be able to do so ? I am quite certain that communal questions will arise in the matter of appointments. Would you be satisfied with such a court ?

I ask the House to consider all these practical difficulties and then say whether it is advisable at the present moment to have a Supreme Court ? It may be that from the political point of view we are all anxious to have a Supreme Court ; but I beg this House not to allow the administration of justice to be influenced by political considerations. Do you want a Supreme Court for the purpose of deciding constitutional questions ? That is merely political. If you want to have one for the purpose of deciding constitutional questions, apart from other objections which have been raised, that at the present moment we have not got self-government, do you think we can afford it merely to decide constitutional questions ? Are there a sufficiently large number of constitutional questions which really require the appointment of judges to a court ? There may probably be one or two cases during a whole year. But that is quite apart from the question of the administration of justice. We want to deal with the question of a court deciding constitutional questions quite apart from a court which concerns itself with the administration of justice. The two things are entirely different, and from the point of view of administration of justice, I certainly as a practising lawyer would be very much opposed to the constitution of a supreme court in this country.

Objections have been raised as to the interpretation of the Hindu law by English lawyers. The Honourable Mover has complained that they have imported English opinions into the interpretation of Hindu law. Now, I remember a decision of the Honourable Mover, a really extraordinarily learned decision, in a case where the question of the validity of the marriage of a Sudra with a Christian woman came up for consideration. I have rarely read a judgment which so boldly went out of the rut of ancient Hindu law and made it fit into modern conditions. Now, what has the Privy Council done ? The Privy Council has brought, in its interpretation of the Hindu law, modern progress into consideration. But for the Privy Council there would be no advance in Hindu law, and Hindu law would have been where it was a hundred years ago. And I dare say that many of the orthodox Hindu lawyers will not agree with me, but I feel that we owe a great deal to the Privy Council for the progress we have made in the application of Hindu law.

1 P.M.

[Mr. S. R. Das.]

Somebody, I think the Honourable the Mover, complained that it has had a vitiating effect, that it was destroying the Hindu joint family system in this country. Well, I am not so certain that in these modern days of progress, the old Hindu law can with safety be applied without bringing into its interpretation the present modern conditions. We have before this House another Bill with reference to the registration of all partitions. We find a number of opinions from people, and I am glad to find that there are a large number of people who object to it, that registration should not be compulsory only on the ground that the proposed system of registration will prevent a large number of partitions, they feel that you must permit partitions and you must not insist on the old view that there should be as few partitions as possible. Now, under those circumstances, to suggest that the interpretation of Hindu law should be restricted to the interpretation as given by the Pandits a few hundred years ago is, I submit, not a correct view to take.

I have tried to deal with this question entirely from the point of view of a practical lawyer and have tried to avoid all political questions. Before I close, however, I feel tempted to deal with one point of view, I mean with one statement of my friend Mr. Chari. He said that some English Judges look upon Indian lawyers as pests. He adverted to his own experience. I am afraid I have had a little longer experience than my friend. I have appeared before every kind of Judge, and I certainly say that my experience has been otherwise. My experience has been that the Judges, whether Civilian, Barrister or Vakil, are apt to treat only those lawyers as pests who may make themselves pests.

THE HONOURABLE MR. G. S. KHAPARDE (Berar Representative): Sir, I wish to support this Resolution. I find that in the discussion many things have been said which really do not relate to the Resolution at all. There were many practical objections raised to the Resolution, but I think this is a stage at which we have to consider whether a Supreme Court is necessary, and whether it ought to be established in this country. That is the point, and in my opinion a Supreme Court is very necessary. The Resolution takes away no privilege which the Indian public enjoy at the present moment. If anything, it will confer very great benefits. It will give the defeated litigants the choice either to go to the Supreme Court or to the Privy Council. It has been asked to whom is this privilege given? My reply is that this privilege is given to the defeated litigant. It has been asked what benefit will it confer? I say the benefit is that the poor litigant defeated in the High Court will be able to seek a remedy in the Supreme Court here, whereas at present he cannot possibly engage lawyers in England and undergo all the expenses that are incidentally necessary.

Then it was asked, what was going to be the position of this Supreme Court? It was also said that its position would be incongruous, anomalous, and so forth. I humbly submit that the position of the Supreme Court will not be anything of that kind. It will be another edition of the Privy Council. We have the King represented here by the Viceroy, and as the King in England has his Privy Council, so the Viceroy here will have his Supreme Court. Why should not the Viceroy have a Privy Council of his own here?

SEVERAL HONOURABLE MEMBERS: Please speak up. We cannot hear you. Please speak louder.

THE HONOURABLE MR. G. S. KHAPARDE : All right, I will try to speak louder. It has been asked as to what position this Supreme Court will occupy. My reply is that it will be the Indian edition of the Privy Council now sitting in London. We have here the Viceroy to represent the King, and this new Court will be the Indian edition of the Privy Council. His Excellency the Viceroy here has his Cabinet in the shape of his Executive Council. To that Cabinet will be added a certain number of persons who will be judicially qualified to sit as Judges of the Supreme Court. All those people will form the Judicial Committee of the Executive Council of His Excellency the Viceroy. There is no incongruity, there is no difficulty whatever in that matter.

It has been said further that this Court will confer no benefit of any kind. My humble reply to that is that in the case of death sentences at present, there is no court of appeal at all. My Honourable friend Saiyid Alay Nabi pointed out that there is a police investigation in the first instance, then an investigation by a Magistrate, and then there is a trial before the Sessions Judge, and finally there is also an appeal to the High Court.....

THE HONOURABLE SAIYID ALAY NABI : I am sorry, Sir, I never said that there is an appeal to the High Court. I did say that, as a matter of fact, a condemned man can appeal to the High Court.

THE HONOURABLE MR. G. S. KHAPARDE : I again maintain, Sir, that his point was that all the necessary facilities for the defence were available in this country and there was no case made out for the establishment of a Supreme Court. To that my reply is, that in England there is a Grand Jury ; there is an inquiry before the Mayor ; there is a commitment to the High Court, and thereafter a man convicted can go to the Privy Council or as it is called the House of Lords. So we are having nothing more than what there has already been in England for centuries.

Then again, Sir, as I pointed out, there is no appeal, really speaking, in a sentence of death. If a man is sentenced to death, the court which passes the sentence is not the Sessions Judge. The Sessions Court merely proposes that it thinks that the man ought to be hanged, and the proceedings are submitted for confirmation to the High Court, and it is the High Court really that gives the death sentence and after that, the poor man has no remedy at all. In India there is really no criminal court of appeal against a sentence of death.

It was further urged that the establishment of this Court will lower the prestige of the High Courts in India. It has not done so in England ; it has not done so anywhere else. Why should it lower the prestige of the High Courts in this country alone ? It is the privilege, it is the prerogative of the Crown to be advised by lawyers, and the prerogative of the Viceroy should be that he should be advised by lawyers, I therefore think that there will be no kind of lowering of the prestige at all. Therefore, Sir, this Resolution from my point of view confers a great benefit on the poor litigant, and takes away none of the existing privileges. On the other hand, it provides a distinct remedy. In a recent case in Delhi, the accused has gone up to the Privy Council over the sentence of death and the accused is faced with some difficulty. All those cases, all those defects should go away. It has been suggested that it may happen that communal questions will come in and then the people will ask for Hindu Judges, Muhammadan Judges, Sikh Judges, and so on. I quite agree that in the

[Mr. G. S. Khaparde.]

beginning such a thing may occur. But the appointments will be made by His Excellency the Viceroy from among the most learned and most experienced. It has been asked who will be the Judges ? I say there are so many retired High Court Judges, so many able lawyers that there is a wealth of legal talent in India which remains unutilised and His Excellency the Viceroy will be able to utilise that material. I do not attach any importance to delays. The case Jarndyce *v.* Jarndyce cited by my Honourable friend was a fictitious case which exaggerates the matter and makes it look worse than it is. That case we do not take as an authority in our courts of law. I have not yet heard any speaker point out the disadvantages that would accrue from the establishment of a Supreme Court in India, beyond probably that there will be more expenditure. But some more expenditure we do not mind. There is a Latin proverb that justice should be done even if the heavens fall ; justice should be done no matter how much it costs. Nothing is too much to be paid for justice. We spend a good deal and we have got to spend a good deal more on the Navy, on the Air Force, and on the other forces in India. Why not spend a few lakhs more in securing justice ? There will be no harm done to the country by doing that. So, I do not attach any importance to the financial aspect of the question ; from the social aspect there is none, and from the political aspect there is everything to be gained. People will gain a great deal here, more especially the poorer classes who cannot afford to incur expenditure to go to England for the sake of justice. It has been said that this court will be equally costly and expensive. It might be very likely and would be. But in India there is a thing called charity, and many eminent lawyers will take up a case merely for the purpose of saving a life, which is a thing you do not hear of in England. Here there will be eminent lawyers who will put their services at the disposal of such poor people. The Court will be at Delhi ; retired lawyers will be there and retired Judges of the High Courts ; there will be a plethora of legal talent. For these reasons, I think that there is everything to commend this Resolution and nothing to detract from it. Therefore, I hope my Honourable colleagues will support it heartily.

THE HONOURABLE SIR PHIROZE SETHNA (Bombay : Non-Muhammadan) : So far, every Honourable Member of the House who has spoken on this Resolution to-day happens to belong to the legal fraternity including my Honourable friend, the Home Secretary, who told us that he once served as a Magistrate. I therefore hope that it will not be regarded as presumptuous on my part to speak on this Resolution and to tell the House what considerations influence me as a layman to accord my support to the Resolution.

The Honourable Mover has told us distinctly that he does not want to do away with the Privy Council so far as India is concerned. His main idea is to have a Supreme Court in the country to give the choice to the litigants as to which body to appeal to. The Honourable the Law Member questioned him in the course of his remarks as to whom he is going to give the choice to, the appellant or the respondent. I presume the Honourable Member will say he will give it to the appellant. The Honourable Mr. Das further pointed out that the Privy Council, as the supreme authority, will still possess the right even after the Supreme Court has given its decision, if it so chooses, to take up the case, which would mean that the litigants would be involved in still further

costs. May I point out to the Honourable Mr. Das that the same privilege exists in the case of the Colonies, and the Dominion of Canada, and yet as a matter of practice, the Privy Council does not think fit to call for papers in any case which the Supreme Court of any Colony or Dominion has decided upon...

THE HONOURABLE SAIYID ALAY NABI : Is there any authority for it ?

THE HONOURABLE SIR PHIROZE SETHNA : I should like to stand corrected by knowing any instances to the contrary. So far as I know it has not.

Another point which appeals to me as a layman lies in the fact pointed out to the House by the Honourable Mover, and not contradicted by anybody, although several lawyers have spoken, but on the contrary the fact was supported by my Honourable friend, Saiyid Nabi Alay.

THE HONOURABLE SAIYID ALAY NABI : Alay Nabi.

THE HONOURABLE SIR PHIROZE SETHNA : I beg his pardon, the Honourable Saiyid Alay Nabi, who said that although the Judges of the Privy Council are very learned lawyers in different branches of the law yet so far as Hindu law and even Muhammadan law are concerned, their judgments in many cases have been found to be unsatisfactory. If that is a point which is not disputed even by my Honourable friend, the Law Member....

THE HONOURABLE SAIYID ALAY NABI : I beg your pardon. I am very sorry for the interruption. What I said was, whatever may be the case, it may be ancient history, but since the reinforcement of the Privy Council.

THE HONOURABLE SIR MANECKJI DADABHOY : Does the Honourable Member know that some of the most important judgments on Hindu and Muhammadan law have been written by English Privy Council Judges and they have extorted respect and admiration in this country ?

THE HONOURABLE SIR PHIROZE SETHNA : I do not deny that. I shall come to the point of my Honourable friend, Saiyid Alay Nabi a little later. I say as a layman it appeals to me very greatly that the litigants may be allowed to go before Judges who in their opinion understand Hindu law and Muhammadan law better than some of the Judges of the Privy Council. That point of view appeals to me as a layman.

My Honourable friend, the Home Secretary, referred to this Resolution as having come up for the first time, in February 1925. May I remind him, as was pointed out by the Honourable Mr. Ramadas Pantulu, that this question has been engaging the attention of the Legislature ever since the reforms came into existence ? It was brought up for the first time by Dr. (now Sir Hari Singh) Gour, if I remember aright, on the 26th March 1921. The Resolution to which my Honourable friend, Mr. Haig, refers came up some years later. But my Honourable friend said that when the opinion was taken of the country at large it was found to be greatly against it. I am sorry....

THE HONOURABLE MR. H. G. HAIG : All I said about the opinion of the country at large was that it did not show identity.

THE HONOURABLE SIR PHIROZE SETHNA : I stand corrected, but I would like to quote the words of the then Home Member, Sir Alexander

[Sir Phiroze Sethna.]

Muddiman, who himself said that the opinions revealed the fact that there is a considerable backing in the country to this proposal. In fact, if we read those opinions we must come to the conclusion that it is a case of fifty fifty. That being so, the Resolution requires more serious consideration at the hands of Government than has been given both by the Honourable the Home Secretary and the Honourable the Law Member, in their speeches to-day.

Now, let me come to the point made by the Honourable Saiyid Alay Nabi and repeated by Sir Maneckji Dabahhoy. He said that to-day conditions have changed. I do not deny that. I know Lord Sinha and Mr. Ameer Ali are of the Judicial Committee of the Privy Council. But I also know that they are not young men and that both these respected gentlemen can give 15, 20 or 25 years to my Honourable friend, Saiyid Alay Nabi in point of age that both these gentlemen will not be there indefinitely. The situation has improved for the present, but the proposal in the Resolution is for all time to come and not for the present only.

My Honourable friend Saiyid Alay Nabi introduced a very novel point. He said that a Supreme Court must not precede but should follow the attainment of responsible self-government. May I ask my Honourable friend if that condition was made precedent to the election of India as an original member of the League of Nations or was it made a condition precedent to our sending delegates to that body or to the Imperial Conference ?

THE HONOURABLE THE PRESIDENT : Will the Honourable Member confine himself to the Resolution ?

THE HONOURABLE SIR PHIROZE SETHNA : I bow to your ruling, Sir.

THE HONOURABLE SAIYID ALAY NABI : On a point of personal explanation. What I said was that the Supreme Court was established in Canada and in Australia after self-government was established there. I did not refer to any other country except those mentioned in the Resolution of the Honourable Mover.

THE HONOURABLE SIR PHIROZE SETHNA : I say, Sir, that the appointment of a Supreme Court before the attainment of self-government will pave the way earlier to the attainment of that goal.

Then one or two remarks fell from my Honourable friend the Law Member. He compared the fees charged by the leading juniors at home with the fees charged by the senior members of the Bar at Calcutta and Bombay. If he had compared the fees charged by Sir John Simon or Mr. Upjohn and others of the same class with the fees which my Honourable friend would himself have charged when he was practising at the Bar or what others in the same rank as himself are charging to-day, then I say the comparison would be fair, not the comparison that he drew. Then again my Honourable friend asked, are you going to convert the Supreme Court into a glorified High Court ? My answer is just this. Are the Supreme Courts in the Dominions and in the self-governing Colonies only glorified High Courts ? Is it not a fact that there are these Supreme Courts and is it not also a fact that although the people there have the privilege of sending cases to the Privy Council in preference to the Supreme Courts that privilege is hardly ever exercised ? There is therefore nothing wrong to my mind in appointing a Supreme

Court in India, and I strongly support the motion of my Honourable friend, Sir Sankarn Nair.

The Council then adjourned for Lunch till a Quarter to Three of the Clock.

The Council re-assembled after Lunch at a Quarter to Three of the Clock, the Honourable the President in the Chair.

THE HONOURABLE SIR SANKARAN NAIR : Sir, my first argument was that there was a denial of justice on account of the great expense and delay involved in the case of appeals to the Privy Council. The reply was that even if a Supreme Court is established, for instance in Delhi, the cost would be just the same, at any rate there will be no appreciable difference because the lawyers in India have to be paid the same fees as may be now payable in London. I am afraid, Sir, that those who put forward that argument are not aware, have not got the actual experience which certainly we in Madras have when new courts are constituted. We know that when new courts, district courts, sub-courts and Munsif's courts are constituted, men from the older courts rush to those courts and settle there and do the work. It may be in very few cases that men may have to be called from an older court, but the real want is supplied by the inrush of men who have practised in the older courts. They forget further that even at present a man, even though there is a Privy Council, has to pay his own lawyer in India to prepare his case, and he incurs that expense. Furthermore, the solicitor's fees are heavy in England, it is often not the counsel but it is really the solicitor in England who costs more. All those expenses for solicitor's costs will be saved if there is a Supreme Court here ; and then there are the costs incurred in the High Court for the preparation of the record ; there is the security for costs which probably will all be saved in case of the institution of this court. Then there is the argument which the Honourable Mr. Das used which I thought was a strong argument in my favour. " What is the delay due to ", Mr. Das asked ; and he said, I believe he is right, that in a good number of cases, in the great majority of cases in fact, the delay is due to the reason that a litigant has to borrow money in order to defray the expenses of litigation, and it is because he has to borrow this money, the case is protracted for such a length of time ; he has to borrow money and send it to his lawyers in London. Now is that not the strongest argument which one can find in my favour ? Because if now the litigation is conducted at so much cost that a man has to borrow money, is that not a strong argument then for the constitution of a court here so that he may have to borrow, if at all, less money, and is it not a further argument in favour of this, that many men are choked off now, many appeals are not filed as they are not able to carry on those appeals because they cannot find the money ? I submit that far from that being an argument against me, the argument from delay is in my favour. Then that leads to the other argument which Mr. Haig put forward. He said, " For Heaven's sake, do not increase litigation and bring about a state of things when litigation shall destroy the subject-matter." Yes, the subject-matter is lost to the litigants ; but what is it due to ? It is not due, as Mr. Haig says, to increasing litigation : it is due to the increasing cost of litigation. If you increase the cost in certain cases from Rs. 1,000 to Rs. 10,000, that means the ruin of the client, whereas the increase of the litigation will go along with the progress of civilization, because there are so many new wants, so many new transactions which are entered

[Sir Sankaran Nair.]

into that sort of increase of litigation is not to be deprecated. What is to be deprecated is the increase of the cost of litigation.

And what I am asking this Council now is to see that, if possible, the cost of litigation is decreased and not to go increasing it.

Then the Honourable Mr. Das put forward another argument. He said "You say that the poor litigant finds it difficult to get a remedy because the cost is so prohibitive and the Privy Council is a bar to the poor man getting his remedy." Here let me correct a gross misapprehension on the part of my Honourable friend Sir Maneckji when he read out a passage isolated from the rest of my speech. What I said was that it is the rich man alone who could go to the Privy Council and get his appeals tried there, and that the cost of the litigation stood in the way of the poor man going there; in that sense therefore the Privy Council acts as a bar to the poor man, while it enables a rich man to go there and get his appeal tried there, and in that way the Privy Council is an institution for the benefit of the wealthy man as against the poor man. That the Privy Council decides in favour of the rich or usually favours the rich as against the poor is only in the imagination of my friend Sir Maneckji; that was not my argument at all.

Now coming to the Honourable Mr. Das who asked me: "Well, you say you want to give an alternative, but to whom? To the appellant or to the respondent. The appellant may be a rich man and the respondent may be a poor man. How do you say then that you are meeting the case of that class of persons, the poor respondents?" My first observation on this is that it is not a fair argument; when I put forward a remedy for a class of cases in which justice is not administered at present it is certainly not an argument which should be put forward on behalf of the Government that there are other cases where my remedy is no remedy. Besides I can easily meet that point. In Madras we have what is called concurrent jurisdiction. You may file a suit in the Small Cause Court or in the High Court; and what the High Court does is this that if you ask for leave to file a suit in the High Court when you could have filed it in the Small Cause Court, you do not get it. I do not know what the rule now is, but that was the rule when I was there. Similarly, if you go to the Privy Council, instead of going to the Supreme Court, the Privy Council may say: "This is a matter which had better be tried in India, and we will not therefore allow it to be tried here." If it is a proper case to go before the Privy Council, they will say: "We will entertain it". If it is not a proper case to go before the Privy Council they will say: "No; you will have to go to the Supreme Court; that is the proper place for you to get your remedy." And where the Privy Council decides in favour of the appellant in cases which might have been decided by the Supreme Court, they may say they will refuse costs; they may say: "You should not have come here; you should have gone to the Supreme Court in India; why did you come here? We will give you a decree in appeal here, but we will not give you costs." That is the answer and I believe that is a conclusive answer to what the Honourable Mr. Das put forward.

Then there was another argument, I believe, which was used by Mr. Haig. He said: "What about the expense which the Government will have

to incur ? The public revenues will suffer if you go on like that." First of all, Sir, you have to consider the fact that the litigants are saved so much expense ; that has to be taken into consideration. Then there is this further point. I do not know whether Mr. Haig knows that some time ago the question was considered by the Government of India and it was then found that the costs of civil litigation were paid by the litigants. The Government no doubt said : " You are taking only civil litigation into account ; you must also take criminal litigation, and if you take the two together, then the receipts from litigation do not cover the cost of the whole thing." I do not know how matters stand now and whether an inquiry if made now as to the cost of litigation will establish the truth of that contention. Therefore, before Government complain that the constitution of a Supreme Court will be such a great loss to the Government, that matter must be gone into and the questions settled.

I have very little more to say. An argument was used—the Honourable Sir Maneckji Dadabhoy as usual quoted me as saying what was really a figment of his own imagination and said with great vehemence and a great show of indignation with regard to sedition cases : " What is the meaning of charging the Privy Council with partiality ? They are thoroughly impartial." My Honourable friend waxed very eloquent over the matter, but the fact is just the other way ; my complaint with the Privy Council was that they will not go into these matters. In Mrs. Besant's case and in cases from the Punjab the Privy Council said : " We will not go into these questions because these questions should be settled locally." If the Privy Council would only go into these questions, it would be a very good thing. I never said they were not impartial or anything of that sort. What I said was that they would not go into these questions at all and that therefore it was all the more necessary that you should have a Supreme Court before whom you could take all these things for their opinion. Sir, I have got nothing more to say.

THE HONOURABLE MR. H. G. HAIG : Sir, the Honourable the Law Member has dealt with the arguments that have been advanced in favour of this Resolution in such a convincing way and with such a thorough practical knowledge of the details that it leaves very little for me to say. I understand from the last speech of the Honourable Mover that he thinks that if Government incurs an expenditure of Rs. 10 or 20 lakhs—I do not know what the cost may be, and no one has any very definite idea—it does not matter provided it could be shown in some way that the cost of civil litigation is generally covered by the receipts. But I may point out that, in any case, how that matter stands I am not sure, I cannot inform him of the facts at the moment—it means an immediate increase in the burdens on the tax-payer.

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And when we talk about making litigation cheap to litigants we have to be very careful, I think, to see that we do not impose further burdens on the tax-payer.

One point struck me during the debate, and that was that, while we started with sober statements of the reasons and arguments in support of the motion, as the debate developed—and I hope it was because those arguments were very largely met—there seemed to be more reliance placed on the appeal to sentiment.

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My Honourable friend opposite, Mr. Ramadas Pantulu, for instance, while recognising fully the practical objections to the proposals, nevertheless stated his intention of supporting the Resolution on grounds which I think must have been to some considerable extent sentimental. He wished that the functions of this new Supreme Court should be very strictly limited. Now, I can understand the position of my Honourable friend the Mover who assigns to the Supreme Court certain important functions and wishes to appoint Judges to perform them, but I find it very difficult to appreciate the point of view of an Honourable Member who wishes to limit those functions until they become very narrow, and yet wishes to set up this court. Sir, any Honourable gentleman who may indulge in sentiment would naturally wish to avoid the stigma of his sentiment being described as cheap, but I think this House should be careful not to indulge in sentiment which is likely to be so dear. I would urge the House, therefore, not to be carried away by any feeling of sentiment, to create half a dozen, or it may be more, sinecures for the performance of duties which would be very limited in character.

THE HONOURABLE THE PRESIDENT The question is :—

"That the following Resolution be adopted.

'This Council recommends to the Governor General in Council to take early steps to secure that a Supreme Court is established in India with power—

(*a*) to interpret and uphold the constitution ;

(*b*) to act as a court of final criminal appeal against all sentences of death ;

(*c*) to act as a revising court in specified serious cases ;

(*d*) to hear civil appeals now heard by His Majesty's Privy Council ; and

(*e*) general to carry out the work at present entrusted to His Majesty's Privy Council ;

provided that such court shall not affect His Majesty's prerogative safeguarded in the constitutions of Canada, Australia and South Africa '."

The Council divided :

AYES—15.

Desika Chari, The Honourable Mr. P. C.
Khaparde, The Honourable Mr. G. S.
Mahendra Prasad, The Honourable Mr.
Mukhorjee, The Honourable Srijut Lokenath.
Oberoi, The Honourable Sardar Shivdev Singh.
Padshah Sahib Bahadur, The Honourable Saiyid Mohammed.
Ram Saran Das, The Honourable Rai Bahadur Lala.
Ramadas Pantulu, The Honourable Mr. V.
Rama Rau, The Honourable Rao Sahib Dr. U.
Rampal Singh, The Honourable Raja Sir.
Ray Chaudhury, The Honourable Mr. Kumarsankar.
Sankaran Nair, The Honourable Sir.
Sethna, The Honourable Sir Phiroze.
Seth, The Honourable Rai Bahadur Nalininath.
Sinha, The Honourable Mr. Anugraha Narayan.

NOES—25.

Akram Husain Bahadur, The Honourable Prince A. M. M.
Alay Nabi, The Honourable Saiyid.
Bell, The Honourable Sir John.
Berthoud, The Honourable Mr. E. H.
Brayne, The Honourable Mr. A. F. L.
Charanjit Singh, The Honourable Sardar.
Commander-in-Chief, His Excellency the.
Corbett, The Honourable Sir Geoffrey.
Dadabhoy, The Honourable Sir Maneckji.
Das, The Honourable Mr. S. R.
Froom, The Honourable Sir Arthur.
Habibullah, The Honourable Khan Bahadur Sir Muhammad, Sahib Bahadur.
Haig, The Honourable Mr. H. G.
Hooton, The Honourable Major-General Alfred.
McWatters, The Honourable Mr. A. C.
Misra, The Honourable Pandit Shyam Bihari.
Muhammad Buzlullah, The Honourable Khan Bahadur.
Natesan, The Honourable Mr. G. A.
Stow, The Honourable Mr. A. M.
Suhrawardy, The Honourable Mr. M.
Swan, The Honourable Mr. J. A. L.
Tek Chand, The Honourable Diwan.
Tudor-Owen, The Honourable Mr. W. C.
Umar Hayat Khan, The Honourable Colonel Nawab Sir.
Wacha, The Honourable Sir Dinshaw.

The motion was negatived.

RESOLUTION *RE.* REPORT OF THE INDIAN SANDHURST COMMITTEE.

THE HONOURABLE SIR PHIROZE SETHNA (Bombay: Non-Muhammadan): Sir, I beg to move :—

"That this Council recommends to the Governor General in Council to urge on the Secretary of State for India the necessity of taking prompt action in pursuance of the recommendations made in their Report by the Indian Sandhurst Committee."

Sir, before I proceed with what observations I have to make in support of my Resolution, I may be allowed with your permission to tender to two of my Honourable Colleagues in this House my thanks for withdrawing their motions similar to mine. The Honourable Saiyid Alay Nabi was good enough to withdraw his motion in my favour, and although my Honourable friend Seth Govind Das drew a higher place in the ballot for to-day's agenda, he promised not to move his motion even if present. Both members have done so because I had served as a member of the Indian Sandhurst Committee, and I would like to assure them that I greatly appreciate the favour.

Among the many important questions that have engaged the earnest attention of this House and of the Legislative Assembly the question of further constitutional advance, and the question of national self-defence, have been the most outstanding. The mutual intimate connection of these two questions has been keenly realised and in the very first Session of the Legislative Assembly a series of Resolutions were adopted all designed with a view to enabling India to undertake the responsibility of her own defence in an increasing measure, so that she might be able, at the earliest possible moment, to grow into the full stature of a self-governing member of the British Commonwealth. Government appointed two Committees, namely, the Auxiliary and Territorial Forces

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Committee early in 1924 and, secondly, the Indian Sandhurst Committee in June 1925. The first Committee submitted its Report on 23rd January 1925, and the second in November 1926. The Auxiliary and Territorial Forces Committee was presided over by Lieutenant-General Sir John Shea, Adjutant General in India, whereas the Chairmanship of the Sandhurst Committee was held by that very capable and efficient officer Lieutenant-General Sir Andrew Skeen, Chief of the General Staff.

Now the most important fact about the Reports of both these Committees is that they are unanimous. All the members of the Committee, whether Indians or Europeans, soldiers or civilians, officials or non-officials, all are unanimous in the recommendations they have made. This is a feature which is, I am afraid, rare in the history of the Reports of either Commissions or Committees.

THE HONOURABLE SIR MUHAMMAD HABIBULLAH (Member for Education, Health and Lands): The Lee Commission.

THE HONOURABLE SIR PHIROZE SETHNA: I said rare. I did not exclude the Lee Commission, but it is a feature which is bound to invest the Reports, not only with exceptional but, I believe I shall be justified in saying, with almost compelling weight and authority. The value of these Reports must further be enhanced by the consideration that the recommendations they embody have received the approval of high military officers of the position and standing of Sir Andrew Skeen and Sir John Shea. I am anxious that this House and Government, far more than this House, should realise, first that the recommendations of these two Committees refer to a matter which is almost vital to our national growth and progress, and on which our feeling is not only one of keenness but of urgency, and secondly, that they possess a weight and an authority which must necessarily arise both out of the satisfactory personnel of the Committees, as was evidenced by the observations in the Press on both the occasions, and of their unanimous character. The Report of the Auxiliary and Territorial Forces Committee, as I have said, was submitted as far back as the 23rd January, 1925, and Government's decision was made public after as long as two years and seven months, or to be precise as late as the 20th day of this month. The delay in the matter was so greatly resented that, as the House is aware, the Legislative Assembly felt itself justified in expressing its utter dissatisfaction at the attitude of Government by voting a cut of Rs. 1,000 in the Demand under the head "Army Department" at the last Budget Session.

As regards the report of the Indian Sandhurst Committee, Government seemed at one time inclined not even to publish the Report until His Majesty's Government had formed their conclusions. It was however published on 1st April last after more than four months from the date of its submission, but not without what is called a "Foreword' and a very ominous "Foreword" it is. In it Government state that any conclusions they might form on the Report must necessarily take account of certain factors of which the Committee could not, by its terms of reference, undertake a complete survey. For example, they point out the problems of recruitment and training of commissioned officers are essentially an Imperial concern and any proposals reacting on them will

receive close scrutiny by His Majesty's Government. Further, they state that, when dealing with any scheme of increasing Indianisation of the Army they must leave themselves free to consider whether the basis of that scheme offers the sure stable line of advance towards the creation of a Dominion Army, or whether alternative methods which did not fall within the Committee's terms of reference might not more profitably be explored. The Government therefore state that the Committee's Report will be used as a starting point for discussions with His Majesty's Government. Did they ever hint at any time before or after the appointment of the Indian Sandhurst Committee that such a procedure would be necessary or was even contemplated? Now a Foreword by Government to a Committee Report is something most unusual, and therefore the public view this Foreword with a certain degree of suspicion. The public verily believe that it is an afterthought designed by Government as a safeguard to shield them if they want to whittle down the unanimous recommendations of the Committee.

This, then, is the position. The Government of India will carry on discussions with His Majesty's Government on the basis of the Report. When the discussions are completed, they will form their own considered views and submit them to His Majesty's Government. And we are told by the Secretary of State in his speech in the House of Lords on the 30th March last that he proposes to invite a Committee of Imperial Defence to consider the problem of Indian defence as a whole, and to examine incidentally, after receiving the Government of India's views, the Report of the Auxiliary and Territorial Forces Committee and the Report of the Sandhurst Committee in relation to those wider aspects of military policy which they alone, His Lordship says, are competent to appraise. Thus, the Report of the Sandhurst Committee has yet to undergo three different processes, first the process of discussion with His Majesty's Government, secondly, the process of final formulation of views by the Government of India and, thirdly, the process of consideration from the point of view of Imperial policy by a Committee of Imperial Defence. It is difficult to say over how long a period this whole operation will extend. It must however be obvious that, having regard to the fact that the wheels of Government move very slowly, too slowly at times, it cannot be a short period.

And here I would like to refer to the speech made by His Excellency the Commander-in-Chief less than a week ago at the other place also on a Resolution for giving effect to the recommendations of the Indian Sandhurst Committee. His Excellency taxed the Committee itself for taking as long as 16 months to submit their Report and he asked: "How could Government be expected to settle in about one-third of that time issues affecting the safety of India and of the whole Empire."

HIS EXCELLENCY THE COMMANDER-IN-CHIEF: I would like to say that I did not "tax" the Committee. I stated that the period they took was absolutely right. I quite agreed that it was not unreasonable they should have taken 16 months in going into the matter thoroughly. I made no complaint and did not tax the Committee on that account.

THE HONOURABLE SIR PHIROZE SETHNA: I am much obliged to His Excellency the Commander-in-Chief for the correction. I refer to what I saw in the Press. The personnel of the Committee was announced in June

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1925. The Committee met for the first time in August 1925 and the fixing of the date for the first meeting was not in the hands of the Committee. The members, both official and non-official, were not prepared nor were they expected to sit continuously. Moreover, there were as many as 122 witnesses examined and it was also thought necessary to send a Sub-committee all the way to England, France, Canada and the States which took up nearly 4½ months of our time. His Excellency further pointed out that we might have taken even longer were it not for the fact that Government placed at the disposal of the Committee the full time services of so able an officer as Mr. Burdon. I will yield to none of my colleagues on the Indian Sandhurst Committee in my appreciation of the invaluable help rendered to the Committee by Mr. Burdon, and I wish publicly to testify to the outstanding ability of that very capable officer. If his services were invaluable it was because of his intimate and first-hand knowledge of the subject we had to handle and which he had acquired in his capacity of Secretary to the Army Department, an office he filled with so much distinction. But I do say that, even if unfortunately for the Committee Mr. Burdon were not a member of the Committee, even then the preparation of our Report would not have taken a day longer than it did. Government were good enough to place at our disposal the services of Major A. F. Rawson Lumby as Secretary. He had previous experience having acted as Secretary of the Auxiliary and Territorial Forces Committee and because he accompanied the Sub-committee of which I was a member. I am able to say on behalf of Mr. M. A. Jinnah, Major Zoravar Singh and myself that Major Lumby proved himself a very useful Secretary and he rendered us splendid help in the preparation of the Sub-committee's Report. Now, Sir, His Excellency asked if the public would not wait for a third of the time that the Committee took for the Government's decision? I may respectfully point out that a third of the time has already gone past. In fact more than half the time has gone past. The Report was submitted in November last and we are now in August. What the public cannot understand is, why it is that Government almost invariably display such inordinate delay whenever it is a question of advancing Indian interests, and why on other occasions matters are rushed through with undue haste and precipitancy as witness the very short time within which effect was given to the recommendations in the Lee Commission's report.

Now, Sir, I wish to refer to the statement made by Lord Birkenhead in his speech in the House of Lords to which I have already referred. His Lordship complained that:

> "Throughout all the criticisms on the army administration in India he detects the belief that those matters are primarily of concern to India alone, that there is no call on His Majesty's Government to participate in them, that any action by His Majesty's Government in this sphere is a kind of bureaucratic interference from Whitehall".

Then His Lordship observes, and I am quoting his exact words:

> "All these questions whether they relate to interchange of reinforcements or to the spread of military training in India or to the Indianisation of the Indian army can only be handled with the necessary degree of success if they be brought under comprehensive survey by an authority competent to examine them from the broadest Imperial view point. It is not enough to approach them parochially."

When His Lordship suggests that our Indian national outlook on the subject of India's defence is a parochial outlook, that the question of the spread of military training in India or the question of the Indianisation of the Army must be approached from what he calls the broadest Imperial view point and not from the narrow parochial Indian point of view or from the point of view of the early attainment of responsible government, then I feel bound to enter my emphatic yet respectful caveat. If such an extraordinary claim were advanced by Lord Birkenhead or any other member of His Majesty's Government in the case of the Dominions, we can easily imagine what reply the Dominions would give. True, India is not yet a self-governing country, but it is one in the making, and the military problem of the country cannot therefore and ought not therefore to be divorced from the vital consideration that it is the problem of a country to which responsible self-government has been promised and which it hopes to attain in the near future.

No one contends that in the existing circumstances of the case and having regard to the transitional character of the present situation with which we are faced the Imperial point of view should be ignored and only the Indian point of view should be considered, and I maintain that the recommendations of the Indian Sandhurst Committee are not in the least vitiated by any such defect. I go further and say that a Committee which had for its Chairman so distinguished a military officer as Lieutenant-General Sir Andrew Skeen, and such a cautious official as Mr. Burdon, could not possibly have ignored the Imperial point of view and also that if the Imperial point of view were ignored, there was nothing to prevent the Indian members from making recommendations which might have been regarded as radical and even revolutionary. The legitimate fear in such cases is not that the Imperial point of view will be ignored, but that due weight and consideration may not be given to the Indian point of view.

Then, again, Sir, much depends upon your conception of what this Imperial point of view is to which Lord Birkenhead attaches so much importance. If the conception of that point of view involves the permanent or prolonged inferiority or subordination of India in what is now-a-days the fashion to call the Commonwealth of Nations, it is a conception which is bound to make you antagonistic or at any rate indifferent to the true interests of this country, and we can never accept such an unjust and false Imperial point of view. No solution can be acceptable to us that is not based primarily upon the full recognition of India's interests, and that does not aim at making Imperial interests only secondary to those interests. His Lordship has said that it is only a Committee of Imperial Defence which can be competent enough to consider all these questions from what he calls the broadcast Imperial view point, but the Indian public cannot have any confidence whatever in that Committee for the good reason that there will be no Indian serving on it and there is no guarantee that India's view point will be adequately or sufficiently represented and considered by the Committee, or that any genuine attempt will be made in its deliberation and discussions to give due weight and importance to the Indian point of view. I have dealt at some length with the statement made by Lord Birkenhead for the reason that it has caused very great alarm in the country, and it is feared that all this is but a prelude as to what

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we may expect as the decisions of Government on the Report of the Sandhurst Committee.

The time at my disposal is not sufficient to enter into all the details of the recommendations. They are by now so well known to you. I will only refer to the most important, and that is the recommendation regarding the establishment of a Sandhurst in India whereby by 1933 the College may be ready to receive and train for commissioned ranks 100 cadets and that by 1952 half the total cadre of officers in the Indian army will consist of Indians. It is no exaggeration to say that the whole country has accepted the Report with great satisfaction.

No report can be unanimously acceptable in all details. There are bound to be differences of opinion, but the differences of opinion in regard to this Report are only in regard to some minor points. Some of these minor matters were referred to by the Deputation which waited upon the Commander-in-Chief and which I shall presently refer. If there is any reference to such minor matters in the course of the debate to-day, I will deal with them in the course of my reply. The Deputation I refer to consisted of Indian officers holding the King's Commission and the Viceroy's Commission which, under the leadership of our Honourable and gallant colleague, the Honourable Nawab Sir Umar Hayat Khan, waited upon His Excellency the Commander-in-Chief a few days ago. The Deputation heartily endorsed the recommendations which I have just now mentioned, but they even went further and expressed their surprise that the period within which half the number of officers are proposed to be Indians was not shortened to 15 years. Are these unanimous recommendations of the Committee to be scrapped or turned down? I do hope, Sir, nothing of the kind will be done, for such action would give a serious blow to the confidence of the people in the good intentions of the Government. Such action would help to strengthen the belief which is prevalent in certain quarters that the real policy of the Government is not to further the ideal to which they pledged themselves in the dark hours and during the exigencies of the War, but to prolong as indefinitely as possible the period when that ideal can come near fruition. The general feeling is that the forces of reaction and of Imperialism such as existed towards the end of the 19th century and the first few years of the 20th century are seeking to reassert themselves and to regain their former ascendancy. This faith will be deepened and strengthened if the proposals of the Indian Sandhurst Committee are thrown out, and the military policy of the Government continues to move in the same old groove of unjustifiable caution and distrust. There may be difficulties but they are due to the policy of the Government themselves and they must be boldly faced. As Sir Frederick Whyte has rightly observed in his book on "Asia in the 20th century":

> "There is no doubt that if the Government had made a more serious and sustained attempt to Indianise the Civil Service and the Army, the problem of Indian Home Rule would not encounter so many serious difficulties as those which confront it to-day".

We have therefore to make up the leeway and also to advance. The Committee's recommendations are made after a full consideration of all the facts that were presented to them. They have put forward a scheme which

takes account of all difficulties, strikes the golden mean and provides a solution which is as much free from extreme or undue moderation as it is from thoughtless extremism. Surely a scheme the effect of which will be that only after 25 years, half the total cadre of officers in the Indian Army will be Indians cannot be said to be extreme, extravagant, incautious or revolutionary.

Sir, the Report of the Committee is in the hands of the public, but there is a serious omission in this Report, namely, the exclusion of the Sub-Committee's Report, particularly the Report of the Sub-Committee which went all the way from India to visit military institutions in England and France, at Kingston in Canada and West Point in America. The other day in another place the Secretary to the Army Department, when questioned about it, said that the Sub-Committee's Report was not published because the request for such publication was made by only one member of the Committee. I am glad to learn the Army Secretary only two days ago at the same place corrected himself and said, that it was the full Committee that had asked for the publication of the Sub-Committee's Report and not only one single member as he had observed on the previous occasion. In answer to a further question the Army Secretary gave it out that the Sub-Committee's Report was not published under the orders of the Secretary of State. I say, Sir, that if the Secretary of State, and at his request the Government of India, have thought it right to put in a Foreword to the Report they should also, in all fairness to the Committee and in all fairness to the general public, have given the reasons as to why they have not published the Sub-Committee's Report. The full Committee have passed certain strictures in their Report which is published; we fully explain and justify those strictures in the Sub-Committee's Report, and it is only fair to us, as also to the general public, that the same be made known widely. In the full Committee's Report we refer to the officer appointed as official guardian to the Indian cadets at Sandhurst. In the Sub-Committee's Report we have explained why in our opinion the choice made was unhappy, that appointment was unsatisfactory, and that this officer was perhaps responsible for more harm than good. Take again another instance. We were told that an outside lecturer once addressing both British and Indian cadets at Sandhurst observed in the course of his lecture that because of the system of Indianised units, no British boy would be liable to serve under the command of an Indian. When we were told this, we asked the India Office for an explanation. The India Office said they knew nothing about this lecture. Imagine therefore our astonishment and surprise when later we discovered that this outside lecturer was no other than an official of the India Office itself holding the rank of Colonel in the Army, from which we would not be wrong in inferring that what he stated at that lecture was not only his own opinion but that of the higher authorities as well and conveyed with their knowledge and consent. Are these not good enough reasons, Sir, why the Sub-Committee's Report should be made public? And I say that the public should not rest content until this Report has been placed in their hands.

To return to the unanimous recommendations made by the full Committee, I may ask what then is the duty of the Government of India in the matter? To my mind that duty is plain. The Government of India must act as the spokesmen and as the exponents of the Indian points of view, of Indian aspirations, feelings and hopes and at the same time of

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their fears and misgivings. They must endeavour to see that the Home Government do not tinker with the proposal, that they approach it in a spirit of liberal and trustful statesmanship, and that the unanimous recommendations of the Committee are given due effect to, and to point out that the rejections of these proposals would give rise to serious discontent in this country. The Government of India, I hope, will take up this strong attitude; and if they do so they will be doing their duty by the Indian people with the fullest regard for the interests of the Indian people. Reforms, if given, must be given promptly: the same reforms, if unduly delayed, will not provoke the same enthusiasm but on the contrary they will be regarded as inadequate and unsatisfactory. Many an untoward development arises in the relations of the Government and the people because of this truth not being fully recognized.

To conclude, Sir, I would say that it would be little short of a grave misfortune if the considered and unanimous proposals of the Committee are whittled down, and if one of the root-causes of Indian discontent is still allowed to rankle in the minds of the Indian people. I sincerely hope Government will fully realise the significance of the matter and leave no stone unturned to meet the views and wishes of the people. The matter is of great importance. It is of great urgency, and I do trust that Government will wholeheartedly and readily respond to the call for prompt action in approving and giving effect to all the recommendations of the Committee.

Sir, I move my Resolution.

The HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: (Punjab: Non-Muhammadan): Sir, I rise to support the Resolution. Under modern conditions India is no longer an isolated country and is no longer surrounded by countries unarmed with modern military weapons. In the interests of the defence of India and in the wider interests of the defence of the Empire, as a whole, it is now absolutely necessary that every unit of the Empire should be self-sufficient in the matter of defence. In times of crisis India should be in a position, without expecting help from outside its confines, to defend herself. There is enough first class military material among the 320 million of people of India. The so-called military classes of India from among whom the military authorities at present recruit the Indian Army, namely, the Rajputs, the Jats, the Mahrattas, the Gurkhas, the Sikhs, and others who number between 40 to 50 millions, have military traditions at their back simply because the recruitment of the army is confined at present to these castes and tribes. A certain number of officers can certainly be supplied by these classes. But these classes are all of them very backward in education. The percentage of literacy among them is indeed very low. They are as a class quite suitable for recruitment as sepoys in the rank and file of the Indian Army. But for officers who are expected to lay down schemes of military strategy and who are to employ military tactics of a superior order in times of necessity, we require a much higher standard of education and intelligence. This higher type of educational fitness and intelligence is available to a much larger extent among the Indian intelligentia and among the professional and business classes of men. If I rightly recollect it has been well said by H. E. Sir Malcolm Hailey, the Governor of the Punjab, in his evidence

before the Skeen Committee that a very large number of men can be found among the professional and business classes who are quite fit to discharge efficiently the duties of an army officer. The professional and business classes of the Indian people are in my humble opinion quite fit to take to a military career. It is only the Government policy of recruiting the army from certain castes and tribes alone, and the administration of the Indian Arms Act which has disarmed the entire mass of the population, that has created an artificial division between the so-called martial and non-martial classes. In pre-British times many of the military officers who have made their mark in Indian history were recruited from the present day non-martial classes. General Hari Singh Nalwa who conquered the Afghans, General Mohkam Chand, and Dewan Sawan Mal, were all Khattris and Misser Beli Ram, another famous General of Maharaja Ranjit Singh was a Brahmin. There are instances of many other famous Generals in the history of India who did not belong to the present day so-called martial classes. I am quite sure that if equal opportunities for military training are given to all classes of people as they used to be given in the times of the Moghals, the Mahrattas, and the Sikhs, they will prove equally efficient in the discharge of the military duties. Let the tests of entry into the military profession be made as high as they can be. I am not in favour of lowering that test, but all those who satisfy that test should without distinction of caste or class be given an equal opportunity to enter the military profession. Our educational system should be so reformed as to fit students for receiving military training, and the cost of the military training should be reduced to such an extent that it should suit the pockets of an average middle class parent. But, Sir, to enable a larger number of Indians to obtain military training, it is necessary that a Military College on the model of Sandhurst should be opened in India. This step is necessary, because at present the higher cost in England, and the longer absence of boys from their parents in a foreign country with all its risks, stand in the way of a sufficient number of Indian students taking advantage of the facilities provided at Sandhurst. There is still another reason why a Military College is necessary in India. In times of war, when communications are more or less closed, it is very difficult for India to obtain new officers from England ; and if the theatre of war happens to be near to the frontiers of India, the absence of a Military College in India would be a very serious handicap in the way of this country defending herself. Even in the last Great War when fortunately India had no war on her own frontiers the necessity arose of hurriedly setting up three cadet corps colleges in India at Quetta, Indore and Wellington.

It is, therefore, absolutely essential that, before the next great war breaks out, and no one can say when it will break out, we should complete arrangements for the military training of officers in India. Up to the present moment Indian officers holding the King's Commission are employed only in the Infantry and the Cavalry. There is no reason why they should not be eligible for appointments in the Artillery, the Signals, the Tanks, the Engineering, and the Air Arms of the Army as well. India has produced on the civil side some of the best engineers. There is no reason why it should not be able to produce equally good military engineers. In the last Great War, several Indians did excellent work in the then Royal Flying Corps ; some of them even won distinguished Military Crosses. This shows that, if opportunities are given,

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Indians are capable of holding their own quite on a par with any other people on the face of the earth.

I would therefore suggest that as recommended by the Skeen Committee—

1. A progressively larger number of Indians be recruited in the military service.

2. Steps should at once be taken so to reform the Indian educational system that it may prepare students fit to receive military training.

3. Steps should at once be taken to open military colleges and military schools in India.

4. Steps should be taken immediately to appoint Indians holding King's Commissions to other arms of the Army, like the Artillery, Signals, Tanks, Engineering and Air Force.

I hope, Sir, Government will be pleased to accept the recommendations made by the Skeen Committee by accepting the Resolution of my esteemed friend, Sir Phiroze Sethna.

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN: (Punjab: Nominated Non-official): Sir, I have got very great respect for the Honourable Mover of this Resolution as I know him to be a very able man; and if there were certain subjects that he knew best and if I was going to move a Resolution on those subjects and he asked me to desist from doing so, I would have done so at once. There are subjects and subjects; and it may be that though this subject can be learnt from books or by hearing evidence, I do not think, the mover can know it properly unless he actually saw active service and knew what was needed in warfare and what sort of Army there should be which could stand the ordeal of a war. So I would ask him kindly to withdraw this Resolution. If a man has never seen a thing, by merely reading or hearing about it he gets a peculiar image of it in his mind. I will relate an example of this to the House. There was a blind man to whom a friend said "would you eat an egg"? The blind man asked "What is an egg?" His friend said "It is white and round." The blind man then asked "What is white?", and his friend replied "White is like the colour of a paddy bird." The blind man then said "What is a paddy bird?" His friend tried to show him with his hand what the neck of a paddy bird was like and he put out his hand for his friend to feel. Then the blind man said, "Oh! if the egg is like that, I am sorry I will not be able to swallow it". In the same way, Sir, to laymen the conception of warfare is like the conception of the egg to a blind man.

Sir, I was, as the House knows, on the Esher Committee which was really the forerunner of the Skeen Committee, and the idea of a college like Sandhurst and Woolwich was first mooted by my colleague, Sir Krishna Govinda Gupta, and myself. Though all the other members were against us, we said that we ought to have a college on the lines of Sandhurst and Woolwich, and it will be seen from the Resolutions passed in the Assembly that they were all based on the recommendations of the Esher Committee. But what did they say in those very Resolutions which they passed in the other House? They said that, though

the army should be Indianised, the officers should be taken from the classes who supply the largest number of recruits to the army in proportion to the number of recruits furnished by them. As a result of this Resolution the Skeen Committee was appointed. And what have they done? Instead of adhering to the Resolution which was the reason of the appointment of the Skeen Committee, they recommend that any candidate who is of such and such an age can appear for the examination. They further say that the civil or other authorities who are near the home of the candidate need not say that they know the applicant, and should not interfere. It is only some Committee somewhere at a distance from the applicant's home which will decide the case of a candidate, whom they do not know and judge whether he is fit to enter the army or not. Of course, the Committee require two referees. Any candidate can get two referees who are interested in him Sir, such a departure from the method of recruitment hitherto adopted would mean a revolution in the direction. I may say, Sir, that from the time when history commenced, recruitment was made from the proper classes. The Puranas, which have been discarded by my friend who preceded me, say that there are four distinct classes in India. Those who belong to the Vashiya caste are to transact business, commerce, etc.; those who are Brahmins are to minister to the religious needs of the other communities, and the Sudras or the low caste who were never to take up arms. It was the Kshatriyas who took to the profession of arms, from whom sprang the Rajputs. This state of affairs continued till the time of the Muhammadan conquest, and the same practice remained in vogue during their rule. The Muhammadans were also fighters, and they discovered who were the best soldiers in India. So according to the feudal system, the soldiers were recruited from among the fighting classes of India. They used to levy *Jezia*. It was not a poll-tax at all. *Jezia* meant that when a man lived in the country and was unable to defend his home, he had to pay some money to the army who defended his hearth and home. So this continued for about 900 years during the time of Muhammadans. In the time of the Moghuls, it was Akbar himself who entrusted the command of the army to the fighting classes who were Rajputs. Then the English came, and after trying the martial spirit and valour of the people, they found out the various fighting classes. Suggestions have been made from time to time to the effect that recruitment should be made from classes other than the martial during the time of Lord Kitchner and Lord Roberts. They went through the question and rejected the proposal.

Then, Sir, from the time the English came, they have recruited from among the classes which have proved to be the best on the field. But if you take men, as this Committee recommends, from any class you like, then it will be a thing without a parallel in the military history of India. If you take the officers from outside the martial classes, to which the soldiers belong, there will be trouble, because the army in India have stuck to the principle that each class of sepoys must be under an Indian officer of its own class; I mean if there is a Sikh regiment, it should be under a Sikh Indian officer; if there is a Punjabi Muhammadan regiment, it should be under an Indian officer who is a Punjabi Muhammadan. Whenever during the absence of one of these officers, an officer belonging to another class has been appointed, that is to say, a Pathan placed in charge of the Sikh sepoys, or a Sikh officer in charge of a Pathan regiment. there has been resentment among the sepoys. Therefore, Sir, when you import

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an element which has never been in the army, and when these sepoys see that the new element who will officer them has done nothing during the last war or during any of the previous wars, I fear they are likely to resent it. They will resent being officered by this new element because these officers have come in under the orders of the military authorities or under the orders of politicians or under the orders of the Legislature. It is a well known fact that there are certain armies which have tolerated the interference of politicians. Take Portugal. There you have revolutions. Look at the disaster of Spain in Morocco? Why? Because politicians began to meddle with the Army. It may be asked how was India conquered or taken? Because there were intriguers in different parts of the country, because there was not one nation in this country, and the result was that the people lost the country. It is said, Sir, that history repeats itself, and if you create an army as you had before the advent of the British, then history will repeat itself and there will be a disaster. Sir, when we found in the Report that a departure was being made in the system of recruitment to the army, a system which has come down to us from centuries, the martial classes thought it their duty to bring this fact to the notice of His Excellency the Commander-in-Chief and the military authorities, and His Excellency had agreed long ago to receive a deputation. But as the House knows, I had to go to Calcutta and then when I came back I found that His Excellency had gone away on tour. So, this was delayed and we were only able to wait on His Excellency the other day. I will not say anything about what the deputation said, because it was published in the papers and I think most of the Honourable Members have seen it. But I might say just one word, that they did feel that when certain classes were not fit to be soldiers, they were not fit to be officers. If any class has not been able to give men to fight I do not think that they are capable of officering. If the Legislature and the politicians want that such an experiment should be made, all the funds of the Government are in their hands and they can vote for two other regiments to be raised. These regiments may be raised from the non-martial classes and officered by their own element. Send them to the frontier during a war and let us see if they behave well. If they do not, you can disband them and it will not matter. But to diminish the stuff which has been tried and bring in stuff which has not been tried is not, I think, practical politics.

4 P.M.

I may say another thing. I have been attacked by my friends in the army that being at Simla I have done nothing and they are sorry that such a report should have been brought about which seeks to bring in those classes who may run away from the field. I told them that I had done all that I could; that I had approached His Excellency and told him and that the personnel of the Committee was a wrong one and nothing could have been expected from it which would be suitable to the requirements of the army; that politics played its part and that they wanted to please some of their politician friends. The Resolution says that the members of the Committee should be from the martial classes, and just at the end it says, also politicians; but when you see the personnel of the Committee, it comes first Pandit Motilal Nehru—the class which was mentioned last comes first. Able lawyers who could speak were on one side and on the other side there were soldiers who could not argue with them, and some of them did not know English and did not know what was being talked

about. I have known General Sir Andrew Skeen ever since we were first in Somaliland, that is, about 25 years ago. He is a great soldier no doubt, but when I say that he is a great soldier I cannot say that he was at the same time a great politician. And when a man is hampered by abler men and he cannot argue with them he thinks that they are right and naturally he is obliged to sign the report. There is another curious thing. The Committee which went abroad included my great friend the mover and Mr. Jinnah who have not seen active service and do not know anything about war. The third gentleman was a soldier but he has left the army and is doing a civilian job. He was like one or two members of the Committee who were dissatisfied with the army because they were not first holding the proper King's Commission and some of the junior Englishmen who came out as King's commissioned officers superseded them. Some of these left the service and others who could not afford to do so lingered on. This was the personnel of that Committee which went abroad. Another little Committee which wanted to find out where they could get best soldiers went to see the colleges. Well, it is very kind of the Government to have given us education, but the education that we are getting is such that we lose as much manhood as the education we receive. An educated man generally is bodily unfit. In England which is a cold country it is different. But in this country it is not yet known that unless a man can stand heat he is no good for this country. During the time that our boys are being trained, they are seated on benches under fans in beautiful rooms. Directly they come out of the college if you make them walk in the heat, they cannot. Their eyes are gone and they cannot see without glasses. A regiment of such men taken from a class untried was sent to Mesopotamia. What did they do? They killed three men of their own and no officer had the courage to send them into the line because if they ran away the enemy would have broken through the line. A similar experiment of raising a regiment from non-martial races has been tried before in Kashmir. The Kashmiris are such big men that one or two of them can carry on their back a big piano. It was asked of the Maharaja why he did not take such strong men into his army? It was thought to be a good suggestion, and so a battalion was raised. When it got ready, it was ordered to be sent to guard the frontier at Gilgit. But the officer commanding came with a request saying: "I shall be thankful if you can give us a posse of Sikhs, say, only four men and not more than that, as if we do not get those 4 Sikhs, our armoury at Gilgit would be looted by the Pathans and we would have no rifles to fight with." Of course, this regiment was disbanded and such a thing was never tried again. Never mind these two instances, try again if you like. You can even disband one of the best regiments and get another regiment of the type mentioned above. But I hope that any experiment made about officers or about men will be on a small scale, as we don't want all the army to be contaminated. I got up and went to my Honourable friend, the Mover, to see if there were new arguments which he might bring but he had not many. The one thing he said was that Imperial considerations should not be allowed to delay matters. If the Imperial point of view does not come in.....

THE HONOURABLE SIR PHIROZE SETHNA: I did not say that.

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN: If the Imperial point of view does not come in, supposing the Indian army is weakened by bringing in wrong stuff, India would get a bad name if they went and

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fought abroad, and did not come up to the mark. The English officers and the same stuff that you have got now in the Indian army were instrumental in winning the war. God forbid, but if the English had lost the war owing to the inefficiency of the Indian army, the keys of India would have been handed over to the other side in Belgium. It is really in the interests of the very country, which you say you are for, that you should not have a wrong army. My friend the Honourable Lala Ram Saran Das has cited the opinion of a Governor. I have got a pamphlet written by another Governor, which I will not take the time of the House by reading, in which he says quite different things about the Skeen Committee's Report.

THE HONOURABLE THE PRESIDENT: The Honourable Member has his back to the clock and is probably unaware that he has already exceeded his time-limit.

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN: I will conclude by saying that the Honourable the Mover should not be in a hurry because such important questions should never be decided in a hurry. Let the House consider that this is an Imperial question, and let it be dealt with by people in England as well as here, and the more the time taken to consider the Report the more the wrong things in this Report will come to light. I hope, Sir, that the House will realise this, and take this from a person who is as much a friend of the country and who has got some experience at any rate of having done service in different campaigns including the war. Let them take the benefit of his advice and not vote in favour of this Resolution which wants to hustle things.

THE HONOURABLE MR. V. RAMADAS PANTULU: (Madras: Non-Muhammadan): Before I entered the House, you, Sir, told me that you considered my amendment not in order and I shall not therefore move it. I sent it in because it was an all-party amendment which was moved in the other House and which was accepted by the President of the Legislative Assembly. However, I do not think I will be materially prejudiced in placing my case before this House by not moving my amendment, because I feel that I can say what is contained in the preamble of my amendment while I support the Resolution of the Honourable Mover. Before I accord my entire and whole-hearted support to the Resolution so ably moved by my friend Sir Phiroze Sethna, I wish to congratulate him upon the very valuable public services he has rendered to this country as a member of the Skeen Committee. The Report of this Committee, Sir, I value more for the admissions that are contained in it, which go to vindicate thoroughly Indian public opinion with regard to the British policy in India of the exclusion of Indians from military service. Valuable as the recommendations are, I value these admissions much more. Indian public opinion had all along laid four charges against the British Government in this country with regard to its military policy. First of all, we have always been telling them that there is ample potential material from which to recruit to the commissioned ranks of the army. Secondly, we have been telling them that the policy of exclusion was deliberate. Thirdly, we have been telling them that their policy of disarmament of a whole nation was based on the distrust of Indians. And, fourthly, we have been telling them that such schemes

as have been put forward, as the 8-unit scheme, are a mere eye-wash. I find plenty of justification for these four charges within the four corners of this Report itself. I shall be failing in my duty if I do not draw attention to these passages. With regard to the existence of the potential material, on page 21 of the Report, I find these sentences :—

" We believe good potential material to exist which the efforts of Government have not yet succeeded in reaching. This belief is based upon evidence of a substantial and credible character. There are a number of young King's commissioned officers already in the Indian Army who are pronounced by their Commanding Officers to be efficient, according to the single standard of efficiency which the army recognises : and many of these have reached their present position in the face of far greater disadvantages and difficulties than a British boy has to overcome ."

That is the first charge. The second charge is admitted on page 12 with regard to the past policy of the Government of India :

" Many and various reasons have been assigned for the unsatisfactory state of affairs described above. The root cause is plain to see. It consists in the fact that until 8 years ago Indians were wholly excluded from positions of high responsibility in the army, all military appointments carrying the King's Commission being held by Europeans alone.

There is the admission of the policy of exclusion. The third charge with regard to disarmament is admitted on page 13 :

" In addition to the other factors which have been mentioned, sections of Indian public opinion charge Government with having increased unnecessarily the difficulties in the path through the restrictions of the Arms Act, or, as political opinion expresses it, the disarmament of the people.

Then, Sir, with regard to the unsatisfactory character of the schemes of Indianisation which is the 4th charge, this is also admitted on page 21 :

" The most substantial reason for the dearth of candidates and one which we believe, after very careful consideration, to be the governing factor in regard to future policy is the extremely narrow scope of the scheme for the Indianisation of the higher ranks of the Army in India which has so far been sanctioned."

Sir, public opinion, therefore, I say, stands fully vindicated by the clear admissions made by the unanimous Report of the Skeen Committee. All that I want now is the acceptance by the Government and putting into action of such recommendations as the Skeen Committee was pleased to make. Firstly, the Skeen Committee is a very unique Committee. Of the fourteen members who sat on the Committee, as many as 12 are Indians, the two European members being Sir Andrew Skeen and Mr. Burdon, the former gentleman holding an eminent position in the Indian Army and the latter being the Army Secretary. They have wholly agreed with the conclusions arrived at by their Indian Colleagues on the Committee. It is a pre-eminently Indian Committee in the conclusions of which responsible European officers concurred. The second thing is that the Report of the Committee is unanimous. It is rather unfortunate that the Honourable the Leader of the House, Sir Muhammad Habibullah, has in this connection mentioned the Lee Commission. I wish that the unanimous recommendations of this Committee were treated in the same spirit as the unanimous recommendations of the Lee Commission. But the comparison between the two merely stops at the point of their unanimity. The Lee Commission recommendations were given effect to in anticipation, and, before even its Report saw the light of day, Government were anxious to put into force those recommendations with retrospective effect to strengthen

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the steel frame of this country. But this unfortunate Skeen Report, even before it saw the light of day, was practically repudiated by what is euphemistically called the Foreword, which has damned the Report in anticipation. The Foreword, if it means anything, means that the Government is not prepared to accept it. One sentence in the Foreword reads thus :

"Again the Government when called upon to deal with any scheme of increasing Indianisation extending over a number of years must leave themselves free to consider whether the basis of that scheme offers the sure stable line of advance towards the creation of a Dominion Army, or whether alternative methods which did not fall within the Committee's terms of reference might not more profitably be explored.

The whole thing is thus thrown into the melting pot by the last sentence :

"The Committee's Report will thus be used as a starting point for discussions with His Majesty's Government to whom the Government of India will in due course forward their considered views on it."

So with regard to the attitude the Government have taken, sufficient indication of it has been given in this Foreward and in the speech made by His Excellency the Commander-in-Chief in another place. I am free to admit that his speech was on the whole a sympathetic one, but it was a very halting one. I must characterise the attitude of the Government in this matter as one of diplomatic evasion and of delaying intention. But I know that the Government of India also is acting in this matter not as a free agent. The two insuperable difficulties that stand in the way of even this modest report being given effect to, seem to be these. Firstly, the racial prejudice of the British officers against serving under Indians. This is supposed to lead to a paucity of recruitment in England of British cadets ; and it is urged as a very good reason for making the pace slow. The second impediment seems to be the obstinacy of the Army Department at home. That obstinacy is based on the plea of Imperialism. They say they cannot give effect to these schemes because, in their view, the Indian Army is a link in the chain of the Imperial Army, and the Indian Army is a unit in the Empire's forces. Therefore, the corollary is that any scheme for Indianization of the Army must be a part and parcel of an Imperial scheme of defence of India. On these grounds, the Army Department at home take their stand. But, Sir, these imperialistic ideas certainly cannot commend themselves to Indian sentiment, to Indian opinion, because they are based upon the conception that the occupation of India by the British people should continue eternally, and upon the assumption that the Army in India is to be maintained to protect the British Imperial interests and the interests of British capitalists all over the globe. That is a view to which Indians cannot subscribe. It is evident that if the people and the Government in India were to have the governing control, the Army in India cannot be used either to suppress Nationalism in China or to carry on British commercial wars in other countries. Therefore, the obvious difficulties in the way of the Army Department in England agreeing to any scheme of Indianization are patent ; but I would say that the views of the Army Department cannot be agreed to by Indians. My Honourable friend, Mr. Haig, said that sentiment was a cheap commodity and that that ought not to be a consideration ; but the whole of his argument against Indianization is based on sentiment because the British lads will not serve under Indians. May I ask what it is except sentiment, and therefore may I ask Mr. Haig to follow the old adage of not throwing

stones at your neighbour's house when you live in glass houses yourself ? Sentiment rules everywhere. I candidly admit that sentiment rules the World and India as well. If British sentiment favours the maintenance of a substantial British element in the Indian Army, Indian sentiment demands in unmistakable terms the utmost Indianization of the Army.

Then, Sir, while I accord my wholehearted support to this Resolution I wish to guard myself against three possible dangers. We who support the Resolution ought not to be understood to agree to the scheme as in any sense even a transitorily final scheme. The question of the defence of India is a part and parcel of the scheme of responsible government : it cannot be dealt with in an isolated fashion. Therefore, whenever there is a revision of the constitution, we retain a free hand to press for a provision being made in the constitution for the devolution of the responsibility of the defence of the country upon the people of the country, and to give the go-by to the whole of the Skeen Committee scheme. The second thing is that while we think that these recommendations are a fair starting point for Indianizing the army, we do not consider them satisfactory or acceptable to the people as a whole. Look at the pace. By 1952 we shall have only 50 per cent. of the commissioned ranks manned by Indians. Does any patriotic Indian consider it a sufficiently quick progress ? Even in this Report I think my friend, the Honourable Sir Phiroze Sethna and others have asked for 15 and 20 years, in the alternative, as the maximum period by the end of which not less than 50 per cent. of the officers will be Indians. And, again, we are not satisfied only with an Indian Sandhurst. We want an Indian Cranwell and an Indian Woolwich as well. Therefore, there are various matters upon which Indians are not fully satisfied with this Report, and therefore I guard myself against accepting this Report as in any way satisfactory. But I do not wish to disturb the value of the unanimity of the recommendations by striking a discordant note on this motion to start with them. The third reason for my caution in dealing with this Report is that the Report itself recognizes that in the course of five years after the establishment of an Indian Sandhurst, say, by the end of 1938, the whole question may be reviewed as stated at page 24 :

" It is however unanimously agreed that, whether the slower or the more rapid rate of progression is ultimately adopted, the scheme actually in operation should be reviewed in 1938, that is to say, 5 years, after the inauguration of the Indian Sandhurst, with a view to considering whether the success achieved is not sufficiently solid to warrant a further acceleration of the rate of progress ".

Therefore, for these reasons, I should have liked to move the amendment which stands in my name giving a guarded support to the Resolution. As I have already said, I do not in the least wish to detract from the value of the recommendations or from the speech made by the Honourable Sir Phiroze Sethna.

I shall only appeal, Sir, in conclusion, to my friends on the opposite side not to throw obstacles in the way of Indianization by opposing this small measure. The Government of India have always been declaring their intention of Indianizing the Army and of allowing the people to make a real advance towards self-defence. Let that intention and that declaration be shown to be true in practice when it is tested in action. There is that declaration, there is the unanimity of this Report, there is solid Indian public opinion : if this is not sufficient, I do not know what will be sufficient. When we ask for res-

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ponsible government, you say: "You are not in a position to defend yourselves". When we ask for facilities for learning self-defence, we are told: "You have not got responsible government". This is a vicious circle. I hope such a tactful and enlightened soldier, such a well-wisher and sympathsier of India as His Excellency the Commander-in-Chief will not indulge in arguments in a vicious circle and will see his way to press on the Government to give full effect to the recommendations of the Sandhurst Committee.

THE HONOURABLE SARDAR CHARANJIT SINGH: (Punjab: Nominated Non-Official): Sir, I am afraid I cannot support the Resolution as it stands. It seems to me a bit premature to ask that prompt action should be taken on the recommendations of the Sandhurst Committee while those recommendations are still under the consideration of His Majesty's Government. I fully appreciate the services rendered by my gallant friend, General Sir Andrew Skeen and his colleagues, but a perusal of the Report shows that the terms of reference referred to one aspect of the question only. Looking at the matter from the Imperial point of view, it is evident that there are other aspects of the problem also; for instance, its bearing on the administration and constitution of India. Then there is the question of efficiency. I am one of those who lay great stress on efficiency; and I firmly believe that in the army, above all, efficiency must be maintained at the very highest level. I submit that these are considerations which must be thoroughly taken into account before any conclusions are arrived at on a question of such vital importance and magnitude. I am sure that even the signatories to the Report themselves do not claim for it that perfection which would admit of no further consideration or perhaps improvement. In the words of the Report itself: "there are difficulties which require a special degree of patience, wisdom and sympathy to surmount." I would therefore strongly ask my Honourable friend Sir Phiroze Sethna not to press his Resolution and to leave the advocacy of Indian aspirations in this respect in the hands of the distinguished Field Marshall, His Excellency Sir William Birdwood, whose love for India and the Indian Army is well known.

THE HONOURABLE SIR MANECKJI DADABHOY: (Central Provinces: Nominated Non-Official): Sir, I intervene in this debate with the earnest desire—and a sincere desire—to bring this discussion, if possible, to a harmonious settlement. I wish to make clear my position to-day. I do not desire to express my opinion one way or the other on the merits of the Resolution so ably moved by my friend, Sir Phiroze Sethna. I recognise and appreciate the enthusiasm and the vigour with which he laid a series of facts before this Council to-day. It was only natural that a man who had devoted a few months in the service of the country and who had gone to distant lands for the purpose of collecting information should be so enthusiastic on the subject. My object to-day is to tell my colleagues here that I yield to none—not even to Sir Phiroze Sethna—in my desire to see the establishment of an Indian Sandhurst in India for the training of our Indian fellow-subjects. Nor do I yield to any one in my desire to improve generally upon the present supply of Indian candidates for the King's Commission. The Committee that was appointed after some months of laborious work have made certain definite

recommendations. Many of these recommendations are doubtless fundamentally vital in the development of Indian aspirations and Indian ambitions. These recommendations have been issued, but unfortunately on this occasion both Sir Phiroze Sethna and my friend Mr. Ramadas Pantulu, who have addressed the Council to-day and whose speeches I have carefully followed, have given expression to a suspicion which prevails in the mind of many of our Indian friends that the Government on this occasion is not going to act squarely and fairly, and has been deliberately delaying the expression of its own opinion on the subject for the purpose of thwarting the recommendations made by this Committee. I will not say that my Honourable colleagues there have no grounds whatsoever for entertaining such suspicions. Certain things have happened which have caused these suspicions in their minds and in the minds of some of my fellow-countrymen. I have seen the same view also expressed in the newspapers, some of them very well-conducted ones, that Government is going to altogether brush aside the recommendations of this Committee. My grievance on this occasion is, though I am pleased that the Resolution has been moved in this House and elsewhere, that my Honourable friends here and in the other House who have desired and who desire Government to take immediate action in connection with this Report are not fair both to the Government of India and to the Home Government, are not fair to the country in denying the other side an opportunity of expressing their views on the subject in clear and unambiguous terms and laying them before the Council. It is for this reason I think it prudent not to express my personal opinion at this stage on the recommendations of this Committee. I have carefully gone through this important Report, and I think it is only right, and fair that, when we ask Government to move and make certain concessions of a very important, vital and far-reaching character, it is only just and equitable that we must give the Government the fullest opportunity to consider the question most carefully and minutely before arriving at a final decision on the subject. When they have expressed their decision after that mature consideration which the importance of the subject demands, it would be our duty to criticise the action of Government in the light of the observations made by them ; but till that stage is reached, I consider it premature for this Council to interfere in this matter. My friend, Sir Phiroze Sethna, has made it a grievance that Government took two and a half years to consider the Report of the Territorial and Auxiliary Forces Committee and to come to a decision ; and in connection with this Report too they might probably take a similar or much longer period. At present I will not pay much attention to that statement as we are not concerned with the Report of the Territorial and Auxiliary Forces Committee. It is not before us ; we are concerned only with the Resolution which my friend, Sir Phiroze Sethna, has moved, and the terms of that Resolution refer to the Sandhurst Committee, and therefore I shall lay certain matters before you in order to enable you to consider whether Government have had sufficient time to consider this matter and whether our charge at present against Government is really sustainable in any way. If you propose to make random statements and random charges against them, nobody will take any notice of you ; but if you refer to facts and figures I personally think that in this case the Government are not to blame. Now take the dates just for a few minutes and see what has happened. My friend has pointed out that this Commission was appointed in June 1925.

[Sir Maneckji Dadabhoy.]

I find from their Report that they concluded their labours on the 4th of November 1926. I presume, therefore, that this Report was handed over to Government some time after the 4th of November. Unfortunately, the Report is not dated. The Commission apparently omitted to date this Report, and therefore I have no means of ascertaining when this Report was actually submitted. We shall therefore assume that some time must have elapsed between the 4th November 1926 and the submission of this Report. Then the Government of India on the 1st April 1927 published this Report, just about a few months after that, with a Foreword on the subject. If Honourable Members will kindly bear in mind these dates, in view of the circumstances I shall presently state, they will see that there has not been any undue delay on the part of Government in considering this subject, and all doubts and apprehensions or fears of suspicions as to the conduct and attitude of Government towards this Report are, in my humble opinion, altogether groundless. The other day, His Excellency the Commander-in-Chief, to whom I shall have to refer presently, stated that only a few weeks ago the Government of India submitted their provisional minute on the subject to the Home Government. Now the few months that have elapsed between the publication of this Report and its submission to the Home Government cannot be considered as a great delay, in view of the facts stated in the Foreword that the problems of recruitment and training of King's commissioned officers for whatever service are essentially an Imperial concern. Now, it is natural that in this connection a serious duty devolves on His Excellency the Commander-in-Chief who is responsible for the Army in India, and therefore he is bound to see that the whole case is thoroughly threshed out by the Government of India before the Report is sent to the Home authorities. His Excellency the other day made a fervent appeal in the other place asking the Members to forbear their judgment for a short while, and I am extremely sorry to find that no importance was attached to that advice in the other place, but I hope that when all the circumstances are laid here before Honourable Members, their decision in this matter will be of a different character. His Excellency stated that the matter is now before the Home Government. Therefore, Sir, are we right, when the matter is *sub judice*, in extorting an admission from this Government by passing this Resolution or in asking this Government whether they are going to accept the recommendations of the Skeen Committee in their entirety or not? In simple language, it means that my friend, Sir Phiroze Sethna, who was a Member of the Skeen Committee, wants an *ex parte* judgment. He wants the Government to pronounce an *ex parte* judgment without giving the Home Government the bare opportunity to express an opinion on the subject. Would such action be in conformity with the existing constitution? I do not know what the decision of the Home Government is going to be. I am not now in a position to know what is the recommendation of the Government of India in the matter. But I know this, as a matter of fact, and you will all agree with me, that we have in His Excellency the Commander-in-Chief a most devoted and an affectionate friend of the sepoys and Indian officers. I have been connected with His Excellency for over 20 years. I sat with him in the old Council some 20 years ago, and I know his feelings and sympathy for the Indians, and especially for the

Army in this country. It is very unlikely that he will not promote the privileges, the dignity or the position of Indians by bettering their education in military matters. Therefore, Sir, I ask, why should there be this indecent haste to pass this Resolution? For so many years our countrymen have been debarred from admission into the higher ranks of the army. Will a few months more make such a great difference in their advancement? If this matter comes up for discussion, and I am sure the Home Government's despatch must in the ordinary course of business arrive before we meet in Delhi, I feel confident that the Government of India will make a definite pronouncement on the subject at the Delhi Session.....

THE HONOURABLE SIR PHIROZE SETHNA: Do the Government promise it?

THE HONOURABLE SIR MANECKJI DADABHOY: I think this matter is likely to come up in the Delhi Session, I mean in ordinary circumstances. Is it therefore necessary to press this Resolution at this stage? Sir, my personal opinion is that this Council would be acting with great dignity and with forbearance if they did not press this Resolution, and joined me in appealing to our friend, the Honourable Sir Phiroze Sethna, to withdraw this Resolution now. If my friend thought that this Resolution was necessary in order to bring the matter prominently to the notice of the Government of India and the Home Government, that object has already been achieved by moving this Resolution here and in the other House. Mere passing of this Resolution will not help us at all.

I also do not agree with my friend Sir Phiroze Sethna, nor with my friend Mr. Ramadas Pantulu, in their statements that because it was a unanimous Report it must be given effect to. Is this Council going to lay down and accept a dangerous principle that when the Report of a Commission is unanimous, it must be accepted in its entirety? Surely, Sir, we men of judgment, we men who know and understand things about our country, are not always to be guided wholly by the expression of opinion of Committees, even if their recommendations are unanimous. We are entitled to express our independent judgment on all such matters, and therefore I do not think much stress can be laid on the proposition that, because the recommendations of the Committee were unanimous, they should be accepted in their entirety. I think the Government should have a full and fair opportunity of examining the subject. Even the Report itself laid special stress on two important points, namely, the efficiency of the Army and that the European recruitment should not be prejudiced. If they have made these two points very clearly, it is all the more necessary that these recommendations should be carefully scrutinised, examined and considered both by the Government of India and by His Majesty's Government before a final pronouncement is made on the subject. I appeal, therefore, once more to my Honourable friend, Sir Phiroze Sethna, to withdraw his Resolution. I hope that my remarks will not be misunderstood to-day. I have not expressed any opinion on the merits of the case on which I shall have another opportunity to speak hereafter.

THE HONOURABLE SARDAR SHIVDEV SINGH OBEROI (Punjab: Sikh): I have to tender an apology to the Council for taking up a few minutes of their valuable time at this late hour, but I would assure them that I would try my

[Sardar Chivdev Singh Oberoi.]

best to be as brief as possible. I think India stands indebted to Lieutenant-General Sir Andrew Skeen and the other members of the Indian Sandhurst Committee for the pains which they took and the unanimous verdict which they gave on one of the most important subjects which concern not only India but, I think, the Imperial Government. In a forcible and reasonable speech the Honourable the Mover of the Resolution has said that recommendation should be made to His Excellency the Viceroy that he should ask the Secretary of State for India to take the Report into consideration and to give effect to it promptly. I need not give any further reasons because it does not require any more reasons than those which have been forcibly put forward by the Honourable Mover.

I would like to say a few words on the remarks which have fallen from the lips of those Honourable Members who have either advised the withdrawal of the Resolution or who have attacked in very vehement terms the decisions of the Committee. From what I gather from the learned speeches of my senior Honourable friend, Sir Maneckji Dadabhoy and of my Honourable friend, Sardar Charanjit Singhji, they simply wish that the matter should not be hastened, and the Government of India or the Home Government should not be asked to hasten their decisions as regards the recommendations of the Skeen Committee. They have referred in right terms about the sympathies of our present Commander-in-Chief and I fully endorse what has been said. I am fully cognisant of the fact that we have got in His Excellency the Commander-in-Chief the best friend of the Indian Army, and I think that this is one of the important grounds why this question should be taken up during the time of his office as Commander-in-Chief of India. As regards the argument that as the matter is under consideration with the Home Government, therefore we should not in this House pass this Resolution—and a request has been made to the Honourable Mover to withdraw it—but I do not understand the necessity of this course. It has been said that when the Government pronounces its decisions, then will be the time for this Council to consider them. I think that it will be a very hard task to take up the position of opposing the decisions of the Home Government and the Indian Government. I think it will be a very hard task for any Honourable Member to come forward with amendments and oppose the decisions of the Government of India and the Home Government. I think the present is the time when we, as Members of this House, responsible representatives of India, must submit our views for the consideration of the Government of India and the Home Government and say that the recommendations made unanimously by the Skeen Committee should be given effect to as soon as possible.

As regards the recommendations of the Committee I agree generally with all the recommendations which have been made with one or two minor exceptions which perhaps I may be allowed to mention later on. But before I go into these minor exceptions, I find myself in a very peculiar position, because in this very House one Honourable Member has expressed the opinion that the decisions of this Committee have not satisfied the Indians at large. He wants too much of it and he wants to hasten the Indianisation of the Indian army. With regard to this, I am quite satisfied that the recommendations of the Skeen Committee are there in such a form as can be said to hasten the Indianisation of

the Indian army. As regards the remarks of my gallant friend from the Punjab who has very vehemently attacked the decisions of the Skeen Committee on one ground that the members of the Committee were not real fighting men and were more politicians than fighting men, and therefore the politicians have overpowered the few fighting men and thus these recommendations have been made. I would draw the attention of the Honourable House to the fact that out of the 13 members of the Committee I can count 7 members who can be said to be real fighting men, including the Honourable Chairman of that Committee, and out of the balance of 6 I would like to mention the names of two gentlemen at least, Sardar Jogendra Singh and Nawab Sir Abdul Qaiyum, who can very well be considered to belong to the martial races according to the definition of my Honourable friend. Though they have not been in the fighting line themselves, they are certainly very competent authorities on matters relating to the military constitution of India. I am sorry I am a bit late in expressing my thanks to my gallant friend for the complimentary words which he used in regard to the Sikhs when he mentioned the formation of a Kashmiri regiment under the orders of the Maharaja of Kashmir. While thanking him for his complimentary remarks regarding the Sikhs, I must say that I do not agree at all with the ideas expressed by him later. From the way in which he gave expression to his ideas, it struck me that he was opposing the recommendations of the Committee tooth and nail. And now I wish to confront him with the first passage of the memorial which was submitted to His Excellency the Commander-in-Chief by a deputation which, I believe, was led by the gallant Colonel. It says :

"We sincerely congratulate the Skeen Committee on the generally liberal spirit, in which its recommendations have been conceived. The proposed pace of Indianisation may be regarded as slow, but in view of the fact that the Committee suggests the possibility of a revision of this pace in 1938, we shall not make a grievance of the cautious beginning proposed in the Report. We do hope that every endeavour will be made to give early effect to the recommendations made in the Report."

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN: If you want to read it, read it in full, because otherwise it gives a wrong impression.

THE HONOURABLE SARDAR SHIVDEV SINGH OBEROI: Any other passage which may be beneficial to you can be read out by you.

THE HONOURABLE COLONEL NAWAB SIR UMAR HAYAT KHAN: Only if I were allowed could I do it ?

THE HONOURABLE SARDAR SHIVDEV SINGH OBEROI: I take the first and the most important point to meet your arguments.

5 P.M.

This clearly shows that the deputation headed by my gallant friend Sir Umar Hayat Khan had sincerely expressed their opinion that the recommendations made in the Report should be given effect to at an early date. He said further on that the commission should be open to members of the martial classes in India. Of course I have read this also, and I agree with him to a very great extent ; but while agreeing with him I cannot disagree with the recommendation of the Committee that it should be an open competition, of course with some reservation of nominations for commissions by His Excellency the Commander-in-Chief. As regards this expression of opinion that the commissions

[Sardar Shivdev Singh Oberoi.]

should be open only to the martial classes, I fail to understand it because my friend has not given the definition of martial races. Nor has he given the names of the martial races of India. (*The Honourable Colonel Nawab Sir Umar Hayat Khan:* "You will see it at the end of the memorial)." Thank you. He thinks that the King's commission should be the monopoly of those whom he calls the martial races of India. I beg to differ from him most respectfully. My opinion about the spirit in the human body is something different from what my friend thinks of it. Of course qualities in human beings can be developed either by inheritance or by associations. Of course I admit that qualities are inherited and that the sons of warriors and the men of martial classes generally are themselves good warriors and are better fitted for the army than the sons of others who are in professions or business or in clerkships. At the same time, I think that these qualities can be secured by training, by association and by education and other means. I cannot agree that the son of a bania cannot become a good general or a good lieutenant. I cannot agree that only the son of a captain or a colonel can become a good lieutenant. I can mention instances of men in the army whose fathers, grandfathers or great grandfathers were never in the army and yet have qualified themselves as good lieutenants and are as good as the British officers. With these remarks I generally support the Resolution put forward by my friend Sir Phiroze Sethna.

With regard to my little points of difference, of course these are matters of detail, but I would like to give expression to them also.

THE HONOURABLE THE PRESIDENT: The Honourable Member has just one minute at his disposal.

THE HONOURABLE SARDAR SHIVDEV SINGH OBEROI: Briefly, Sir, I would like that 75 per cent. of the commissions should be recruited by open competition and 25 per cent. by nomination. The second point is that when the examination takes place, it should not be only in the languages or geography, history or mathematics, but there should also be an examination to test the physical health of the candidates, their sportsmanlike habits and family services, whether their fathers were in the army or not, and so forth. These are the few words I have to express in support of the Resolution put forward by my Honourable friend, and I hope that Honourable Members will support it.

HIS EXCELLENCY THE COMMANDER-IN-CHIEF: When I first saw this Resolution tabled I could not help feeling that it was premature. However, I do not regret this debate in one respect, in that it has given an opportunity of hearing the ideas of Honourable Members of this Council and realising what their views are on the subject—views which Government will certainly be glad to take into consideration. I notice that in the speeches of two of my Honourable friends, Sir Phiroze Sethna and Sir Maneckji Dadabhoy, a good deal of stress was laid upon the actual time taken by the Committee and the time which has already been taken by Government. As I told Sir Phiroze Sethna, I took no exception whatever to the time taken by the Committee. I realise it was necessary that they should have taken all the time they required. Later on he stated, I think that I had claimed for Government that we had not yet had half the time or one-third of the time to consider it. As a matter of fact, I

made no mention whatever of any factor of time and I happen to have here the exact words I used. What I said was:

"And when we realise the time the committee necessarily had to take Honourable Members will probably agree that Government could hardly have dealt with the Report quicker than they did."

THE HONOURABLE SIR PHIROZE SETHNA: I will find it out.

HIS EXCELLENCY THE COMMANDER-IN-CHIEF: As I have said, I felt when this Resolution was tabled that it was premature and I cannot help feeling that it is still the case, and I also think that the sense of this House will probably agree with me in that respect, when I mention in a very few words how the matter now stands. On receipt of the recommendations of the Committee, the Government of India at once set themselves to consider it as carefully as they could. Before going any further I would like to say how very grateful the Government are to the Committee, for the very great trouble they took in dealing with the whole matter. They went into the subject with the greatest care and we are grateful to them. My Honourable friend Sir Phiroze Sethna seems to me to say: "why not then carry out the recommendations straightaway". Well, the Government of India are not in a position to say now either that the recommendations can be accepted straightaway, nor are they in a position to say that they must be rejected. As a matter of fact, no Government worth its salt could possibly delegate to any Committee, however influential, their own rights and responsibilities in this matter. As I have said, the Government of India set to work on the report and dealt with it as expeditiously as they could, considering the importance of the question. Having done that, Government were able a short time ago to send a telegram to the Secretary of State giving their provisional views upon the proceedings of the Committee. I am sorry that the telegram could not give His Majesty's Government the necessary time which must be essential for them to come to any considered judgment on the matters before us. We realised they would have to consult the Committee of Imperial Defence upon any matter which involves army reorganisation, as the recommendations of the Committee do, and that is really how the matter stands. His Majesty's Government have informed us that they have not come to any considered judgment on this matter, and when this House considers the enormous and the inherent responsibility which does lie on His Majesty's Government for the defence of the whole Empire, I am sure they will realise that it is not a matter which can be dealt with in a few days or weeks, or possibly months. I am not quite certain when the Committee on Imperial Defence will next meet, but till then His Majesty's Government will not be able to come to any definite conclusion. That, Sir, is very briefly how the matter stands and when the House realises this, they will appreciate the fact that Government at this stage can no more accept the recommendations of the Committee than think of rejecting them. That being the case, I do urge on my Honourable friend that he should withdraw this motion and when things are so undecided not to attempt to bring forward any hostile motion against Government at a time when we have not even arrived at our provisional conclusions.

THE HONOURABLE SIR PHIROZE SETHNA: Sir, I am much obliged to His Excellency the Commander-in-Chief for what remarks he has just offered, and in reply to his inquiry as to the paper from which I drew my information,

[Sir Phiroze Sethna.]

I will quote from the special correspondent of the *Times of India*, from his telegram, dated Simla, August, the 25th, in which.....

THE HONOURABLE THE PRESIDENT: The Honourable Member must not labour that point. He was interrupted by His Excellency the Commander-in-Chief to explain that His Excellency did not complain of the time the Committee took to produce this Report. The Honourable the Mover of the Resolution nevertheless set up an argument for the purpose of demolishing it; and I cannot allow him to demolish it a second time.

THE HONOURABLE SIR PHIROZE SETHNA: I shall then first proceed to reply to the observations made by the Honourable Sir Umar Hayat Khan. This Honourable Member holds that because I am not a soldier, and much less been in action, I am by no means justified in moving the Resolution. Following this argument I think the proper course for me would have been not even to have accepted a seat on the Committee. I believe however I am in good company and in no better than that of Sir Umar Hayat himself for, although he has often told us that he is first and last a soldier, and yet he is ever ready to favor the House with his opinions on very divergent subjects with most of which he has not even a nodding acquaintance. My Honourable friend, Sardar Shivdev Singh Oberoi, has spared me the task of reading out the quotation from the representation of the deputation headed by Sir Umar Hayat Khan himself, and in which they have not only approved of the recommendations of the Committee in particular about having Indians represent half the full strength of officers in 25 years, but they have said the pace recommended by the Committee was not quick enough. The Honourable Sir Umar Hayat Khan interjected by saying that we must not read that passage by itself but read other passages as well. I suppose he refers to the passage in the representation where they say:

"Are we to understand from this that the word of Command is to rest with the Bania, the Arora, the Khatri, the Khoja, the Bohra and the non-Punjabi etc."

I think the Honourable Sardar has very ably replied to this point as well and made clear that a soldier need not be a born soldier, that is to say, the child of a father or grandfather who was himself a soldier. Any man can become a soldier if he has the aptitude and the necessary training for it. My Honourable friend, Sir Umar Hyat Khan, knows that there were as many as eight gentlemen on the Committee who were soldiers, some of them did entertain at first the views to which he has given expression here to-day, but they eventually came round to our way of thinking. They recognise that the doors were not closed to the so-called martial classes. It was certainly open to them to continue as before and to continue to a larger extent, but there was no reason why the same opportunity should be denied to persons coming from classes whom my friend Sir Umar Hayat calls non-martial.

It will interest Sir Umar Hayat and those who hold the same views as he does that in the course of our investigations at St. Cyr in France we inquired as to the number of boys who came from the military classes and of those whose fathers had not followed the military profession. The House will be interested to know that out of the 325 boys at St. Cyr at the time 175 were sons of professional soldiers and 150 were sons of men in different civil professions. We were told

further that the former, namely, the sons of soldiers, did not as a rule display any greater military aptitude than the latter, and the latter, the House will be still more interested to know, were sons of tax-collectors, business employees, carpenters, chemists, agriculturists, bailiffs, butchers, band masters and working men.

I would like to satisfy the Honourable Colonel that the question was very fully considered by the Committee, and the conclusions they have come to were accepted even by their colleagues belonging to what he calls the martial classes. My Honourable friend has not spared even Lieutenant-General Sir Andrew Skeen and the other military members of the Committee and said that they were won over by the politically-minded members on the Committee. Let me assure him that General Sir Andrew Skeen was not to be won over as easily as he thinks. He is a Scotchman for one, and it would be almost impossible to get him to budge from an opinion he had formed after mature consideration. If anything it was he who made us turn round to his views and shaped the recommendation which we finally accepted of having half the cadre consist of Indians at the end of 25 years and not earlier.

My Honourable friend, Sir Maneckji Dadabhoy told us that he had no remarks to make on the Report itself. All he wanted to do was to appeal to me that I might withdraw the Resolution and leave the matter in the hands of His Excellency the Commander-in-Chief. I entertain the same high regard for His Excellency as he does. Sir Maneckji said he had known him for a long number of years; I too claim the same privilege. In fact I claim to know his views better having come in close contact with him when serving on a particular Committee when I had opportunities to judge of His Excellency's regard not only for the soldier himself, but for those having to do with the soldier, his views in the matter. If the decision were left absolutely in the hands of His Excellency Field Marshall Sir William Birdwood, I would cheerfully and readily withdraw the Resolution and agree to whatever he says; but we know that the most His Excellency can do is to influence his colleagues on the Executive Council of His Excellency the Viceroy and no further, and that the final say will rest with the authorities at home. It is therefore, Sir, that I cannot but press my Resolution to a vote. Why need my friend, Sir Maneckji, be so apprehensive? He knows well enough that constituted as this House is at present, what the fate of my Resolution will be. We all know it is bound to be lost, and if in spite of that I say that I shall ask for a division, it is solely for the reason of letting the Secretary of State know that at any rate the elected Members of this House favour the unanimous recommendations of the Sandhurst Committee. For this reason, Sir, I cannot accept the proposal of Sir Maneckji Dadabhoy and which has been repeated by His Excellency the Commander-in-Chief to withdraw the proposal.

Now, Sir Maneckji Dadabhoy appears to be in the confidence of Government (*The Honourable Sir Maneckji Dadabhoy*: "No.") He thinks the decision will be out before the Delhi Session in January. He is very confident about it, but His Excellency the Commander-in-Chief in his speech could give no such assurance. I quite agree with His Excellency that the matter requires time; it cannot be settled in a day, in a few weeks or even some months. My Resolution does not say that the decision must be arrived at to-morrow. I quite realize

[Sir Phiroze Sethna.]

that it must take some reasonable time, but the moving of the Resolution only means that we do not want the Government to take any longer time than they can help, and as much time might not again be lost as in the case of the decision on the report of the Auxiliary and Territorial Forces Committee's Report which took two years and seven months. Let me assure His Excellency the Commander-in-Chief that it is not a case of recording a hostile vote as he calls it. It will be a vote to impress upon the Secretary of State the necessity of giving early effect to the recommendations of the Committee.

THE HONOURABLE SIR MANECKJI DADABHOY : It is a vote which might spoil a good case.

THE HONOURABLE THE PRESIDENT : The question is :—

"That the following Resolution be adopted.

"This Council recommends to the Governor General in Council to urge on the Secretary of State for India the necessity of taking prompt action in pursuance of the recommendations made in their report by the Indian Sandhurst Committee".

The Council divided.

AYES—17.

Akram Hussain Bahadur, The Honourable Prince A. M. M.
Alay Nabi, The Honourable Saiyid.
Desika Chari, The Honourable Mr. P. C.
Khaparde, The Honourable Mr. G. S.
Mahendra Prasad, The Honourable Mr.
Mukherjee, The Honourable Srijut Lokenath.
Natesan, The Honourable Mr. G. A.
Oberoi, The Honourable Sardar Shivdev Singh.
Ram Saran Das, The Honourable Rai Bahadur Lala.
Ramadas Pantulu, The Honourable Mr. V.
Rama Rau, the Honourable Rao Sahib Dr. U.
Rampal Singh, The Honourable Raja Sir.
Ray Chaudhury, The Honourable Mr. Kumarsankar.
Sankaran Nair, The Honourable Sir.
Sethna, The Honourable Sir Phiroze.
Seth, The Honourable Rai Bahadur Nalininath.
Sinha, The Honourable Mr. Anugraha Narayan.

NOES—23.

Bell, The Honourable Sir John.
Berthoud, The Honourable Mr. E. H.
Brayne, The Honourable Mr. A. F. L.
Charanjit Singh, The Honourable Sardar
Commander-in-Chief, His Excellency the
Corbett, The Honourable Sir Geoffrey.
Dadabhoy, The Honourable Sir Maneckji
Das, The Honourable Mr. S. R.
Froom, The Honourable Sir Arthur.
Habibullah, The Honourable Khan Bahadur Sir Muhammad, Saheb Bahadur.
Haig, The Honourable Mr. H. G.
Hooton, The Honourable Major-General Alfred.
McWatters, The Honourable Mr. A. C.
Mehr Shah, The Honourable Nawab Sahibzada Saiyad Mohamad.
Misra, The Honourable Pandit Shyam Bihari.
Muhammad Buzlullah, The Honourable Khan Bahadur.
Stow, The Honourable Mr. A. M.
Swan, The Honourable Mr. J. A. L.
Tek Chand, The Honourable Diwan.
Thompson, The Honourable Sir John Perronet.
Tudor-Owen, The Honourable Mr. W. C.
Umar Hayat Khan, The Honourable Colonel Nawab Sir.
Wacha, The Honourable Sir Dinshaw.

The motion was negatived.

The Council then adjourned till Eleven of the Clock on Friday, the 2nd September, 1927.